



CHELTENHAM

BOROUGH COUNCIL

Notice of a meeting of Licensing Committee

Friday, 6 December 2013

2.30 pm

Council Chamber, Municipal Offices

Membership	
Councillors:	Garth Barnes (Chair), Diggory Seacome (Vice-Chair), Andrew Chard, Anne Regan, Rob Reid, Malcolm Stennett, Charles Stewart, Pat Thornton, Jon Walklett and Roger Whyborn

The Council has a substitution process and any substitutions will be announced at the meeting

Agenda

1.	APOLOGIES	
2.	DECLARATIONS OF INTEREST	
3.	PUBLIC QUESTIONS These must be received no later than 12 noon on the fourth working day before the date of the meeting	
4.	MINUTES OF MEETING HELD ON 1 November 2013	(Pages 1 - 14)
5.	MINUTES OF SUB COMMITTEE MEETINGS Licensing Sub Committee – 25 October 2013 BP Garage	(Pages 15 - 22)
6.	PRIVATE HIRE DRIVER APPLICATION Mr Gareth James	(Pages 23 - 26)
7.	PRIVATE HIRE DRIVER APPLICATION Mr Keith Lewis	(Pages 27 - 30)
8.	APPLICATION TO PLACE AN OBJECT ON THE HIGHWAY - A BOARD Slater's Menswear	(Pages 31 - 40)
9.	LOCAL GOVERNMENT ACT 1972 - EXEMPT INFORMATION That in accordance with Section 100A(4) Local Government Act 1972 the public be excluded from the meeting for the	

		<p>remaining items of business as it is likely that, in view of the nature of the business to be transacted or the nature of the proceedings, if members of the public are present there will be disclosed to them exempt information as defined in paragraph 1, 2 and 7, part 1 Schedule 12A (as amended) Local Government Act 1972, namely:</p> <p>Information relating to any individual,</p> <p>Information which is likely to reveal the identity of an individual,</p> <p>Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.</p>	
10.		PRIVATE HIRE DRIVER APPLICATION	(Pages 41 - 48)
11.		REVIEW OF HACKNEY CARRIAGE DRIVER'S LICENCE Report of the Licensing and Business Support Team Leader	(Pages 49 - 56)
12.		ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION	
13.		DATE OF NEXT MEETING 3 January 2014	

Contact Officer: Rachael Sanderson, Democracy Assistant, 01242 264130
Email: democratic.services@cheltenham.gov.uk

Licensing Committee

Friday, 1st November, 2013
2.30 - 4.50 pm

Attendees	
Councillors:	Garth Barnes (Chair), Andrew Chard, Anne Regan, Rob Reid, Malcolm Stennett, Charles Stewart, Pat Thornton, Jon Walklett and Roger Whyborn
Also in attendance:	Amelia Byres, Senior Licensing Officer Vikki Fennell, Solicitor

Minutes

1. APOLOGIES

Councillor Seacome

2. DECLARATIONS OF INTEREST

Councillor Barnes declared an interest in agenda item 13 – Allocation of Christmas Street Collection Dates as a trustee of Cheltenham Animal Shelter. In the absence of the Vice-Chair, he indicated that he would not speak or vote but would remain in the Chamber to conduct the debate.

Councillor Walklett declared an interest in agenda item 13 – Allocation of Christmas Street Collection Dates as he had a friendship with Dancing Ken Hanks (Cheltenham Animal Shelter) and he was a Member of the Mayor's Charity Committee. He would not speak or vote and would leave the Chamber for consideration of this item.

3. PUBLIC QUESTIONS

None

4. MINUTES OF MEETING HELD ON 4 OCTOBER 2013

Resolved that the minutes of the meeting held on 4 October 2013 be agreed and signed as an accurate record.

5. MINUTES OF SUB COMMITTEE MEETINGS

Members stated that Sarah Farooqi was in attendance at the Sub Committee and asked for this to be amended. Upon this amendment it was resolved that the minutes of the sub-committee meeting held on 3 October 2013 be agreed and signed as an accurate record.

6. LOCAL GOVERNMENT ACT 1972 - EXEMPT INFORMATION

7. APPROVAL OF EXEMPT MINUTES OF MEETING HELD ON 4 OCTOBER 2013

Resolved that the exempt minutes of the meeting held on 4 October 2013 be agreed and signed as an accurate record.

8. SITE VISIT (2PM ON THE HIGH STREET OUTSIDE THOMAS COOK)

9. STREET TRADING APPLICATION

Amelia Byres, Senior Licensing Officer, introduced the report as circulated with the agenda. An application had been received from Mr Raviv Hadad for a street trading consent to sell deli items such as breads, traditional pastries, falafel mix, harissa dressing, aubergine dip, tahini sauce and other traditional cooked salad from a mobile trike at two locations. It was proposed that the trike would be located on the High Street outside Monsoon and Warehouse, location one, for the majority of the year. During the Christmas period this location had historically been occupied by a hot food unit operated by Mrs Ellen Danter and a licence had already been granted for this to continue in 2013. As such, it was proposed that the mobile trike would be located on the High Street outside Thomas Cook, location two, during the Christmas period only. If Members were minded to grant a licence to Mr Hadad, this would only be valid until 31 March 2014 as all street trading consents must be reapplied for annually on 1 April.

In response to a query, Amelia Byres confirmed that Mrs Danter had been granted a licence which allowed her hot food unit to be situated outside Monsoon and Warehouse until 31 December 2013. The van would be open to trade between the hours of 09:00 and 18:00 with the exception of Thursdays when this was extended to 21.00 hours to coincide with late night shopping.

Mr Hadad attended the meeting and spoke in support of his application. He explained that, when he had started thinking about the venture two years earlier, he had tried to consider it from a licencing point of view and had been as accommodating as possible. He had been in discussions with the licensing department about the location of the trike and he believed that it was acceptable in terms of the regulations for emergency vehicle access routes etc. As a small operator he did not have the resources to launch a big marketing campaign and he relied heavily upon footfall and exposure which he felt would be optimum at the proposed locations. His trike was attractive, clean and non-polluting and he felt that he would be able to offer something innovative which was suitable for all.

Members were invited to ask questions of the applicant, during which the following points were raised:

- A Member queried how the food would be kept hot and Mr Hadad confirmed that hot food would be cooked to order using a gas heater. He would not be using a generator. The size of the cooking area was minimal and, although he used a fryer, he provided assurance that smells would only arise if the oil being used was old or rancid. The smells would be no worse than those produced by a café, particularly as the cooking would be done in the open air.
- A Member questioned how Mr Hadad intended to keep the trike clean and tidy to comply with health and safety regulations. Mr Hadad indicated that he had a 60 litre foldable bin which would stand next to the trike. The trike had been carefully designed with a tap underneath which would allow the cooking oil to be emptied and replaced at the end of each day. There were no hand washing facilities on the trike as there was no water, however, he had a chemical towel and single use gloves. Mr Hadad referred to the fact that he would be subject to a health and safety assessment by Cotswold District Council and the Senior Licensing Officer confirmed that any premises carrying out food operations, including mobile or temporary premises, had to be registered with the local authority where the food would be stored and, if it was a mobile premises, where this would be located overnight. As Mr Hadad lived within Cotswold District, he would need to apply to Cotswold District Council for food registration.
- A Member noted that concern had been raised by objectors that the umbrella over the trike would reduce visibility of the shop fronts and he questioned whether Mr Hadad would consider decreasing the size of the umbrella to minimise this impact. Mr Hadad indicated that he had thought carefully about this and he had submitted photographs to illustrate its size. The umbrella needed to be a certain size to ensure that it complied with regulations in respect of cooking with oil.
- In response to a query regarding how the trike would be stocked, Mr Hadad explained that he would load his trike at the beginning of each day with as much stock as he could comfortably cycle with. Deliveries would take place between 8:00 and 10:00 hours so he intended to start trading from 11:00 hours each day.
- A Member questioned whether Mr Hadad had used the trike in other locations and he confirmed that he had taken it to several charity events and farmers' markets.
- In response to a comment that the trike might lose its appeal if it operated 365 days per year, Mr Hadad expressed the view that the trike was simply a tool which allowed him to sell his produce to a wide range of people. He did not feel that the food would lose its appeal if people liked it and he hoped that he would attract repeat customers who would expect the trike

to be in the same location, as with any other restaurant or supermarket.

- Several Members raised concern regarding the location of the trike. In response to a query as to why he had applied for two separate locations, Mr Hadad explained that he had opted for the location outside Monsoon and Warehouse mainly because of the higher footfall. Whilst he was happy with the second location outside Thomas Cook, he felt that he would attract more customers at the first location, given that a van selling hot food had successfully traded there for 12 years during the Christmas period. A Member raised concern that the second location was a very busy corner for both pedestrians and traffic as it was directly opposite the Regent Arcade and he did not feel that it was an appropriate location for the trike. A Member was of the view that the proposal would bring something new and exciting to Cheltenham which would enhance the streetscene, however, he did not feel that location one was acceptable given the close proximity to Monsoon and Warehouse which both sold clothing.
- In response to a query regarding the photographs of the trike outside Monsoon, which had been circulated separately as part of the supporting evidence, the Senior Licensing Officer explained that these were for illustrative purposes and did not show the trike in the exact place where it would be located should the licence be granted; in the photographs the trike was positioned directly in the emergency vehicle route. Mr Hadad agreed that the location of the trike was not completely accurate in the photographs.

John Forward, Regent Arcade Manager, had attended the meeting to speak in relation to his representation against the application. He explained that Canada Life, which owned the Regent Arcade, had spent a considerable amount of time and money developing the Arcade; this had included seeking planning consent which had come with very detailed conditions in relation to design and the materials which should be used. He believed that the conditions had been successfully adhered to and that the new design would add a lot of value to Cheltenham. He explained that there were six food outlets within the Regent Arcade, three of which were 'fast food' offerings which were similar to that proposed by Mr Hadad. It was very difficult for retail businesses to survive in the current economic climate and they all relied heavily on footfall. Whilst he was supportive of fair competition on a level playing field, he did not feel that a street trader should be allowed to open up in direct competition to businesses which were paying significantly higher business rates for units within the Regent Arcade. He questioned whether Mr Hadad would be trading when it was cold and wet as all his retailers had to do. Street trading had a major impact on other retailers and he felt that, granting a

licence to Mr Hadad to trade in that location would give him an unfair advantage.

In response, Mr Hadad indicated that there were advantages and disadvantages to every business. If the Committee granted him a licence he would pay his fees and he intended to trade in all weathers. The photographs he had provided showed that his trike was not very large and he did not think that it would be in competition with the other food offerings in the area and that it would help to generate more interest in the town which would benefit everyone. Street food was becoming increasingly popular in cities such as Copenhagen, Stockholm and London and he felt that there was no reason why it would not be a success in Cheltenham. Mr Hadad also pointed out that traders paid high rates for a location in the Regent Arcade and not all of that money went to the Council in the form of business rates. He had considered moving into an empty unit when he had closed his restaurant two years earlier, however, this was not financially viable for him. He went on to reiterate that he had carefully chosen the proposed locations for his trike.

In response to a Member query as to the fees paid by street traders, the Senior Licensing Officer confirmed that this varied depending on the number of days the licence had been granted for, however, they would be in the region of £4,000-5,000 based on an application to trade for 365 days per year. She explained that she did not know how much the retail units paid in terms of business rates..

A Member indicated that he could not support Mr Hadad's proposal in this location and that he was not comfortable with him trading for 365 days per year. Whilst it was an innovative idea, he did not feel that it would enhance the Town Centre. Mr Hadad understood these concerns but he asked that the Committee give him a chance as he believed that the business would work well. If a licence was granted by the Committee, it would only be valid until 31 March 2014, at which point there would be an opportunity to review its success.

Members adjourned from the Chamber to consider their decision.

Members returned to the Chamber and, upon a vote it was (3 against)

RESOLVED that Mr Hadad's Street Trading application be approved at one location only, on the High Street outside Thomas Cook, until 31 March 2014 as Members were satisfied that the trike would positively enhance Cheltenham as a tourist and retail destination and would not have a negative impact on the conservation area. Members requested that any new application be brought to the Licensing Committee for determination even if no objections were received.

10. PRIVATE HIRE DRIVER REVIEW

Amelia Byres, Senior Licensing Officer, introduced the report as circulated with the agenda. Mr Stephen Owens held a private hire driver's licence which was due for renewal on 1 December 2015. Mr Owens had been subject to a vehicle inspection on 15 October 2013 by the enforcement officers from the Integrated Transport Unit, Gloucestershire County Council which oversaw all school transport providers across Gloucestershire. On inspection, the Integrated Transport Unit had found that the near side front tyre was worn below the legal limit on the outer edge, exposing the chord. The Transport Engineering Manager had contacted the Licensing Office and the Senior Licensing Officer had immediately suspended the vehicle and telephoned Mr Owens to advise him of this. Mr Owens had replaced the tyre and had brought it back to the Licensing Office for inspection. At the time of the incident, the Integrated Transport Unit had advised that this was the second time that Mr Owen had been found driving with a bald tyre, however, the first occasion had been much less serious and the County Council had chosen not to inform the Borough Council on that basis. The Committee was reminded that it must be satisfied that Mr Owens was a fit and proper person to continue to hold a private hire driver's licence.

A Member raised concern that this was the second time that Mr Owens had been found with a bald tyre and he sought clarification as to why the first incident had not been reported. The Senior Licensing Officer explained that the County Council had chosen not to inform the Borough Council on the basis that it was a minor issue. There was very little action which could be taken by the Borough Council if they were not advised of such incidents. The Member was of the view that the first incident should not be taken into account in the review of the licence given that the County Council had not considered it significant enough to report in the first place. Another Member disagreed with this opinion and indicated that the Police, County Council and Borough Council regularly used their discretion regarding the seriousness of offences and it was down to the Committee to decide what weight it would give to this information when determining what action should be taken.

In response to a Member query as to whether the Committee was able to require Mr Owens to attend a driver assessment course, the Senior Licensing Officer explained that, whilst the Committee did have the option of requiring Mr Owens to attend a driver assessment course, this was focused on driving and did not cover vehicle maintenance. In 2010, the Council's Policy had introduced an NVQ which all drivers had to complete within the first year of becoming a licensed driver, however, there was no given course which included vehicle maintenance before a licence was granted. Members agreed that the introduction of a course covering vehicle maintenance for new applicants should be considered as part of the Policy review in 2014.

Mr Owens explained that he normally bought quality tyres every few months, however, on this occasion he purchased part-worn tyres as a temporary measure until he got paid. Unfortunately the tyres had not been very good and he had been surprised at how quickly they had worn out. He indicated that he had been a taxi driver for 8 years and he had never done anything wrong before, he had a clean driving licence and he had never appeared before the Licensing Committee. He was very sorry and he would not let this situation happen again.

Members were invited to ask questions of Mr Owens, during which the following points were raised:

- When asked, Mr Owens confirmed that the part-worn tyres had only been fitted three weeks prior to the inspection by the Integrated Transport Unit. He had bought the tyres from Get Grip Tyres in Cheltenham and, although they had looked fine when they had been fitted, they had obviously been very poor quality. A Member raised concern that a similar incident involving another driver had come before the Committee within the last three months and he felt that it was necessary to ask Trading Standards to investigate the company, if the same one had been used on both occasions.
- A Member suggested that there may have been a problem with the vehicle tracking, based on the photographs which had been provided with the papers, and he questioned whether this had been checked. Mr Owens confirmed that this had been done when the new tyres had been fitted and, although it had been slightly out, it was not enough to have caused the tyres to have worn so significantly in such a short space of time.
- Several Members expressed their disappointment that Mr Owens did not carry out a daily check on his vehicle and there was particular concern that he had chosen to use sub-standard tyres given that he was transporting children. A Member questioned what action he had taken to ensure that his vehicle was roadworthy at all times and that passenger safety was not comprised. Mr Owens explained that he now checks his tyres on a weekly basis and he confirmed that he has an arrangement in place with his operator who has agreed to bear the cost of any repairs to his vehicle so that he can get any problems resolved immediately.

In summing up, Mr Owens explained that he had been fined £200 by the County Council and had also had to reimburse his operator for the cost of the new tyres so this had been a costly lesson for him. He expressed his remorse and indicated that he had learnt from his mistakes.

Members had the following recommendations to vote on:

1. that the private hire driver's licence be continued with no further action because the Committee is satisfied that Mr Owens is a fit and proper person to hold such a licence; or
2. that the private hire driver's licence be revoked as the Committee considers Mr Owens is not a fit and proper person to hold such a licence because he failed to maintain his vehicle in a roadworthy condition.

Upon a vote it was (6 for, 2 against and 2 abstentions)

RESOLVED that the private hire driver's licence be continued with no further action because the Committee is satisfied that Mr Owens is a fit and proper person to hold such a licence.

11. OBJECT ON THE HIGHWAY

Amelia Byres, Senior Licensing Officer introduced the report as circulated with the agenda. Mr Martin Canning based at Antique and Modern Fireplaces, 41-43 Great Norwood Street, Cheltenham had made an application to place a straight-sided and straight-bottomed 'A' board at the junction of Great Norwood Street and Suffolk Road. The 'A' board had previously been granted consent, however, the applicant had failed to renew this consent and a new application had been submitted as a result. Members were advised to bear in mind that the current Policy on Measures to Control Street Scene Activities in Cheltenham covering Street Trading, Objects on the Highway and Charitable Collections had been approved on 1 April 2013. The 'A' board had previously been granted consent under the old Policy. The new application does not comply with the current adopted Policy in a number of ways: the premises has shop-front at street level; the premises is not situated along a side alleyway and/or on private land which was not a public thoroughfare/right of way; the application is for a directional 'A' board more than 120 metres away from the premises which is contrary to condition (d) of the standard conditions attached to 'A' boards; and there was less than 1.8 metres of footway along the line of the board between the edge of the object and either the kerb or other highway boundary. She reiterated that the 'A' board had previously been licensed, however, due to an error on the applicant's part, it had not been renewed in time and therefore it had been brought to the Committee to determine whether the application should be granted in the conservation area where the premises was located.

A Member queried whether any similar applications had been received from other traders in the area during the time the 'A' board had been licenced. The Senior Licensing Officer advised that no other applications had been received and no other 'A' boards located along Great Norwood Street had been granted consent. A Member questioned whether the

pavement where the 'A' board had been located was wider than usual and confirmation was provided that this was the case. In response to a query as to whether any complaints had been made in relation to the 'A' board during the three years since it had last been granted a licence, the Senior Licensing Officer confirmed that there had been no complaints, however, there had been a number of objections from responsible authorities to the current application, as set out in the report circulated with the agenda. She confirmed that her records dated back to 2009 at which time Mr Canning had gone through the same application process and consent had been granted by the Licensing Committee.

Mr Canning explained that the 'A' board had been in the same location since 1962 and all of the businesses which had previously used the premises had found that it was vital for their trade due to the shop being located 200 yards off the main highway. When the 'A' board had been stolen in the past, trade had fallen to an unsustainable level. When the licence had last been considered, the Committee had made an exception and had granted consent for the 'A' board. He indicated that there had been no objections to the original application in 2009 and failure to renew the licence in time had been a complete oversight on his part. When his mistake had come to light, he had immediately telephoned the Senior Licensing Officer to apologise and had completed the relevant form. He could guarantee that, if the application was refused, the shop would be forced to close within 12 months.

Members were invited to ask questions of Mr Canning, during which the following points were raised:

- A Member questioned why the 'A' board was so important to a fireplace business as this was not the sort of shop which people would come across and make an impulse purchase. Mr Canning explained that Cheltenham was a big tourist town and the business did attract a lot of passing trade. Without the 'A' board, people would not necessarily see the shop. He reiterated that, when he had taken over the premises 13 years ago, he had been advised by the previous owners that the 'A' board had been vital to their trade and when the sign had been stolen there had been a negative impact on the business.
- A Member queried whether the 'A' board could be moved further down the road, closer to Mr Canning's shop. He indicated that the 'A' board had historically been located at the junction to Great Norwood Street and Suffolk Road where the pavement was wider so it did not obstruct the highway. Originally the sign had been fastened to a lamppost but he had moved it in response to a request from an officer when the licence had originally been granted.

- A Member raised concern that, if the 'A' board was granted consent, other surrounding businesses might also submit applications for similar signs given the importance which Mr Canning attributed to his sign in terms of generating trade. Whilst he accepted that this was a possibility, Mr Canning explained that traditionally this had not happened and the other businesses were not located 200 yards from the main footfall. When the 'A' board had originally been granted consent it had been made very clear that this was an exceptional circumstance.
- In response to a query as to where the business was advertised, Mr Canning indicated that he advertised in the Yellow Pages and was currently in the process of getting a website built.

In summing up, Mr Canning explained that he was a local man and his business employed one full-time and three part-time members of staff, with all restoration work carried out by local craftsmen. If the 'A' board was not granted consent this would severely restrict trade and would lead to the business closing down. The application had previously been granted consent and he appealed to Members to pass the application before them.

Members had the following recommendations to vote on:

1. that the application be approved because Members are satisfied that the 'A' board complies with the new policy in respect of objects placed on the highway; or
2. that the application be refused because it does not comply with the new policy in respect of objects on the highway

A Member proposed an amendment to recommendation 1 as follows: 'that the application be approved as an exception to the new policy in respect of objects placed on the highway on the grounds of custom and practice'.

Upon a vote it was (5 for and 4 against)

RESOLVED that the application be refused because it does not comply with the new policy in respect of objects placed on the highway.

12. HACKNEY CARRIAGE DRIVER APPLICATION

Amelia Byres, Senior Licensing Officer introduced the report as circulated with the agenda. An application had been received from Mr Giuseppe Maurizio Licata for a hackney carriage driver's licence. Members were advised that Mr Licata had previously been a licensed hackney carriage driver with Cheltenham Borough Council until 2009 when he had

received a drink-driving conviction and had surrendered his hackney carriage badge. Mr Licata had returned with a new application in 2011 at which time he had six points on his Driver and Vehicle Licensing Agency (DVLA) driver's licence for using a mobile phone whilst driving and speeding on the motorway. The application had been referred to the Licensing Committee which had subsequently been refused. The Council's Policy on the Relevance of Convictions sets out that, where a disqualification has occurred as a result of a drink-driving offence, at least five years free from conviction from the date of the restoration of the DVLA licence should normally elapse before an applicant is considered for a licence, however, at that time the Licensing Committee had suggested that Mr Licata submit another application in two years. Rather than waiting for that period to elapse, Mr Licata had submitted another application in March 2012 which had also been refused by the Licensing Committee. Two years had now passed since the Licensing Committee in 2011 and Mr Licata had submitted a new application, however, it was noted that, since his last application, Mr Licata had received a caution for possessing a controlled Class B drug. The Council's policy in respect of drink-driving convictions continued to set out that at least five years should normally elapse before an applicant was considered for a licence, despite the Committee's suggestion in 2011 that Mr Licata reapply in two years. In addition, the policy set out that an application from an applicant with an isolated conviction for an offence related to the possession of drugs within the last three years would require careful consideration of the facts. Members were required to determine whether, based on all the information, Mr Licata was a fit and proper person to hold a hackney carriage driver's licence.

Mr Licata had attended the meeting and spoke in support of his application. He explained that he had some old school friends visiting him during race week in 2012 and they had asked him to get hold of the drugs. On 15 March 2012, Gold Cup day, he had been walking home at around midnight when he had been stopped by police for a spot check and found with the drugs. In relation to his drink-driving conviction, Mr Licata advised that he had now been driving for a year in the UK and 8 months in Dubai without any points on his licence. He wanted an opportunity to get his life back on track and was ready to get back to work and earn a living.

Members were invited to ask questions of Mr Licata, during which the following points were raised:

- A Member sought clarification as to whether Mr Licata had bought the drugs for use by his friends and Mr Licata confirmed that they had asked him to get the drugs for them to take at the races. It was a special occasion and they wanted to have a good time on what was the most popular day in the Cheltenham calendar.

- A Member questioned whether Mr Licata continued to use drugs recreationally. Mr Licata explained that he was an ex-professional footballer who had played for Cheltenham Town Football Club many times; he was not a drug user or a drug dealer. The incident had occurred when he had been going through a very bad divorce when he had lost everything and had been unable to see his son. This phase was now over and he was ready to get back to work.

Members had the following recommendations to vote on:

1. that the application be granted as Mr Licata is a fit and proper person to hold a hackney carriage driver's licence; or
2. that the application be refused on the grounds that Mr Licata is deemed not to be a fit and proper person to hold a hackney carriage driver's licence.

Upon a vote it was (8 for and 1 against)

RESOLVED that Mr Licata's application be refused on the grounds that he was deemed not to be a fit and proper person to hold a hackney carriage driver's licence.

Councillor Walklett left the meeting at 4:44pm

13. ALLOCATION OF CHRISTMAS STREET COLLECTION DATES

Amelia Byres, Senior Licensing Officer introduced the report as circulated with the agenda. Appendix A to the report set out a schedule of street collection applications for the town centre for the months of November and December. Paragraph 4.1 detailed which charities had made the street collection applications. Some charities had requested more dates than allocated, however, the Licensing department had discussed directly with the charities the dates which had been allocated to them and they were all happy with the arrangements.

A Member noted that the Lion's Club of Cheltenham had been allocated 2.5 days and she indicated that she would have liked to have seen this cut down if another application had been received from a different charity. The Senior Licensing Officer indicated that Members were entitled to reduce the number of days if they felt that it was too much.

Upon a vote it was (unanimously)

RESOLVED that the proposed allocation of street collection dates attached at Appendix A be approved.

14. **ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION**
None
15. **DATE OF NEXT MEETING**
6 December 2013

Garth Barnes
Chairman

This page is intentionally left blank
Page 14

Licensing Sub-Committee

**Friday, 25th October, 2013
10.00 - 11.43 am**

Attendees	
Councillors:	Anne Regan, Diggory Seacome and Charles Stewart
Also in attendance:	Vikki Fennell, Solicitor Phil Cooper, Licensing Officer

Minutes

1. ELECTION OF CHAIRMAN

Councillor Seacome was duly elected as Chairman.

2. APOLOGIES

None

3. DECLARATIONS OF INTEREST

None

4. APPLICATION FOR A VARIATION OF A PREMISES LICENCE

Phil Cooper, Licensing Officer introduced the report as circulated with the agenda. An application had been received from Global Fuel (UK) Ltd in respect of BP Prestbury Road Service Station, located at 80-86 Prestbury Road, Cheltenham to vary their existing premises licence.

A copy of the application form is attached to Appendix A of the report.

The applicants have applied for a variation of their existing premises licence to extend the hours during which alcohol may be sold and to include the provision of late night refreshment.

The times and activities authorised by the existing premises licence are as follows;

Sale/supply of Alcohol	Monday to Saturday	08:00 – 23:00
	Sunday	10:00 – 22:30

The times and activities applied for by way of variation of the premises licence are as follows;

Sale/supply of Alcohol	Every day	00:00 – 00:00 (24 hours)
Late night refreshment	Every day	23:00 – 05:00

The applicants have stated the following steps to promote the four licensing objectives:

- Between 24:00 & 06:00 hours, unless there are two staff on duty in-store, then the entrance doors are to be locked and alcohol will only be sold via the night hatch, spirits located behind the counter.
- Appropriate staff alcohol sales training to be satisfactorily completed and records. Written training records to be made available for inspection upon reasonable request be a relevant officer of a responsible authority. Appropriate training manual utilised.
- Appropriately worded notices to be displayed prominently inside and outside the store requesting customers to leave the site quietly at night.
- Forecourt to be swept regularly. Forecourt bins to be emptied regularly.

No representations have been received from responsible authorities.

Valid representation have been received from 13 people on the grounds of public safety, the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm. Points 4.2 – 4.16 of the report details the name and addresses of the objectors and their concerns.

Copies of all of the residents' representations are attached to Appendix B of the report.

A petition in support of the application had been received, signed by 157 of the services station's customers. The petition showed 149 people (95%) indicated they were in support of the application, 5 signatories objected to the application and 3 entries were spoilt. A copy of the petition is attached to Appendix C of the report.

Appendix D of the report shows the locations of the residents' properties and that of the premises.

Appendix E of the report details an internal layout plan of the premises.

Mr Roy Light, Advocate for the applicant, Mr Richard Baker, Agent from RB Retail & Licensing Services Ltd and Mr Kris Narabatnam, applicant attended the committee and spoke in support of the application.

Mr Light referred the Committee to the extra bundle of papers and asked Members to look at page 26 of the agenda papers. This detailed that the premises wanted to sell hot pies, savouries, soup and hot drinks for consumption off the premises. Mr Light reassured the Committee that it was not the intention of the premises for people to come into the premises to have a few drinks and a meal, this was not going to happen. The applicant would be happy for this wording to be added as an additional condition to the licence if granted.

Mr Light referred to the Secretary of State Guidance from June 2013 and read paragraph 10.13 out to the Committee. The guidance stated that unless there are good reasons not to grant the variation of the licence based on the Licensing Objectives then the requested hours should be granted.

Mr Light moved on to the representations received and stated that they mainly focused on noise disturbance resulting in sleep disturbance and causing lack of enjoyment of residents' properties.

The applicant has twelve sites in total all with shops and all selling alcohol. Ten of these sites trade 24 hours a day with six selling alcohol 24 hours a day without any issues. The applicant runs these sites properly and does not want to upset residents or his customers. Since taking over and reopening the premises on 8 August 2013 the applicant has made several changes to the site. Residents had raised concerns about petrol deliveries at midnight to 01:00 or 02:00 resulting in noise to local residents. The applicant has changed this to ensure fuel deliveries are only made between 9am and 5pm. The applicant always tries to address concerns if he can. Residents also raised concerns about light pollution caused by the pole light. The applicant has now arranged for the pole and canopy lights to be switched off at 11pm. Whilst the applicant was away a resident notified him that the lights were turned off late one evening at 11.10pm. The applicant has introduced a timer to ensure this will not happen again and the lights are turned off at 11pm each night.

The applicant is not somebody who wants to steam roller local residents but wants to work with them and try and help. Concerns were raised over noise on the forecourt. The applicant ensures that the pumps closest to the road are closed off at night to reduce noise levels.

Mr Light detailed the hatch system that is used between 00:00 and 06.00am. Mr Light referred to a recent incident of a customer knocking on the window at midnight to attract the cashier's attention so they could buy some flowers. The applicant has arranged for a buzzer to be installed which is loud enough for the cashier to hear but would not disturb local residents. The Police raised concern with one cashier being on site if the hatch was not in use. If the doors were to remain open the Police requested that 2 members of staff are in the store. The applicant will see how things pan out and then decide which days are busiest resulting in the hatch being in use or not. Mr Light confirmed that Mr Baker has been in touch with an acoustic company specialising in reducing the noise from hatches and passed a photograph to residents to look at. A survey would take place and a new highly efficient hatch would be installed.

Mr Light referred the committee back to the second bundle which showed an incident and refusal log that has been in use since the applicant took over the premises. Apart from one complaint about the light pollution no other complaints had been made about how the premises is operated and none of the responsible authorities had objected to this application.

The largest number of entries in the incident and refusal logs, contained in the additional bundle, was due to customers wanting to buy alcohol out of hours. Customers come into the premises to buy their shopping all together including alcohol. If existing customers are unable to buy their shopping in one go from this premises they will stop shopping here and go elsewhere. Therefore, this application is an essential part of the business to be able to offer these things.

Mr Light referred the committee to page 30 of the bundle which described the additional steps the applicant intends to take to promote the four licensing objectives as a result of the proposed variation. Mr Light read the steps out as follows:

- Between 24.00 and 06.00 hours unless there are two staff on duty in store then the entrance doors are to be locked and alcohol will only be sold via the night hatch, spirits located behind the counter.
- Appropriate staff alcohol sales training to be satisfactorily completed and recorded.
- Written training records to be made available for inspection upon reasonable request by a relevant officer of a responsible authority.
- Appropriate training manual utilised.
- Appropriately worded notices to be displayed prominently inside and outside the store requesting customers to leave the site quietly at night.
- Forecourt to be swept regularly.
- Forecourt bins to be emptied regularly.

Mr Baker showed the Committee the training manual and explained how the staff are trained. Mr Baker referred to section 3 of the training manual which states that staff are expected to read this prior to selling alcohol, all staff are retrained on this material. Once the material has been read staff are tested with a written examination of multiple choice questions. There are four different tests and all staff are tested on an annual basis and marked by the designated premises supervisor. Once the staff have passed the exam these records are kept on file, the staff have to sign a statement which states the do's and don'ts which they must abide by, this is counter signed by the designated premises supervisor. Members of staff are also given a pamphlet to keep at home and refer to. The refresher training coincides with the annual petroleum training.

Mr Light referred the committee to the final page of the additional bundle, the petition. Mr Baker detailed the analysis of the petition. The petition was left on the counter for customers to complete. Breaking down the 149 signatures in support of the application, 25 of them lived within 200 meters of the premises and the remaining 124 lived further away.

Mr Light referred back to the representations made and added the number of opposing residents living very near to the premises from the petition. In total there were 17 objections.

Mr Light advised Members that the same amount of weight should not be attached to the petition as to those individual representations and to those residents who had attended today. Mr Light confirmed that 25 members of the public wanted 24 hour alcohol sales.

Mr Light referred the committee to page 88 of the report which showed a map of the premises and highlighted where the objectors' properties were in relation to the premises. Mr Light explained that the red box on the plan indicated the premises and the blue dots showed the location of the objector's premises. The objector's property to the left of the premises was some distance away and a road was situated between the property and premises. Three of the other objectors' properties were not visible to the site. Another objector's property was set back from the premises. Numbers 95 and 87 Prestbury Road were two of four properties closest to the site. Two of these premises had made representations, two have not.

The applicant understands the residents' concerns and is confident that the variation would not increase disturbance to residents. The premises has a 24 hour a day planning permission so there would be no difference in the noise coming from the premises if this application was granted.

The applicant asked his staff to record a survey of customers attending the premises or members of the public walking past. The survey was recorded over several dates between 11pm and 6am. On average in a two week period there were 10 pedestrians who came in to the premises and 13 who walked on by without entering the premises. The member of staff noted that these people were decent and of good behaviour. The number of customers arriving by car was more than customers on foot. These results were supported by the CCTV images.

Mr Light showed residents a photograph of the premises.

Mr Light referred to the separate bundle of papers and explained about the Thwaites case. He referred to paragraph 63 of the case and read; had they had proper regard to the Act and the Guidance, they would have approached the matter with a greater reluctance to impose regulation and would have looked for real evidence that it was required in the circumstance of the case. Their conclusion that it was so required on the basis of a risk of migration from other premises in the vicinity was not one to which a properly directed bench could have come. The fact that that the Police did not oppose the hours sought on this basis should have weighed very heavily with them.

Mr Light said he understood the residents' concerns but there was no evidence to support these concerns.

Members asked the following questions:

- A Member asked if the premises stopped retail lorries filling up with fuel during the night.
- The applicant stated that he did not stop these lorries but these sort of vehicles did not use this premises for buying fuel.
- Mr Light stated that this was nothing to do with the variation application today. The premises was open as it stands with its current licence 24 hours a day if these sort of vehicles wanted to use the petrol station.
- When asked, the applicant said he would need to run the operation for a period first before deciding if the premises was to operate with two members of staff or one with the night hatch in use.
- When asked, the applicant stated they did not allow customers to drink alcohol bought on the premises on site. The applicant confirmed they did not sell alcohol to customers who appeared drunk. The applicant advised the Committee that he was happy to add additional signage to state that no alcohol was to be consumed on the premises.
- When asked, the applicant advised the Committee that at present the alcohol is closed off with shutters when not in the current selling hours. The applicant told the Committee that he has been trading in these sort of premises since 2003 and has not had any problems. No one has drunk alcohol on any of his premises.

- When asked, the applicant confirmed since he has opened this premises on 8 August 2013 there had been no police reported incidents.
- A Member stated they thought additional customers would be attracted to these premises if the application was approved for 24 hour alcohol sales.
- The applicant confirmed that his premises had been turning away regular customers. His customers wanted to buy all their shopping at one time and at present they were unable to buy alcohol at all hours. Customers will eventually shop elsewhere.
- Mr Light referred the Committee to the additional bundle and stated that there were 6 other similar premises locally with 24 hour licensed sites.
- A Member stated that the incident and refusal log was very comprehensive

Mr Clay attended the Committee and spoke on behalf of the following residents:

Mr & Mrs Edwards, Mr & Mrs Garside, Liz Allan, Andrea Clarke, and Mr & Mrs Haynes.

- Mr Clay asked the applicants why they felt the need for a petition.
- Mr Baker stated that he wanted to enable customers to state if they felt they opposed or supported the application. The petition was left on the counter for customers to complete.
- Residents felt this was unfair and that the petition did not state what the effect of this application would have on local residents. They felt the petition was made of fiction.
- Mr Light stated that this was why Mr Baker had analysed the results of the petition, these results showed 25 local residents in support of this application.
- Mrs Allen stressed that her address was stated on the petition and her own address was listed in favour of this application. This was not true, Mrs Allen stated she had not signed the petition in favour of this and had objected to this application by means of a completed representation.
- When asked, the applicant confirmed that the forecourt is swept between the hours of 6am and 11pm.
- Mr Clay stated that public nuisance complaints had been lodged to Environmental Health. The resident's specific noise concerns related to vehicles approaching the site, raised voices and doors slamming. Residents felt that this application would increase trade to the premises and escalate the current noise nuisance that was currently occurring.
- Mrs Allen stated that she could see the premises from her bedroom window. Whilst Mr Light had said her premises was not in view of the site Mrs Allen reminded the applicant that at present her trees in front of the property were in leaf. In a few weeks time those leaves would fall and the trees would be bare resulting in a clear view from her property to the premises. Mrs Allen stated again she had not signed the petition to support this application and questioned the accuracy and integrity of this petition.
- Mr Light said he did now know why this signature appeared on the petition

Councillor Colin Hay attended the Committee and spoke on behalf of his local residents. He stated that there was no problem with the owner or his responsibilities towards the premises. The applicant shows he runs this and other premises very well. Councillor Hay stated his worry was the location of this premises. Footfall from town would divert past these premises and members of the public could stop off and buy alcohol from this site. One person stopping here that had had too much to drink could cause anti social behaviour.

Councillor Hay referred to the lack of Police representation and stated that the Police were unable to object to an application unless there was specific evidence of problems relating to premises. Councillor Hay said he had spoken to local Police Officers and they were concerned about additional alcohol related antisocial behaviour in this area.

Councillor Hay said he had seen the petition on the counter of the premises. He felt that a better approach for a petition would have been for an anonymous box for customers. An open petition on the counter made it difficult for customers to oppose the application.

Councillor Hay stated that he was concerned about the footfall passing this premises late at night.

When asked, Phil Cooper confirmed that if the application was granted the premises would be liable for the late night levy fee, should such a levy be adopted in Cheltenham. When asked, a Member confirmed that part of the late night levy fee would go to Cheltenham Borough Council.

A resident asked the applicant what times the newspapers were delivered to the premises.

The applicant confirmed the newspapers are delivered between 4am and 5am. The applicant said he would try and arrange for this time to be altered if the current time caused nuisance to residents.

When asked, Councillor Hay confirmed that he represents residents on the opposite side of road from the premises.

Mr Haynes detailed the incident previously noted, a customer knocked on the window late at night to buy flowers. This was at 4am, Mr Haynes said he had reported this to the Environmental Health Department. Mr Haynes stated that he and his wife had moved to their back bedroom due to result of the noise from this premises. All he and his wife wanted was a good night's sleep.

In summing up, Mr Light said that this application was submitted as a result of demand from customers. Mr Light referred back to the Thwaites case which states that evidence must be seen, residents can't just object, they have to have evidence. There have been no problems with the premises. Residents have concerns but given the lack of evidence the application should be granted and if there are issues then the applicant can deal with them and the residents can inform the Council and the licence can be reviewed.

IT WAS RESOLVED THAT;

in respect of the application by Global Fuel (UK) limited in respect of the BP Prestbury Road Service Station, Cheltenham the Sub Committee has read the material presented to it and has listened to all of the evidence and w submissions. The Sub Committee in coming to its decision has also considered the four licensing objectives, the National Guidance and the Statement of Policy. The decision of the Sub Committee is: -

The application for an extension to the hours of sale of alcohol and to include the provision of late night refreshment is granted as requested by the applicant in their application subject to the mandatory conditions and conditions consistent with the steps outlined by the Applicant as detailed on page 16 of their application which includes alcohol training, signage etc. and to the following condition:

That there will be signage placed in and outside the premises and on the garage forecourt to say that alcohol purchased at the garage is not to be consumed on the premises.

The Sub Committee has placed this condition on the licence for the purpose of promoting the licensing objective of the prevention of public nuisance and the potential for noise disturbance on local residents.

In all other respects the Sub Committee has found that the licensing objectives are satisfied and that the condition imposed on the licence will ensure the licence meets these objectives.

The Interested Parties are reminded that should the Applicant fail to meet the licensing objectives that they can report matters to the Licensing Authority and the Applicant and that the licence can be the subject of a review.

The Chairman advised residents to record any incidents to ensure a record is kept.

Chairman

Cheltenham Borough Council

Licensing Committee – 6 December 2013

Application for a Private Hire Driver’s Licence

Mr Gareth John James

Report of the Senior Licensing Officer

1. Executive Summary and Recommendation

- 1.1 An application has been received from Mr Gareth James for a Private Hire Driver’s Licence.
- 1.2 Mr James has a number of convictions. The details of these are contained in the enclosed background papers.
- 1.3 In light of this Members of the Committee should be aware of the convictions because of:
 - 1.3.1 The nature of the offences; and
 - 1.3.2 The need to ensure that Mr James is judged to be a fit and proper person to hold a Private Hire Driver’s Licence.
- 1.4 **The Committee is recommended to resolve that Mr James’s application:**
 - 1.4.1 **be granted as Mr James is a fit and proper person, or**
 - 1.4.2 **be refused on the grounds that Mr James is deemed not to be a fit and proper person.**

1.5 Implications

- 1.5.1 Financial
 - Contact officer: Sarah Didcote**
 - E-mail: sarah.didcote@cheltenham.gov.uk**
 - Tel no: 01242 264125**
- 1.5.2 Legal
 - There is a right of appeal against a refusal to grant a licence which, in the first instance, is to the Magistrates’ Court.
 - Contact officer: Vikki Fennell**
 - E-mail: Vikki.Fennell@tewkesbury.gov.uk**
 - Tel no: 01684 272015**

2. Background

- 2.1 The Borough Council must be satisfied that the holder of a Private Hire Driver’s licence is a fit and proper person to hold that licence (Section 59 Local Government (Miscellaneous Provisions) Act 1976).

3. Policy Considerations

- 3.1 Decision making in relation to licensing is an onerous duty, dealing with both the livelihood of the Licensee/Applicant and the risks to the safety and comfort of the public.

- 3.2 Each case will be decided on its own merits. The Council will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision.
- 3.3 The overriding consideration is the safety of the public. The Council has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit, honest and not persons who would take advantage of their employment.
- 3.4 Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour which will be taken into account.

Drunkenness

- 3.5 A serious view will be taken of convictions of driving or being in charge of a vehicle while under the influence of drink.
- 3.6 Where a disqualification has occurred as a result of a drink-driving offence, at least 5 years free from conviction should normally elapse from the date of the restoration of the DVLA licence before an applicant is considered for a licence.

Offences of Dishonesty

- 3.7 Drivers of hackney carriage and private hire vehicles are expected to be persons of trust. It is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare and in other ways.
- 3.8 Passengers may include especially vulnerable people.
- 3.9 Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing. In certain situations drivers will know that a property is empty whilst the occupants are away on holiday for a set period of time after taking them to the airport or railway station.
- 3.10 The widespread practice of delivering unaccompanied property is indicative of the trust that businesses put into drivers.
- 3.11 For these reasons a serious view is taken of any convictions involving dishonesty. In general an applicant with convictions for dishonesty, which are less than 4 years old, is unlikely to be considered favourably.

4. Licensing Comments

- 4.1 Members are to refer to the enclosed background papers for a full list of convictions and an explanation of how the Council's Policy applies to each type of offence.
- 4.2 The Committee must seek to promote its own adopted policy and only deviate from it where there are strong and defensible reasons.
- 4.3 The Committee must be satisfied that Mr James is a fit and proper person before agreeing to the grant of a licence. The refusal recommendation is based upon the policy guidelines and public safety given the close contact that licensed drivers maintain with members of the public.
- 4.4 Mr James has been sent a copy of this report and invited to attend this meeting to speak in support of his application and to answer members' questions or to be represented. In considering the application on its own merits Members should have regard to the adopted Probity Guide.

Background Papers

Service Records

Report Author

Contact officer: Mrs Amelia Byres
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 264217

This page is intentionally left blank
Page 26

Cheltenham Borough Council

Licensing Committee – 6 December 2013

Application for a Private Hire Driver’s Licence

Mr Keith David Lewis

Report of the Licensing Officer

1. Executive Summary and Recommendation

- 1.1 An application has been received from Mr Keith Lewis for a Private Hire Driver’s Licence.
- 1.2 Mr Lewis has a number of convictions. The details of these are contained in the enclosed background papers.
- 1.3 In light of this Members of the Committee should be aware of the convictions because of:
 - 1.3.1 The nature of the offences; and
 - 1.3.2 The need to ensure that Mr Lewis is judged to be a fit and proper person to hold a Private Hire Driver’s Licence.
- 1.4 **The Committee is recommended to resolve that Mr Lewis’s application:**
 - 1.4.1 **be granted as Mr Lewis is a fit and proper person, or**
 - 1.4.2 **be refused on the grounds that Mr Lewis is deemed not to be a fit and proper person.**

1.5 Implications

- 1.5.1 Financial

Contact officer: Sarah Didcote
E-mail: sarah.didcote@cheltenham.gov.uk
Tel no: 01242 264125
- 1.5.2 Legal

There is a right of appeal against a refusal to grant a licence which, in the first instance, is to the Magistrates’ Court.

Contact officer: Vikki Fennell
E-mail: Vikki.Fennell@tewkesbury.gov.uk
Tel no: 01684 272015

2. Background

- 2.1 The Borough Council must be satisfied that the holder of a Private Hire Driver’s licence is a fit and proper person to hold that licence (Section 59 Local Government (Miscellaneous Provisions) Act 1976).

3. Policy Considerations

- 3.1 Decision making in relation to licensing is an onerous duty, dealing with both the livelihood of the

Licensee/Applicant and the risks to the safety and comfort of the public.

- 3.2 Cheltenham Borough Council's policy on the relevance of convictions relates to the Council's assessment of the suitability of an applicant for licensing as a driver of taxis and/or private hire vehicles in terms of their criminal and driving records. Specifically, it is to be applied where an applicant for a driver's licence has received a relevant conviction, caution or fixed penalty.
- 3.3 Each case will be decided on its own merits. Although an applicant may have convictions that would fall under the guidelines in this policy, the Council will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision.
- 3.4 The overriding consideration is the safety of the public. The Council has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit, honest and not persons who would take advantage of their employment.
- 3.5 Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern.

Violence

- 3.6 Drivers of hackney carriage and private hire vehicle are often entrusted with the care of children and young persons. (Cheltenham Borough Council's adopted policy - appendix K, para 3.1)
- 3.7 It is comparatively easy for an unscrupulous driver to take advantage of such vulnerable persons. (Para 3.2)
- 3.8 The Council seeks to minimise risks associated with children and young persons and for that reason a more serious view will be taken where offences of violence involve children or young persons. (Para 3.3)
- 3.9 Where the commission of an offence involved loss of life a licence will normally be refused. In other cases a period of 5 to 10 years free of conviction for offences involving violence (depending on the nature and seriousness of the offence) will generally be required before an application is likely to be considered favourably. (Para 3.4)
- 3.10 In particular an application will normally be refused where the applicant has a conviction for an offence or similar offence(s), or offence(s) which replace the below offences:
- Murder
 - Manslaughter
 - Manslaughter or culpable homicide while driving
- (Para 3.5)
- 3.11 An application will also normally be refused where the applicant has a conviction for an offence or similar offence(s) or offence(s) which replace the below offences and the conviction is less than 10 years prior to the date of application:
- Arson
 - Malicious wounding or grievous bodily harm (s.20 Offences Against the Person Act 1861) which is racially aggravated (s.29(1)(a) Crime and Disorder Act 1998)
 - Actual bodily harm (s.47 Offences Against the Person Act 1861) which is racially aggravated (s.29(1)(b) Crime and Disorder Act 1998)
 - Grievous bodily harm with intent (s.18 Offences Against the Person Act)

- Grievous bodily harm with intent (s.20 Offences Against the Person Act)
- Robbery
- Possession of firearm
- Riot
- Assault Police
- Common assault with racially aggravated (s.29(1)(c) Crime and Disorder Act 1998)
- Violent disorder
- Resisting arrest
(Para 3.7)

3.12 An application will also normally be refused where the applicant has a conviction for an offence or similar offence(s) or offence(s) which replace the below offences and the conviction is less than 8 years prior to the date of application:

- Racially-aggravated criminal damage (s.30 Crime and Disorder Act 1998)
- Racially-aggravated s.4 Public Order Act 1986 offence (fear of provocation of violence) (s.31(1)(a) Crime and Disorder Act 1998)
- Racially-aggravated s.4A Public Order Act 1986 offence (intentional harassment, alarm or distress (s.31(1)(b) Crime and Disorder Act 1998)
- Racially-aggravated s.2 Protection from Harassment Act 1997 offence (harassment) (s.32(1)(a) Crime and Disorder Act 1998)
- Racially-aggravated s.4 Protection from Harassment Act 1997 offence (putting people in fear of violence) (s.32(1)(b) Crime and Disorder Act 1998)
- Racially-aggravated s.5 Public Order Act 1986 offence (harassment, alarm or distress) (s.31(1)(c) Crime and Disorder Act 1998)
- Assault occasioning actual bodily harm (s.47 Offences Against the Person Act)
(Para 3.8)

3.13 An application will also normally be refused where the applicant has a conviction for an offence or similar offence(s) or offence(s) which replace the below offences and the conviction is less than 5 years prior to the date of application:

Common assault

- Affray
- S5 Public Order Act 1986 offence (harassment, alarm or distress)
- S.4 Public Order Act 1986 offence (fear of provocation of violence)
- S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
- Obstruction
- Possession of offensive weapon
- Criminal damage

(Para 3.9)

4. Licensing Comments

- 4.1 Members are to refer to the enclosed background papers for a full list of convictions and an explanation of how the Council's Policy applies to each type of offence.
- 4.2 The Committee must seek to promote its own adopted policy and only deviate from it where there are strong and defensible reasons.
- 4.3 Members are to note that Mr Lewis conforms with the Council's Policy on the relevance of convictions because each of his convictions occurred a sufficient length of time in the past. However Members are also to note that, for Taxi and Private Hire drivers, convictions are never spent and Members should make their determination based on whether the evidence suggests Mr Lewis is a fit and proper person to hold such a licence.

- 4.4 Mr Lewis has been sent a copy of this report and invited to attend this meeting to speak in support of his application and to answer members' questions or to be represented. In considering the application on its own merits Members should have regard to the adopted Probity Guide.
- 4.5 The Committee must be satisfied that Mr Lewis is a fit and proper person before agreeing to the grant of a licence. The refusal recommendation is based upon the policy guidelines and public safety given the close contact that licensed drivers maintain with members of the public.

Background Papers

Service Records

Report Author

Contact officer: Mr Philip Cooper
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 775200

Cheltenham Borough Council**Licensing Committee – 6 December 2013****Highways Act 1980 Part VIIa
Local Government (Miscellaneous Provisions) Act 1982****Application for permission to place an object on the Highway – ‘A’
Board****Report of the Senior Licensing Officer****1. Executive Summary and recommendation**

- 1.1 Mr George Ferguson based at Slater Menswear, 13 - 17 Promenade, Cheltenham has made an application to renew the existing consent to place a straight sided and straight bottomed ‘A’ board outside 13-17 Promenade. The ‘A’ board does not exceed 100cm (h) x 60cm (w).
- 1.2 It is intended that the ‘A’ board be displayed;
- | | |
|-----------|---------------|
| Monday | 08.30 - 17.30 |
| Tuesday | 08.30 - 17.30 |
| Wednesday | 08.30 - 17.30 |
| Thursday | 08.30 - 19.30 |
| Friday | 08.30 - 17.30 |
| Saturday | 08.30 - 17.30 |
| Sunday | 11.00 - 16.00 |
- 1.3 An image of the A Board is attached at **Appendix A** and a location map is attached at **Appendix B**.
- 1.4 The recommendations have regard to the individual merits of this application and the established policy. The policy seeks to avoid a proliferation of ‘A’ boards and objects on the highway whilst having regard to cases where there is a clear commercial need for this form of advertising.
- 1.5 The Committee is recommended to resolve that:**
- 1.5.1 The application be approved because Members are satisfied there are sufficient reasons to deviate from the with the new policy in respect of objects placed on the highway or**
- 1.5.2 The application be refused because Members are not satisfied that the A board complies with the Council’s new policy in respect of objects placed on the highway.**
- 1.6 Summary of implications**
- 1.6.1 Financial
- Contact officer: Sarah Didcote
E-mail: sarah.didcote@cheltenham.gov.uk
Tel no: 01242 26 4125**

1.6.2 Legal

No right of appeal.

Contact officer: Vikki Fennell
E-mail: Vikki.Fennell@teWKesbury.gov.uk
Tel no: 01684 272015

2. Background

2.1 The current Policy on Measures to Control Street Scene Activities in Cheltenham covering Street Trading, Objects on the Highway and Charitable Collections was approved on 1st April 2013. A copy of the whole policy has previously been circulated to Members and extracts are included in the application pack that was given to the applicant.

3. Policy Principles, Aims and Objectives

3.1 The policy outlines the principles the council will apply when making decisions on applications for objects on the highway consents.

In particular, this part of the policy will aim to promote the following aims and objectives:

- To have a clear & transparent policy governing all decisions relating to objects placed on the highway.
- To enable the Council to manage all objects placed on the highway in order to provide effective control measures.
- To ensure that all objects placed on the highway meet the required quality standards, pose no risk to public health, safety & protection and to ensure that these objects do not obstruct the highway.
- To avoid duplication with other statutory provisions and the Council's commitment to work in partnership with other enforcement agencies.

3.2 In setting the policy principles relating to 'A' boards, the Council seeks to strike a balanced approach between promoting the Council's priorities, in particular strengthening the Borough's economy by assisting and promoting local businesses but at the same time ensuring the free passage along footpaths and maintaining the visual street environment by the controlled use of 'A' boards in the streets.

3.3 To this end the Council will permit one 'A' board per premises subject to that premises meeting all of the conditions stipulated below. Please note that one 'A' board will be permitted *per premises*, not per business. Premises housing more than one business will therefore, subject to the requirements shown below, be permitted only one 'A' board. In these circumstances the Council will encourage businesses to share the use of the 'A' board.

3.4 Conditions of Consent

The Conditions of Consent are subject to the Revised Outdoor Advertising Protocol below.

- (a) A minimum of 1.8 metres of footway remains along the line of the board between the edge of the object and either the kerb or other highway boundary.
- (b) Where there are existing consents in place in the vicinity of the application, there must be a minimum distance of 4 meters (either way) between 'A' boards.
- (c) The size of the 'A' board does not exceed 1100mm (43") in height (inc feet) and 844mm (32") in width.

- (d) The 'A' board is placed directly outside the premises, immediately adjacent to the front of the premises or in the case of premises that do not have a street frontage, immediately adjacent to the entrance to the premises.
- (e) The 'A' board must not contain any visual or written material that could be construed as inappropriate or offensive. *(Any breach of this condition will result in the immediate removal of any such signs.)*
- (f) The 'A' board must not cause an obstruction to access by emergency or service vehicles.
- (g) The 'A' board must not interfere with sight lines for any road users. *(For example 'A' boards placed on street corners, central reservations, roundabouts, pedestrian safety refuges and junctions, or pedestrian crossing facilities.)*
- (h) The 'A' board must be sufficiently weighed down to avoid falling over. *(It will not be sufficient that 'A' board is attached to fixed structures. The applicant must be able to demonstrate that the 'A' board has been sufficiently weighed down and the Council reserves the right to inspect the 'A' board prior to issuing a consent.)*
- (i) The 'A' board must relate to the trade of the premises.
- (j) The 'A' board must be constructed in such a way that it does not have any moving parts *(i.e. rotating or swinging 'A' boards)*.
- (k) The object does not obstruct the safe passage of users of the footway or carriageway in any other way not mentioned above.

3.5 Revised Outdoor Advertising Protocol (Appendix I)

No 'A' board will be approved within Conservation Areas except in the following circumstances;, having regard to the position and location of the premises:

- a) where those premises are located at basement or first floor level i.e. the premises has no shop-front at street level,
- b) the premises are situated along a side alleyway and / or on private land which is not a public thoroughfare / right of way.

Nothing in this protocol overrides requirements set out in the Council's policy on the licensing of 'A' boards so where an 'A' board meets the exemptions in the protocol, it will still be subject to the normal policy on the licensing of 'A' boards set out in the policy.

4. Consultee Comments:

4.1 Responsible Authorities

Highways Enforcement Officer – Gloucestershire Highways try to keep the highway free from unnecessary sign clutter. However we do recognise that for business which are located on a 1st floor or above (i.e. not at street level) that the use of A boards directly outside their business is helpful to highlight their existence.

However our concerns with this particular application are that entrance to this business does actually have a street level frontage with good signage above this entrance which is similar in size to the adjacent shops – (see attached Google image)

To confirm then Gloucestershire Highways would **object** to this application because we feel that there is already sufficient street level signage and an A board outside on the pavement would create street level signage clutter. In addition if granted then other business at this location might start requesting similar such advertising boards.

5 Licensing Comments

- 5.1 The Committee should note that the 'A' board has previously had consent, however on renewal of the consent it was considered necessary to refer the application to Committee because the Council's policy has changed and the application does not comply with the new adopted policy in a number of ways:
- 5.1.1 The premises does have a shop-front at street level contrary to the Revised Outdoor Advertising Protocol (3.5 above). Attached at **Appendix C** is an image of the shop frontage.
- 5.1.2 The premises is not situated along a side alleyway and/or on private land which is not a public thoroughfare/right of way (3.5 above)
- 5.2 The existing consent, granted originally in 2003 is due to expire on 31st December 2013.
- 5.3 On individual merits, this application must be determined taking into account the objections received and in accordance with the Council's current adopted policy in respect of objects placed on the highway.
- 5.4 The Committee must seek to promote its own policy and only deviate where there are sufficient and justifiable reasons for doing so.

Background Papers

Policy on Measures to Control Street Scene Activities in Cheltenham: Street Trading, Objects on the Highway and Charitable Collections.

Report Author

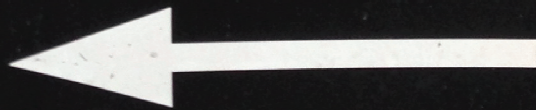
Contact officer: Mrs Amelia Byres
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 264217



SLATER

M E N S W E A R

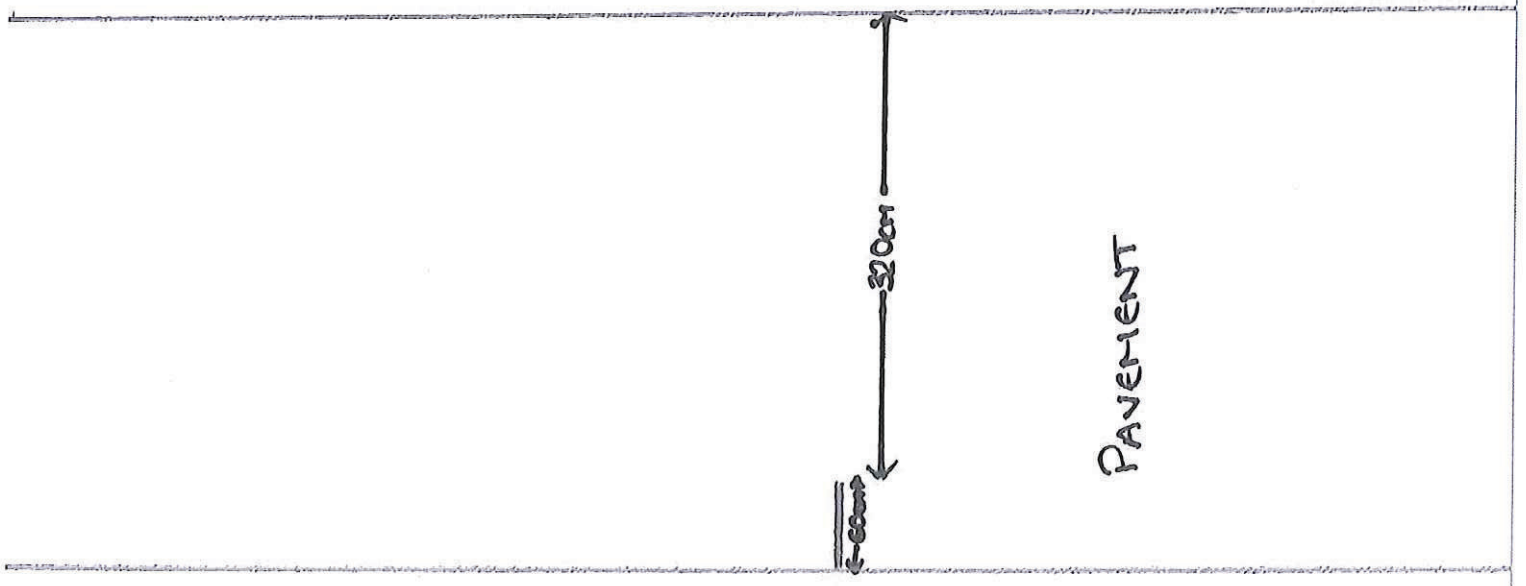
OPEN



Deal
In Store
Limited Time

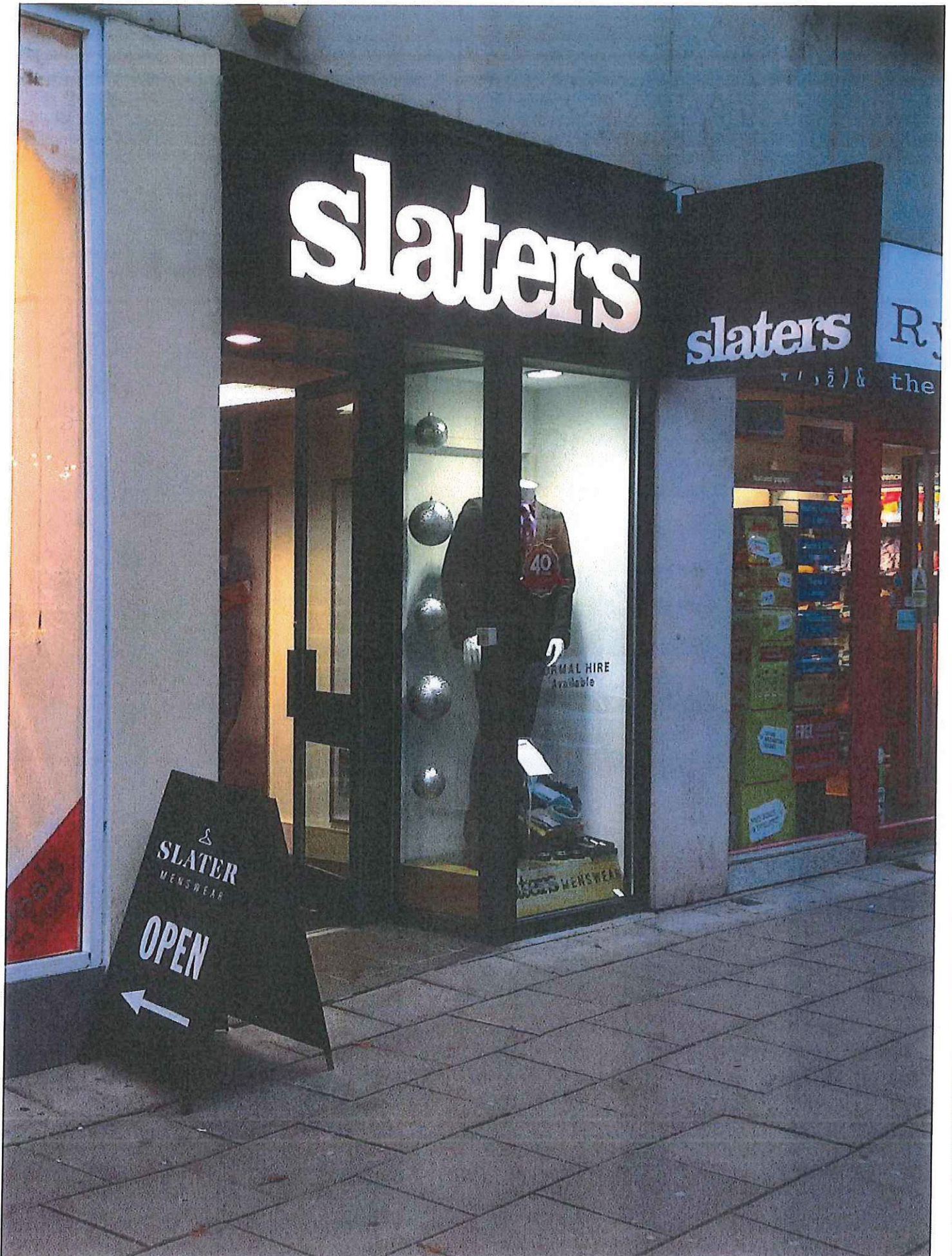
This page is intentionally left blank
Page 36

Scale
1:50



SHOP
FRONTAGE

This page is intentionally left blank
Page 38



This page is intentionally left blank
Page 40

Document is Restricted

This page is intentionally left blank
Page 44

Document is Restricted

This page is intentionally left blank
Page 48

Document is Restricted

This page is intentionally left blank
Page 52

Document is Restricted

This page is intentionally left blank
Page 54

Document is Restricted

This page is intentionally left blank
Page 56