



CHELTENHAM

BOROUGH COUNCIL

Notice of a meeting of Licensing Committee

Friday, 7 March 2014

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 7 February 2014	(Pages 1 - 16)
5.	MINUTES OF SUB COMMITTEE MEETINGS None	
6.	APPLICATION FOR PRIVATE HIRE DRIVER'S LICENCE Mr Carr	(Pages 17 - 26)
7.	APPLICATION TO PLACE AN OBJECT ON THE HIGHWAY - TABLE AND CHAIRS Boston Tea Party, Clarence Street, Cheltenham	(Pages 27 - 36)
8.	STREET TRADING APPLICATION Mrs Kinnean	(Pages 37 - 42)
9.	ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION	
10.	DATE OF NEXT MEETING	

		4 April 2014	

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

Licensing Committee

Friday, 7th February, 2014

1.00 - 4.30 pm

Attendees	
Councillors:	Garth Barnes (Chair), Diggory Seacome (Vice-Chair), Andrew Chard, Anne Regan, Malcolm Stennett, Charles Stewart, Pat Thornton, Jon Walklett, Roger Whyborn and Helena McCloskey (Reserve)
Also in attendance:	Councillor Penny Hall

Minutes

1. APOLOGIES

Councillors Reid and Walklett gave their apologies.
Councillor McCloskey attended as a substitute for Councillor Reid.

2. DECLARATIONS OF INTEREST

Councillor Barnes declared an interest in agenda item 6 as he had publicly declared his objection against this application and would not sit on Committee for this item.
Councillor Barnes declared an interest in agenda item 7 as he had had discussions with the applicant and was therefore compromised. Councillor Barnes said he would not sit on Committee for this item.

3. PUBLIC QUESTIONS

None

4. MINUTES OF MEETING HELD ON 10 JANUARY 2014

Resolved that the minutes of the meeting held on 10 January 2014 be agreed and signed as a true record.

5. MINUTES OF SUB COMMITTEE MEETINGS

Resolved that the minutes of the sub committee meeting held on 20 December 2013 be amended to include Councillor McCloskey's attendance and be signed as a true record.

Resolved that the minutes of the sub committee meetings held on 3 January 2014 and 9 January 2014 be agreed and signed as a true record.

6. APPLICATION FOR A SEXUAL ENTERTAINMENT VENUE LICENCE

Louis Krog, Licensing and Business Support Team Leader, introduced the report as circulated with the agenda. Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009, allows applicants to apply for a Sexual Entertainment Venue (SEV) licence where they wish to offer "relevant entertainment" (as

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defined at paragraph 2.5 of the report) on a frequent basis (as defined at paragraph 2.4 of the report).

An application for a SEV licence was made on 13 December 2013 by Bath Road Property Limited in respect of Diamond Gentlemen's Club at 12-14 Bath Road, Cheltenham, GL53 7HA.

The applicant has applied to offer relevant entertainment at the premises every day from 20:00 to 04:00.

The Officer referred Members to point 1.3.2 of the report which outlined the proposed variation of the standard condition; "During any performance there must be no physical contact between the performer and any member of the viewing public. A safe distance of 90cms (36 inches) should be maintained between performers and customers during all performances" so to remove the 36 inch rule so that the condition reads; "During any performance there must be no physical contact between the performer and any member of the viewing public";

The Officer also referred Members to 1.3.3 of the report which states; for the following non-standard timings "Operating hours from 1100 until 0400 on all Cheltenham race days. At the start of British Summertime, the terminal hours of the operation shall be extended by one hour".

Appendix A of the report provided a copy of the application form.
Appendix B of the report showed a copy of the premises layout.
Appendix C of the report detailed a location map of the premises.
Appendix D of the report listed the house rules of the premises.

The Officer advised Members that since the adoption of the amended provision of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, any premises that want to offer "relevant entertainment" on a frequent basis can only do so by obtaining a SEV licence.

The Officer confirmed that the applicant had correctly advertised the application.

The Officer advised Members that objections made on moral grounds or values should not be taken into account because these were not relevant to either the mandatory or discretionary grounds for refusal and the Council recognise that sexual entertainment is a legitimate form of entertainment. In determining the application, Members must have due regard to any observations made by the Chief Officer of the Police and any other comments made by anybody else.

Gloucestershire Constabulary did not object to the application but have requested that the conditions listed at 4.4.1, 4.4.2, 4.4.3, 4.4.4 and 4.4.5 of the report be incorporated in to the conditions of the licence.

The Officer confirmed that 193 representations had been submitted from other persons. These were shown in the background papers. A summary of the issues raised by objectors were listed at point 4.6.1 to 4.6.10 of the report.

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The Officer referred Members to point 5.3 and 5.4 of the report which detailed the policy considerations and listed the mandatory and discretionary grounds for refusal of a SEV licence.

The Officer detailed the policy considerations with regard to the location of the premises at 5.6 of the report and referred Members to appendix E of the report which provided a copy of the pool of standard conditions.

The Officer referred to point 6 of the report which detailed the national guidance.

The probity in Licensing was listed at point 7 of the report.

The Officer confirmed that the Council has not adopted a policy of setting a limit on the number of SEVs it considers relevant for the relevant locality. Instead, each application will be determined on individual merits on a case to case basis. Point 8.1 to 8.5 listed the issues which had been raised by objectors that required clarification.

An additional document from the applicant had been circulated to Members prior to the meeting detailing background to the application. The document is attached as a supplement to the minutes for this agenda item.

The Chairman reminded Members of the Committee and members of the public in attendance that moral objections had to be put aside along with the four licensing objectives under the Licensing Act 2003. The guidance used for this type of application was a Central Government ruling. The Council's current SEV policy did not set a limit for SEVs and each application must be dealt with on its own merits.

The Chairman stated that the suitability of the applicant, the vicinity and the character of where the premise is would be considered when determining this application.

When asked about point 4.4.3 of the report, The Officer stated that Police conditions stipulated one SIA registered door staff shall be employed in the designated areas where sexual entertainment is taking place. Members could decide if they felt there should be two SIA registered door staff in place if they felt this would be more appropriate.

The Officer confirmed that point 1.3.3 of the report allowed the premises to extend the terminal hour at the start of British Summer time to benefit the premises the extra hour.

Andrew Woods Solicitor, Nigel Blair Director – Bath Road Properties, James Elias Bath Road Properties – Chairman of Night safe and John Anderson Ex Police Officer attended the Committee to speak in support of the application.

Andrew Woods stated that the application had been made for an activity that is lawful. The applicant is a well respected operator and is the Chairman of the Night safe scheme. The applicant has a good history with authorities throughout the county and this responsible approach would continue. The following points were also made.

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- If the application was granted today customers would enter the premises using the Bath Road entrance, walk up the stairs and pay a fee on arrival. There is no visibility from the front door to inside the premises and there are no windows.
- All other facilities in the club were as a bar would be and CCTV would be in use. Any dances would take place in the semi circular sofas situated around the outside of the room. The customer would be seated with the dancer in front of them. The performance would last 3 minutes then the dancer would get dressed. The fee for the performance would be made to management prior to the dance taking place and money would not be carried by the performer.
- One SIA registered door supervisor would be in place whilst the performance took place. If Members felt two SIA registered door supervisors should be in place Andrew Woods confirmed the applicant would be happy to agree this. All other standard and Police conditions were agreed to.
- The premises held an existing premises licence allowing the sale of alcohol until 4am. This application sought sexual entertainment and when assessing the area and location of the venue had applied for this entertainment to start from 8pm and no earlier. The premises were situated on the first floor with no visibility into the venue externally. A smoking area for the performers was situated on the second floor with a separate smoking area for customers on the first floor.
- The venue would be called Diamond and would replace the existing Voodoo signage. No other advertisement relating to the type of premises would be displayed anywhere. There were no hidden or private rooms and every dance would be performed in a specified area. The application if granted is covered by a large number of conditions as shown on pages 55 to 59 of the report.
- Any inappropriate behaviour from customers would result in them being removed from the premises by the door staff. The applicant would liaise with the Police about the condition of having door staff in place up to 30 meters from the venue when customers left the premises.
- Appendix 1 of the report, on page 61 listed 5 separate additional conditions that would be attached to the licence if granted. All other additional Police conditions had been agreed.
- The rationale behind the application from Mr Blair had been demand for this type of venue and there is no other Sexual Entertainment venue in Cheltenham. The number of customers who would attend this sort of venue would be between 75-100, much less than those currently attending the premises as a nightclub. There would be a much higher spend per head for this application and that is why the business plan works.
- Point 2.4 of the report details infrequent sexual entertainment being provided on more than 11 occasions within a 12 month period. Under this part of the Act this premises provided sexual entertainment during race week in 2013 without any issues. The applicant was confident that this would continue to be the case if the application was granted.
- This application had resulted in strong feeling from some residents which the applicant took on board. Grounds for refusal were listed at points 5.3 and 5.4 of the report on page 32. None of the mandatory

grounds were relevant and the discretionary ones relating to the suitability of the applicants were relevant to this application.

- Point 5.6 of the report on page 33 detailed considerations to be made with regard to the location of the premises. This application sought sexual entertainment to start from 8pm. During race days the application sought sexual entertainment to start from 11am. On reading residents objections the applicant was happy to amend the start time to 5pm during race meetings but if Members felt 8pm was more appropriate the applicant would also be happy with this time.
- Representations made which were speculative, covered moral grounds, mentioned gender equality or listed the licensing objectives were not relevant to this application.
- The applicants do not accept any suggestion that this licence, if granted, would increase public nuisance or crime and disorder. These points are not supported and there is no evidence to suggest this would be the case. These comments were unsubstantiated. There will be a reduced number of customers at the premises resulting in less noise and alcohol fuelled behaviour. Comments made regarding sexually frustrated customers leaving the premises were not relevant and were speculative. The Police had raised no concerns with this application being made.
- The locality of the premises is in a core commercial area not within the main shopping area. There are some residential properties behind the premises but the premises are not located in a predominantly residential area. The Park and Salvation Army are within the commercial area and would not be impacted by this application as the entertainment would not start until 8pm. There are other late night venues alongside these premises and it is within an area of late night leisure trade. The premises Kukui is situated beneath Diamonds.
- A previous lap dancing premises was granted a SEV licence in a highly residential area with local Churches and community centres close by. This applications location was far more suitable.
- The applicant requested that the 36 inch rule condition is not imposed as it was very difficult to enforce. The club can run completely properly without the rule so long as the no touching condition remains. Nine other towns did not impose the 36 inch rule because it is difficult to enforce.
- A meeting with residents recently took place to listen to concerns. Residents would not be affected by this application if the licence is granted today. An email address would be available for residents to contact the premises with any concerns.

Members asked the following questions of Andrew Woods and in responding;

- Confirmed that with the premises operating as a SEV there would be between 75-100 customers and as a night club between 300 – 400 customers.
- Said that after concerns from residents the premises would be called Diamond rather than Diamond Gentleman's Club.
 - A Member said they had grave concerns for residents in and around the Salvation Army area and to customers visiting the Theatre and felt members of the public would be put in an uncomfortable position.

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- Stated that their experience of this type of venue showed that there would be fewer customers attending the premises as a SEV than if it were operating as a nightclub.
- Stated that the 36 inch rule not being enforced would make it easier for door staff to monitor and customers were not allowed to touch the performer.
- Said that no specific inspection requests had been asked for from the Police and they would welcome any type of inspection.
- Stated that it was not appropriate for payment of money to go to the performer. The fee for the dance is made to management prior to the performance taking place.
- Confirmed advertising would be done by word of mouth and direct marketing would come from the existing night time economy.

When asked, the Officer confirmed if the applicants left the premises the SEV licence must be transferred to the new applicant and would be treated as a new application and be determined at this Licensing Committee.

The Officer advised the Committee that alcohol premises are subject to 3 to 6 monthly inspection and these would be incorporated with inspections for this premises if the licence was granted.

Members asked the following further questions of Andrew Woods and in responding;

- Stated that during race week last year the 36 inch rule was not enforced by the Police as they were in agreement as long as customers did not touch the performers.
- Confirmed that due to the layout of the premises it was very difficult to provide disabled access to the venue. Staff would be available to assist as necessary.
- Said he anticipated there would be very few customers attending the venue between 8pm and 10pm. There is a condition that prevents any hand bills being distributed in the town centre.
- Explained that the performances would take place in the semi circular booths around the edge of the room, as shown in the plan on page 49 of the report. Tables were not placed between the customers and the performer and spaces for drinks to be placed were provided in the side of the seats.
- Stated that the venue may provide male Chippendale evenings but to begin with the premises would be providing lap dancing entertainment. The double booths and single booths would be occupied by one customer and one dancer only. Management and door staff would also be monitoring the dancers and CCTV would be used throughout the premises which would be kept for 28 days.
- Said he did not envisage the 20 booths all being in use at one time. The cost of a dance would be around £20.00. Customers not wanting a performance could stand in the bar area.
 - A Member asked how the applicant would control a large number of drinkers at busy times after 11pm.
- Reminded Members that door staff would be present at the venues entrance and that the applicant had agreed to the additional condition of

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door staff monitoring outside of the venue for up to 30 metres. Customers would have to pay a £10.00 entrance fee and felt that members of the public would not pay £10.00 to enter the venue just out of curiosity. Experience of this sort of venue shows that this does not happen.

- Confirmed that more lighting would be provided in the stairway entrance.
 - A Member raised concern over the other sort of entertainment that could be provided under a SEV licence as page 33 of the report detailed.
- Stressed that the only entertainment this venue would be providing would be lap dancing.
- Stated that the performers would dance on the stage enabling customers having a drink at the bar to watch them.
 - A Member referred to point 4.4.2 on page 30 of the report. The Member felt that dancers should also provide their addresses as well as their telephone number.
- The Officer advised Members that if they felt this was a relevant condition this could be attached to the licence if granted today.
- Confirmed he would provide an email address and mobile telephone number for residents to contact the venue if needed.
- The Officer confirmed that if granted today the SEV would enable the premises to provide all entertainment listed at point 6.4 on page 33 of the report not just lap dancing.
- Stated that he was happy for it to be recorded today that the venue would only be providing lap dancing and dancers on the stage as entertainment.
 - A Member asked if the venue did provide entertainment other than lap dancing and stage dancing could the applicant be brought back to the Licensing Committee for the licence to be reviewed.
- The Officer confirmed that it would be beyond the Council's powers to prescribe what activities can take place given that the law deliberately gives sexual entertainment a wide definition to provide operators the option to offer any sort of sexual entertainment with the definition of the Act. He stated that the Council is permitted to review the application on renewal and decide whether to renew the licence for another 12 months. The licence once granted could not be reviewed.
- Referred to the House Rules provided at page 57 of the report and advised the Committee the applicant would be happy to include in the House Rules that lap dancing and stage dance would only take place in the premise.
- Confirmed the performers would not be fully naked.

Councillor Barnes attended the Committee as Ward Councillor to speak on behalf of his residents concerns about this application. The following points were made;

- This was a huge debate and it was not easy for the Committee to consider. Councillor Barnes said that in all his years as a Councillor he had never seen so many objections made to one application, 193 in total and there would have been more.

- These objections had mainly been submitted from people living in the community who were very concerned about how the character of the community would be affected by this application.
- What happens inside the venue could be controlled properly but what occurs outside of the premises can not. A lot of stimulation would be taking place inside the club and lots of young men that had been drinking and stimulated would be leaving the venue at different times of the evening. If the premises were operating from 8pm these customers could leave the venue early on in the evening.
- The local residents in this village atmosphere feel this venue is not appropriate for this location. St Lukes Church and village hall all provide events in the evenings. Worried families have been in tears over fears for the village if this application were granted in this location.
- Vernon Place was a dark alleyway with no CCTV in this area or the park. Vulnerable people could be using these areas and shoppers returning from Sainsbury's. Residents and shoppers using this area could be accosted by young men fuelled by alcohol and stimulation leaving this venue. These residents and shoppers in this area would be denied freedom and choice to walk around safely if this application was granted.
- How would this area be policed at night and would there be enough staff inside the premises? Residents are concerned that females leaving pubs and clubs in this area could be taken advantage of by customers from this premise.
- Questions asked at the recent resident meeting with applicants about how many people would attend the premises were not answered.
- Residents were mainly concerned about what would happen outside of the venue if the licence was granted.

Councillor Barnes summed up by saying that he hoped that the 193 objections received had a voice here today. Residents were deeply concerned that granting this licence today would turn this area into a sleazy one and felt strongly that this was not the right area for this type of venue. This application should be turned down. He went on to say that if the licence was agreed that the Committee would need to ensure that there were the correct safeguards in place at the Club.

Councillor Sudbury attended the Committee as Ward Councillor to speak on behalf of local residents opposed to this application. The following points were made;

- This application has received a high number of objections and has caused huge anxiety for local residents.
- Whilst there are a number of reasons that have been given by those opposed to the application, Cllr Sudbury urged the committee to refuse the application on the following discretionary grounds: that the grant of the license would be inappropriate having regard:
 - i) To the character of the relevant locality and
 - ii) To the use to which any premises in the vicinity are put.
- In commenting on the applicants claim that the site is suitable because it compares well to the site of the former Blue Rooms which previously

held a SEV licence, Cllr Sudbury said that whilst there are vague similarities, there are crucial differences.

- This venue is next to Vernon Place which is a poorly lit narrow lane whereas the Blue Rooms was next to the wider, better lit Bennington Street.
- Vernon Place is a quiet resident's backwater but residents already suffer with noise from the nightclub, anti social behaviour and illegal parking at nights.
- Vernon Place is one of the oldest lanes in the town, leading to Barrett's Mill Lane and on to Sandford Park,
- There will be a danger of and fear of sexual assaults occurring and increasing in this area if this licence is granted.
- The Salvation Army and Playhouse are close by which are key differences to the location of the previously licensed Blue Room.
- The crucial difference between the Blue Room and the application site is that Sandford Park is behind the venue and the access to the park from Bath Road is close by.
- Children and young people will be using this area at 8pm on their way to Sandford Park when the SEV entertainment starts and the premises are open.
- This area will not be policed at this time of night. Sexually charged customers will be leaving the premises at all times and members of the public will be more vulnerable to sexual attacks if this application is granted.
- The applicants had made a great deal of organising a public meeting to answer residents questions but Cllr Sudbury wanted the committee to know that residents were very disappointed that their questions were not answered at the meeting.
- At this meeting Cllr Sudbury had asked the applicant if normal club nights would continue if permission was granted and the applicants had confirmed that normal club nights would continue. There was still uncertainty about this and Cllr Sudbury asked the committee to delve deeper on this issue in their considerations.

In summing up Councillor Sudbury stated that if granted this application would have a huge negative impact on the area. Cllr Sudbury urged the Committee to refuse the application due to the proximity of the venue to and impact on residents of Vernon Place and users of Sanford Park. It is the impact of the clubs clientele when they have left the club in a sexually charged mood that would be most unacceptable in these areas.

Mr Ratton a resident of College Road attended the Committee to speak in support of his objection. The following points were raised;

A total of 193 objections had been made against this application and Mr Ratton wanted to ensure the Committee were fully aware of the strength of the residents' feelings about this application.

Concerns were raised about difficulties occurring at the end of the night when customers who had been sexually aroused and had consumed alcohol left the premises.

The Officer reminded Members that existing conditions on the current premises licence were in place for the management and dispersal of the outside area. In particular he drew the Committee's attention to conditions 2(b), (e) & (h) of the current premises licence.

These conditions would still apply if this application was granted today and both licences would run together.

When asked, The Officer confirmed that any decision made by a public body is subject to appeal or judicial review. The type of appeal would depend on the grounds for refusal.

Andrew Woods referred to Councillor Barnes' and Councillor Sudbury's comments and said that a considerable amount of speculation had been stated. The following points were also made;

- Mr Anderson, an expert has considerable experience of the West End Soho area. Surveys have been completed which confirm there is no evidence of sexually charged problems occurring outside this sort of premises.
- With this evidence and thorough research the comments made about this area turning into a mini Soho are wholly unsubstantiated.
- If the Police had concerns about this sort of problem happening outside of the premises the Police would have submitted an objection.
- The current premises licence conditions stipulate controlling the outside area.
- Andrew Woods said he was unhappy to hear that residents leaving the recent meeting were not satisfied as he felt their questions had been answered.
- The applicant was happy to start the entertainment at 10pm instead of 8pm.

A Member asked a question relating to research provided by an objector about the impact of SEV's in other areas. The Chairman felt that all parties had had sufficient opportunity to speak.

Members left the Chamber at 2.40pm to determine their decision.
Members returned to the Chamber at 3.19pm with their decision.

Members were advised they had the following decisions to determine;

1. Grant the application as applied for;
2. Grant the application subject to any additional terms, conditions and /or restriction that are either specific to the licence or standard conditions;
3. Refuse the application.

Upon a vote it was (5 for, 3 against)

The decision of the Committee was as follows:

In respect of the application by Bath Road Property Limited in respect of Diamonds Gentlemen's Club at 12-14 Bath Road the Licensing Committee has read the material presented to it and has listened to all of the evidence and the oral submissions.

The decision of the Committee is:

The application for a sexual entertainment venue licence be granted as requested by the applicant in their application subject to the conditions recommended by the police and the following added conditions

The times of operation will be 10:00 p.m. to 4:00 a.m. including during race week

The Committee agrees to relaxing the 36' rule but there will be the condition of no touching whatsoever

Dancers are required to sign in with their address and telephone number

Phone number and email address to be provided for residents/authorities to contact if there are concerns

The name of the club will be "Diamond"

There are to be no hand bills delivered/handed out in Cheltenham at all

House rules to be amended to state that only lap dancing and dancing on the stage will take place at the club

The licence will be subject to renewal/review in one year

7. APPLICATION TO PLACE AN OBJECT ON THE HIGHWAY - TABLE AND CHAIRS

Councillor Garth Barnes stood down as Chairman due to his declaration of interest. Councillor Seacome became Chairman for this item.

Louis Krog, Licensing and Business Support Team Leader introduced the report as circulated with the agenda. An application has been received from Mr Raja Miah in respect of The Ball Room, Bayshill Lodge, Montpellier Street, Cheltenham. The applicant has requested to place 21 chairs and 7 tables on the pavement directly outside the premises.

If the application was granted today the tables and chairs would be placed outside from 08.00 to midnight on Monday and Tuesday's. 08.00 to 01.00 on Wednesday to Saturday's and from 10.00 to 23.00 on Sunday's.

Appendix A of the report detailed a picture of the proposed table and chairs. Appendix B of the report provided a location plan of the premise.

The Officer advised the Committee that at the Licensing Committee on 10 January 2014, Members resolved to defer the determination of this application to allow Members to visit the proposed site. The application is now being brought back to Committee for determination.

The Officer confirmed that four objections had been received as point 3.2 of the report detailed. Appendix C of the report provided a copy of the objections.

The Officer referred Members to point 5.3 of the report which advised Members about the current Street Scene Policy.

Members asked the following questions;

- When asked, the Officer confirmed that other premises in the area have permission to place tables and chairs outside until midnight.
- A Member proposed an amendment to the application which would consist of 2 tables and 6 chairs to the right of the entrance and on the left side 2 tables with 4 chairs.
- The applicant confirmed that the size of the chairs were the same as chairs placed outside Soho's premise.
- Members felt the tables and chairs should be placed outside until midnight to be consistent with other premises in the area.

Members were advised they had the following recommendations to determine;

1. The application be approved because Members feel the application is compatible with the current Street Scene Policy, or;
2. The application be refused as the application falls outside the provision of the current Street Scene Policy.

Upon a vote it was unanimously

RESOLVED that the application is amended to approve four chairs and two tables to the left of the premises (facing the premises) and six chairs and two tables to the right of the premises (facing the premises). The terminal hour for the use of tables and chairs will be Monday to Saturday until midnight because Members feel the application is compatible with the current Street Scene Policy.

8. REVIEW OF HACKNEY CARRIAGE DRIVER'S LICENCE

Members of the Committee unanimously voted to keep Councillor Seacome as Chairman for this item in Councillor Barnes' absence.

Louis Krog, Licensing and Business Support Team Leader introduced the report as circulated with the agenda. This is a review of Mr Keith Clements Hackney Carriage driver's licence.

On the 2 January 2014 Cheltenham Borough Council were informed by Gloucestershire Constabulary that Mr Clements had been found driving a licensed Hackney Carriage vehicle without insurance on 31 December 2013.

Further checks by Gloucestershire Constabulary revealed that Mr Clements was not entitled to drive a motor vehicle because his DVLA driver's licence was revoked in October 2013 for failing to submit his licence following 3 fixed penalty points being added to his DVLA driver's licence.

The Officer stated that upon notification of this information Mr Clements was invited to attend the Municipal Offices to provide and explanation. He failed to attend two arranged meetings and failed to respond to attempts to contact him. As a consequence to this and other matters listed in 2.2 of the report Mr Clements Hackney Carriage driver's licence was suspended with immediate effect on the basis that he was not considered a fit and proper person.

Mr Clements had indicated that he would not be able to attend the meeting today.

Members felt Mr Clements had had ample opportunity to make his case known and felt they should determine this in his absence.

Members were advised they had the following recommendations to determine:

1. Mr Clements in not a fit and proper person to hold a Hackney Carriage driver's licence and as a consequence his licence will be revoked under section 61(1)(c) of the Local Government (Miscellaneous Provisions) Act 1976,
2. Subject to recommendation 2.1.1 of the report, his Hackney Carriage driver's licence be revoked with immediate effect in the interest of public safety under section 61(2B) of the local Government (Miscellaneous Provisions) Act 1976; or
3. Mr Clements is a fit and proper person and that the suspension be lifted with no further action.

Upon a vote it was unanimously

RESOLVED that, subject to recommendation 2.1.1 of the report, Mr Clements Hackney Carriage driver's licence be revoked with immediate effect in the interest of public safety under section 61(2B) of the local Government (Miscellaneous Provisions) Act 1976.

9. ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION

Boots Corner

Councillor Garth Barnes returned as Chairman for this item.

Jeremy Williamson, Cheltenham Development Task Force Managing Director attended the Committee to answer Members questions and concerns. The following points were made.

The Development Task Force MD stated that he had spoken to the County Council who raised points about a similar controlled zone in Gloucester. Their experience showed that Hackney Carriage and Private Hire vehicles when not being used for business became private cars which still used the controlled zone. There was a difficulty controlling Private Hire vehicle's as they are more seasonal. The decision was to allow Hackney Carriage vehicles access through the controlled area but no Private Hire vehicles.

A Member asked The Development Task Force MD why the Licensing Committees previous discussions and points had not been forward on to him.

The Licensing Officer confirmed that after discussions with the Licensing Committee a letter was sent to the Cheltenham Development Task Force MD and the County Council expressing the Committees views and concerns.

Private Hire vehicles are more commonly booked for longer journeys with vehicle originating from outside of Cheltenham therefore the vehicle would not be on the controlled vehicle list anyway.

Members raised the following concerns and questions;

- A Member felt this would discriminate some drivers.
- A Member felt the County Council had got this wrong. The purpose of controlling the Boots corner area was to reduce traffic. It would be more sensible to cease both Private Hire and Hackney Carriage vehicles. The topic the County Council had also overlooked was the location of the Hackney Carriage rank in Pittville Street, access to this rank if through Boots corner. The Member suggested moving this Hackney Carriage rank to Winchcombe Street. Another rank near by was located at Bennington Street. Problems within the trade would be caused if only Hackney Carriage vehicles were given access.
- A Member objected to only Hackney Carriage vehicles having access to this controlled area. Members of the public do not know the difference between Hackney Carriage and Private Hire vehicles and felt that Private Hire vehicles need more identification.
- The Licensing Officer confirmed that the law requires Hackney Carriage vehicles to have a plate placed on the back of the vehicle and there is not a law to enforce this for Private Hire vehicles.
- A Member felt there would be enough buses using this controlled area and that both Hackney Carriage and Private Hire vehicles should not have access. If access was granted this area would become part pedestrianised which defeated the object.
- A Member felt having one or the other trade would cause inequality. The Member was concerned that events that happened in Gloucester were having an affect on decisions made in Cheltenham. The Member asked the Cheltenham Development Task Force MD what was going to be done about this and residents of Cheltenham needed to be considered. This Licensing Committee were determined to make a decision.
- The Cheltenham Development Task Force MD said a unitary debate would decide which vehicles would use the controlled area. This system would not work without any vehicular access and concerns about customers having access to Marks & Spencers would be eased if Hackney Carriages were given access. Notes from today's Licensing Committee would be taken back to the County Council for further views to be made.
- A Member stated that not all disabled customers would be able to use buses and taxis are needed for a door to door service.
- The Cheltenham Development Task Force MD said this comment reinforced why the group had suggested Hackney Carriage have access to this area. A balance decision needed to be made to ensure all customers were able to access this area.

- A Member said the Licensing Committee wanted to treat Hackney Carriage and Private Hire driver's equally. Both should be allowed access or neither but not one or the other of the trade.

The Chairman confirmed that the Committee were happy for The Cheltenham Development Task Force MD to take the previous discussions and today's concerns back to the County Council for a view to be made.

A Member said the Licensing Committee should stick to their previous decision of both trades having access to the controlled area or neither of the trade.

The Chairman confirmed that the Licensing Committee all agreed this and asked that the Cheltenham Development Task Force MD takes this view back to the County Council.

The Cheltenham Development Task Force MD confirmed he would do this.

10. DATE OF NEXT MEETING

Friday 7th March 2014

Garth Barnes
Chairman

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Cheltenham Borough Council**Licensing Committee – 7 March 2014****Application for a Private Hire Driver's Licence****Report of the Licensing & Business Support Team Leader****1. Executive Summary**

- 1.1 An application has been received from Mr John Carr for a Private Hire driver's licence on 03.01.2014.
- 1.2 On the 26th of July 2013 the Licensing Committee revoked Mr Carr's Private Hire driver's licence. In light of the aforementioned and following consultation with the Chair and Vice-chair of the Licensing Committee, the application is brought to the Committee for determination.

2. Recommendation**2.1 The Committee is recommended to resolve that:**

- 2.1.1 **Mr Carr's application for a Private Hire driver's licence be granted because the Committee is satisfied that he is a fit and proper person to hold such a licence, or**
- 2.1.2 **Mr Carr's application for a Private Hire driver's licence be refused as the Committee considers him not to be a fit and proper person to hold such a licence.**

3. Implications**Financial**

Contact officer: Sarah Didcote
E-mail: sarah.didcote@cheltenham.gov.uk
Tel no: 01242 26 4125

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 Hackney Carriage licence is a fit and proper person to hold that licence (Section 59 Local Government (Miscellaneous Provisions) Act 1976).
- 2.2 In July 2013 Mr Carr's Private Hire driver's licence was reviewed by the Licensing Committee. The review application was instigated after Mr Carr was stopped by an officer of Gloucestershire Constabulary and found to have three tyres were worn below the legal limit. The report in July stated that "PS Wallace explained that the defects were the worst tyres he had personally seen on any vehicle for some time."

- 2.3 On that occasion Members having had regard to all the relevant matters decided it would be appropriate to revoke Mr Carr's Private Hire driver's licence.
- 2.4 Mr Carr has now made a new application for a Private Hire driver's licence. The outcome of the bald tyres and other fixed penalty points are contained in the enclosed background papers.
- 2.5 In light of the fact the Committee previously revoked his licence and following consultation with the Chair and Vice-chair of the Licensing Committee, the application is brought to the Committee for determination.

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.

Maintenance of Vehicle

- 3.5 The vehicle, all of its fittings and any attached equipment shall at all times when the vehicle is in use or available for hire, be kept in a clean, safe, tidy and efficient state, and must also comply with all relevant statutory provisions including in particular those contained in the Road Vehicles (Construction and Use) Regulations 1986.

Tyres

- 3.6 All tyres fitted to the vehicle or carried as a spare must comply with the Motor Vehicles (Construction and Use) Regulations 1986 and Motor Vehicle (Tests) Regulations 1981.
- 3.7 The carrying and use of Space saver tyres and tyre sealant kits will only be approved with the support of a method statement. The method statement will detail the drivers and vehicle owners responsibility with regard to the maximum permitted speed and restrictions of use and highlight that they are ONLY a temporary measure to complete the journey in which the puncture occurred. An approved repair to BS AU159 or a replacement tyre must be undertaken before any further fares are carried.
- 3.8 Run flat tyres fitted to any vehicle by the manufacturer will not be replaced by any other type or make either individually or all of them. The use of these tyres must be supported by a method statement (such as the manufacturers handbook for the vehicle) specifying the capability and restrictions of use following a puncture. In all cases the Tyre Pressure Monitoring System (TPMS) must be working correctly and if required, be reset when a tyre(s) are renewed or replaced. Worn or damaged run flat tyres must be replaced by the same make and size.

Minor Traffic Offences

- 3.9 Isolated convictions for minor traffic offences should not prevent a person from proceeding with an application. However, the number, type and frequency of this type of offence will be taken into account and if there are several offences of this nature the applicant will normally be expected to show a period free of conviction of at least 6 months.
- 3.10 In particular, an application will normally be refused where the applicant has received 12 or more penalty points on his DVLA licence in the five years prior to the application being made (whether or not the applicant was convicted by a court for the offences for which the points were imposed) or where the applicant has more than one conviction for this type of offence within the last 6 months.

MINOR TRAFFIC OFFENCES

- MS10 Leaving a vehicle in a dangerous position
 - MS20 Unlawful pillion riding
 - MS30 Play street Offences
 - MW10 Contravention of Special Road Regulations (excluding speed limits)
 - PC10 Undefined contravention of Pedestrian Crossing Regulations
 - PC20 Contravention of Pedestrian Crossing Regulations with moving vehicle
 - PC30 Contravention of Pedestrian Crossing Regulations with stationary vehicle
 - TS10 Failing to comply with traffic light signals
 - TS20 Failing to comply with double white lines
 - TS30 Failing to comply with a "Stop" sign
 - TS40 Failing to comply with direction of a constable or traffic warden
 - TS50 Failing to comply with traffic sign (excluding "Stop" sign, traffic lights or double white lines)
 - TS60 Failing to comply with school crossing patrol sign
 - TS70 Undefined failure to comply with a traffic direction sign
- Aiding, abetting, counselling or procuring offences as coded above, but with 0 changed to 2 (e.g. PC10 becomes PC12)
- Causing or permitting offences as coded above, but with 0 changed to 4 (e.g. PC10 becomes PC14)

Hybrid Traffic Offences

- 3.11 Offences of the type listed below will be treated as major traffic offences if the court awarded 4 or more penalty points for the offence and as minor traffic offences if the court awarded 3 or less penalty points for the offence.

HYBRID TRAFFIC OFFENCES

- CU10 Using vehicle with defective brakes
- CU20 Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition.
- CU30 Using a vehicle with defective tyre(s)
- CU40 Using a vehicle with defective steering
- CU50 Causing or likely to cause danger by reason of load or passengers
- CU80 Using a mobile phone while driving a motor vehicle
- SP10 Exceeding goods vehicle speed limit

- SP20 Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
- SP30 Exceeding statutory speed limit on a public road
- SP40 Exceeding passenger vehicle speed limit
- SP50 Exceeding speed limit on a motorway
- SP60 Undefined speed limit offence

Aiding, abetting, counselling or procuring offences as coded above, but with 0 changed to 2 (e.g. CU10 becomes CU12)

Causing or permitting offences as coded above, but with 0 changed to 4 (e.g. CU10 becomes CU14)

Inciting offences as coded above, but with 0 changed to 6 (e.g. CU10 becomes CU16)

4. Probity in Licensing

- 4.1 Cheltenham Borough Council's Licensing Committee operates in a quasi-judicial way in determining contentious licensing applications, policy issues and related matters.
- 4.2 The decisions that the Committee makes are significant and weighty. The Committee operates, for the most part, under its extensive delegated powers and it, rather than any other part of the Council, actually makes the decisions. The decisions can have a considerable effect on the value of premises or other capital assets, on the amenities of people living near licensed premises and on the lives of applicants. Furthermore if the Committee makes a wrong or irrational decision this may mean that the Council will face substantial costs if there is a successful appeal against the decision or if the decision is the subject of a legal challenge from an aggrieved third party.
- 4.3 Some licensing legislation specifies procedures to be followed but in all cases human rights and natural justice considerations dictate that the Committee adheres to the following principles in that decisions must:
 - Be made on the individual merits of a case.
 - Have regard to all relevant national and local guidance.
 - Be made impartially and in good faith.
 - Be made by the body that receives all the relevant information and evidence.
 - Relate to the issue or question placed before the committee.
 - Be based only on consideration of relevant and material matters.
 - Be rational and reasoned.
 - Be made in a way that does not give rise to public suspicion or mistrust.
- 4.4 Licensing Committee Members must vote in the best interests of the Borough as a whole and must not vote on the basis of local ward interests that may be contrary to a balanced licensing assessment in the light of the evidence before the members and wider policies and guidance.
- 4.5 Licensing applications must be determined on the basis of the documents and information that have been formally submitted and where all parties have had a proper opportunity to consider them.
- 4.6 Members must read and carefully consider the content of the circulated report before the meeting and they must have regard to its contents in reaching their decisions.
- 4.7 Where Members propose to make a decision contrary to the officer recommendation clear licensing reasons must be established and these must be seconded and minuted.

5. Officer Comments

- 5.1 Members must be sure Mr Carr is a fit and proper to be granted a Private Hire driver's licence.
- 5.2 Mr Carr was initially interviewed on the 5th of July 2013 by Mrs Amelia Byres. Notes of that interview are attached at **Appendix A** of this report.
- 5.3 Mr Carr was given another opportunity to make any further comments in relation to using his vehicle with defective tyre. He attended the Municipal Offices on the 23rd January 2014 and added the following to his initial interview; he said the previous incident was a misjudgement and he has now had time to reflect. He stated it was a mistake to buy part worn tyres and he will in the future only buy brand new tyres. Finally, he stated he will also check his tyres on a daily basis.
- 5.4 Subsequent to the interview on the 23rd January 2014, Mr Carr notified the Council on the 26th of February 2014 that he has received further penalty points. Due to report publishing deadlines, it was not possible to schedule another interview with Mr Carr but he has provided the Council with a written explanation which is attached at **Appendix B** of this report.
- 5.5 Members will note from the number of penalty points Mr Carr received for the offences that they should be treated as a minor traffic offences. Guidance on the relevance of minor traffic offences in relation to minor traffic offences is outlined at paragraph 3.10.
- 5.6 Mr Carr 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.

Contact Officer

Contact officer: Louis Krog

E-mail: licensing@cheltenham.gov.uk

Tel no: 01242 775004

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Appendix A - Interview Notes for Mr John Carr – 05/07/2014

Mr Carr was interviewed by Mrs Amelia Byres and Mr Philip Cooper; he explained that he was in stationary traffic on Thursday 4th July at approximately 14.00 hours, he explained that his operator A2B had allocated him a job to collect passengers from a local school. He explained that he was in stationary queuing traffic on Albion Street when his mobile telephone rang. He saw from the caller display on the mobile telephone that it was his son calling and felt that as the traffic was stationary he had time to answer the mobile telephone quickly before the traffic started to move again.

He explained that the vehicle was then pulled over by Police Sergeant (PS) Tony Wallace and consequently inspected. On inspection of the vehicle PS Tony Wallace found that the vehicle (PHV053) had three defective tyres. Mr Carr was informed that his vehicle was served with an immediate prohibition notice and that he had been summonsed to Court for the motoring offence, using a mobile phone whilst driving.

Mr Carr explained that he had replaced the tyres on the vehicle at the beginning of June however he had purchased used, part-worn tyres instead of new tyres. He explained that this was the first time he had bought second-hand, part worn tyres and had not appreciated how little wear you get from them. He explained that since replacing the tyres at the beginning of June he had done approximately 5000 miles using them.

Mr Carr went on to say that he knew that the tyres were not perfect, however his vehicle is due to be tested in July for the six monthly MOT and fitness test therefore he decided to keep the tyres on the vehicle and use them until the 6 monthly MOT and fitness test was due to be completed. He explained that this occasion was the first time that he had bought second hand, part worn tyres and that it was an error of judgement on his part.

Mr Carr explained that the vehicle was MOT tested on 5th July 2013, the 'pass' certificate for which he produced during the interview. He explained that the vehicle had passed a private MOT test that morning in which no defects or advisories were listed.

When asked if Mr Carr had been told by his operator or colleagues to change the tyres in recent weeks he advised that no one had mentioned the tyres to him previously.

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PC30 offence 12/2/14

This occurred at 6.30pm on a night of heavy rain & wind. I made a brief stop of less than 1 minute to handover a pizza to a customer waiting near a push button controlled crossing. In the dark and rain I did not realise the car had not completely cleared the zig zags, about 1/3 was behind. I was focused on stepping near the customer and completing the handover quickly, so that they could get back in out of the rain & cold. There was nobody else around at this time.

I was told by the passing officer that this sort of offence is normally dealt with by a course, without any penalty points. However when the letter came through, it seems that I did not qualify for the course because of the previous CU30 offence in July last year.

I accept that technically this was an offence, although the circumstances were largely due to being customer focused in adverse weather conditions at night. I believe that the fixed penalty is sufficient in this instance.

J. Carr 25/2/14

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Cheltenham Borough Council
Licensing Committee – 7 March 2014

Highways Act 1980

Local Government (Miscellaneous Provisions) Act 1982

Application for Permission to Place Tables and Chairs on the Highway

Boston Tea Party, 45 - 49 Clarence Street, Cheltenham

Report of the Licensing Officer

1. Executive Summary and Recommendation

1.1 An application has been received from Mr Sam Roberts in respect of Boston Tea Party, 45-49 Clarence Street, Cheltenham. The applicant applied to place 10 tables and 34 chairs on the pavement directly outside the premises but has subsequently revised this downwards to 9 tables and 18 chairs.

1.2 It is intended that the tables and chairs be put out:

Monday	07.00 – 21.00
Tuesday	07.00 – 21.00
Wednesday	07.00 – 21.00
Thursday	07.00 – 21.00
Friday	07.00 – 21.00
Saturday	07.00 – 21.00
Sunday	07.00 – 21.00

1.3 A photograph showing the style of table and chair to be used is attached at **Appendix A**.

1.4 A location plan showing the tables in chairs in position is attached at **Appendix B**.

1.5 **The Committee is recommended to resolve that:**

1.5.1 The application be approved because Members feel the application is compatible with the current Street Scene Policy, or

1.5.2 The application be refused as the application falls outside the provisions of the current Street Scene Policy.

1.5 Summary of implications

1.5.1 Financial

Contact officer: Sarah Didcote
E-mail: sarah.didcote@cheltenham.gov.uk
Tel no: 01242 26 4125

1.5.2 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 for *Town Centre Street Activities: Street Trading & Objects on the Highway* 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. Consultation and Feedback

3.1 Consultation was undertaken in accordance with the Council's normal consultation procedure for applications to place tables and chairs on the highway.

3.2 Objections were received in respect of this application from:

3.2.1 Nigel Overall, Gloucestershire Highways

3.2.2 Martin Levick, Senior Enforcement & Compliance Officer, Built Environment (CBC)

3.2.3 Wilf Tomaney, Urban Design Manager, Built Environment (CBC)

3.3 Members' attention is drawn to **Appendix C** which contains copies of the above objections. Members are asked to note that all three objections were received before the applicant reduced the scale of his application.

4. Policy Principles, Aims and Objectives

4.1 This section outlines the policies the council will apply when making decisions on applications for consents.

4.2 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.

Each application is assessed against the outlined conditions included in the application pack and this policy.

No object and its associated activity may generate noise which is likely to cause nuisance or annoyance.

Any object given consent to be placed on the highway must be sufficiently weighed down or secured to ensure that the object will not cause any harm or damage.

The Council wishes, as far as is compatible with other highway uses, to promote the 'cafe culture' in Cheltenham because of the added life and vitality this brings to the town. To this end, the Council will look favourably on applications by operators in appropriate locations to put tables and chairs on the pavement outside their premises.

Consent to place tables and chairs on the highway will only be granted for the consumption of food and drink, provided they are in association with a business operating from nearby premises.

Consent to place tables and chairs on the highway will be subject to the use of canvas barriers to cordon off the area where the tables and chairs are placed on the highway.

For health and safety reasons, the Council will not permit glass top tables.

Where consent has been issued for tables and chairs to be placed on the highway the Council may permit, within reason, other objects to be placed inside the area that has been cordoned off with barriers.

5. Licensing Comments

- 5.1 The Committee must determine the application with a view to promoting the Council's adopted policy.
- 5.2 This report has been brought to members' attention as prescribed in the scheme of delegation set out in the Street Scene Policy (page 6) adopted on 1st April 2013, whereby all new applications are referred to the Licensing Committee.
- 5.3 Members are asked to note that the objections in relation to this application were received before the applicant revised the application downwards from 10 tables and 34 chairs to 9 tables and 18 chairs.
- 5.4 In accordance with the current Street Scene Policy members must determine and consider if an application of this type positively enhances the enjoyment and reputation of the town as a tourist and leisure destination whilst being in keeping with the streetscape.

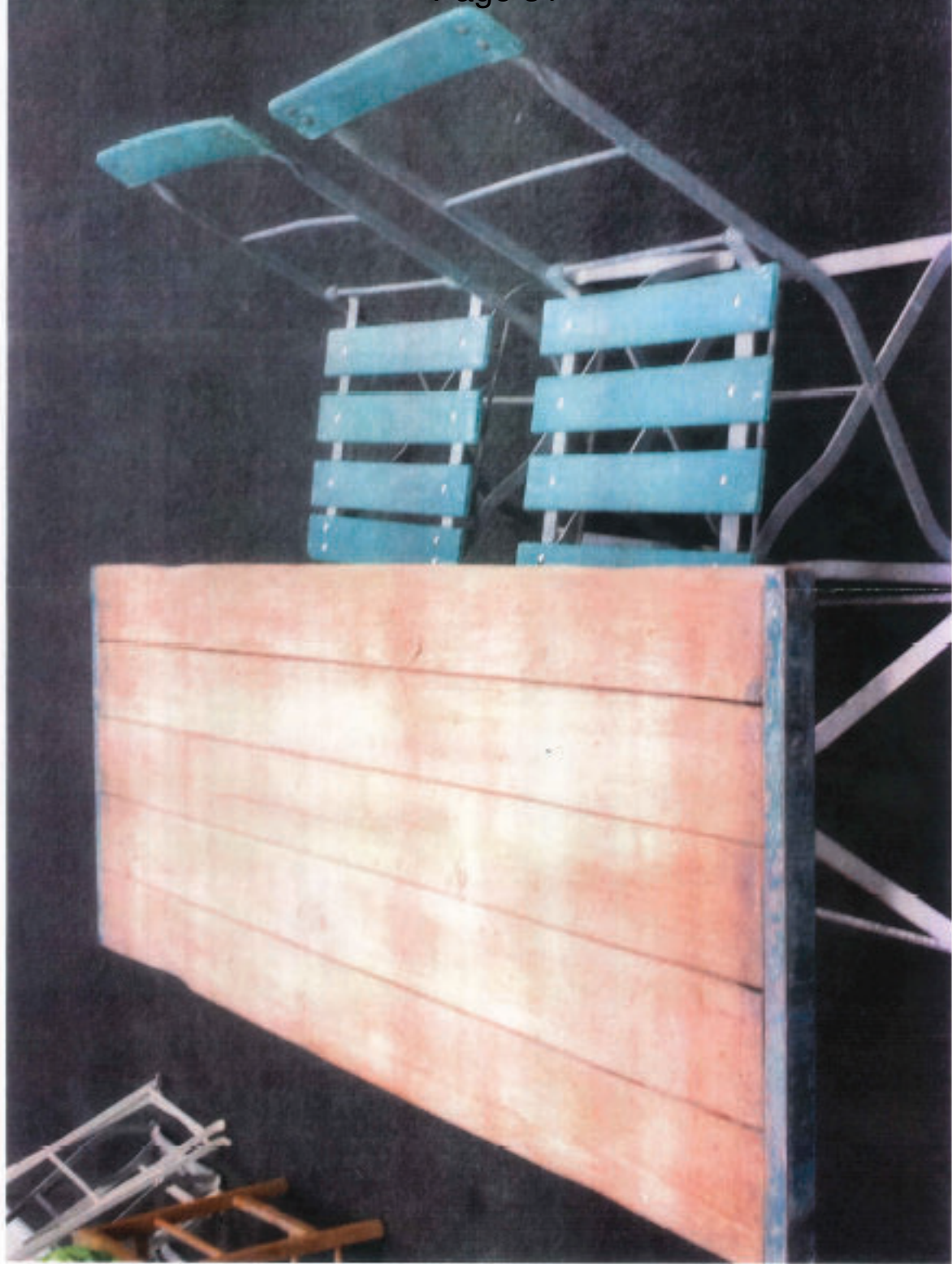
Background Papers

Service Records

Report Author

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

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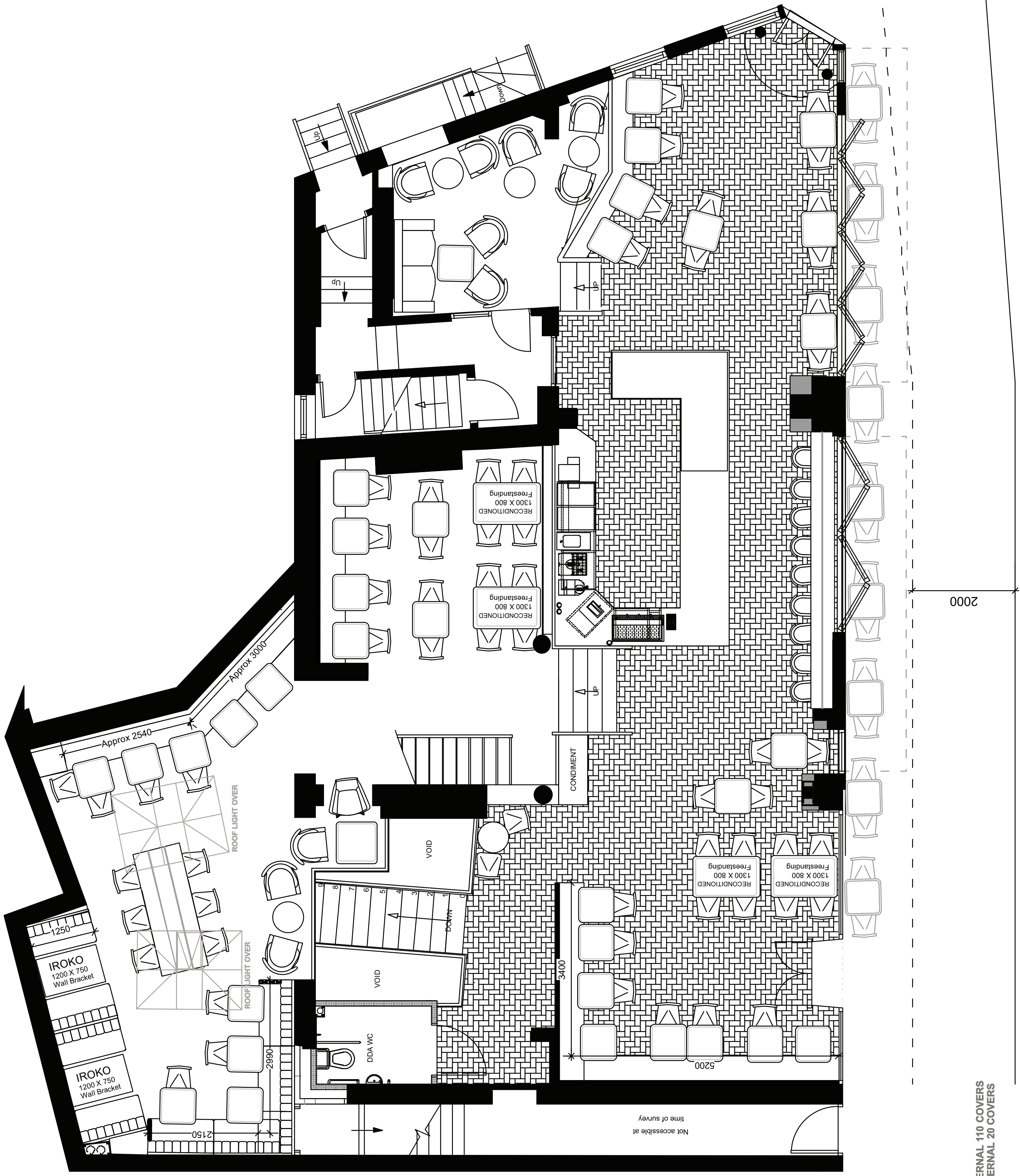


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FOR TENDER

Rev.	Date	By	Description
A	22/01/14	RH	General layout amended
B	12/02/14	RH	Reduced external covers

07969 026964 ask@bergsrhru.com		Bergsrhru	
Boston Tea Party		45-49 Clarence Street, Cheltenham GL52	
Proposed Ground Floor GA		Drawn: RH	Check Date: 27/12/13
1:50@A1		Drawn: RH	Check Date: 12/02/14
BTP_012_04.1		Revision: B	



INTERNAL 110 COVERS
EXTERNAL 20 COVERS

Comments / Objections

Highways:

“Looking on our Street view systems this proposed out-door seating area will be sited on an area of footway adjacent to an existing bus stop. Due to proposed seating area causing a restriction in available footway width there could be a conflict between pedestrians using the footway and those using the bus stop.

No footway exists along the side west side of Wells Street (side of this building) and there could therefore be a conflict with vehicles and the seats proposed to be located on the carriageway at this location.”

Senior Enforcement & Compliance Officer, Built Environment:

“I wish to raise a formal objection to this application. The number and disposition of the tables and chairs are excessive and wholly out of character and detrimental to the appearance of the property which is a Grade II Listed Building. The setting of the listed building will be further deleteriously affected by the tables and chairs proposed which are of poor quality (as depicted in the photograph submitted with the application).

The application therefore fails to meet with the policy aims which seek "to ensure that all street trading activities meet the required quality standards, and do not prejudice the Council's efforts to improve the image, perception and attractiveness of the Town and is in keeping with the streetscape." ”

Urban Design Manager, Built Environment:

“This is the unit at the corner of Clarence St and the entry to St Mary's - just along from the Wilson. My team are involved in a lot of work in this area

- Cheltenham transport plan will affect (beneficially) traffic movement along the street;
- We are working with the Wilson to consider how we can extend footpath width outside their building;
- We have drafted proposals (which have been out to consultation and are supported by the Council with funding) for significant improvements to St Mary's churchyard including work on the corner of Well Walk and Chester Walk
- We are working with the Wilson on improvements to Chester Walk at the rear of their building

There's no objection in principle to Boston Tea Party's proposal, in fact I positively welcome the idea of putting some outdoor activity here. The area has been considered to be a cultural quarter in the Civic Pride plans.

However, any proposal needs careful treatment and I'm sure our landscape team would be happy to discuss proposals- concerns are related to the following:

- 1 it's a prominent corner running along Clarence St

- 2 it's a view stopper looking up Crescent Place
3. it's the main entry to St Mary's
4. Its close to the Wilson.

My concern is the intensity of the proposal and the impact of a great row of "banner" barriers along the edge. Loss of the banners would help significantly, but the intensity of the use needs to be carefully thought through.

An additional concern is how the large fold back doors operate with the tables out.

Martin Levick has raised concerns over the quality of the tables - I agree.

There's also a bus drop off point along the frontage which isn't marked on the plan and needs to be accommodated by the proposals.

Having said that - it's a large underused space and the activity generated would be welcomed - and it would have a beneficial impact on the Wilson.

[Licensing Officer comment: To address the concerns referred to above the applicant has amended the application so that:

1. *Fewer tables and chairs are being applied for than on the initial application;*
2. *Those tables adjacent to the bus stop are smaller than initially applied for,*
and
3. *No tables and chairs are applied for along the west side of Wells Street]*

Cheltenham Borough Council

Licensing Committee – 7 March 2014

Local Government (Miscellaneous Provisions) Act 1982 Application for a Street Trading Consent

Susan Elizabeth Kinnear Report of the Licensing & Business Support Team Leader

1. Summary and recommendation

- 1.1 We have received an application from Mrs Susan Kinnear, for a street trading consent for an ice cream cart measuring 1.52m (l) x 1.26m (h) x 1m (w). Mrs Kinnear is applying to trade on the Promenade by the Long Gardens.
- 1.2 Mrs Kinnear has applied for consent to trade on the following dates and at the following times:

Seasonal Consent: April to September

Times

Monday	12:00 - 18:00 hrs
Tuesday	12:00 - 18:00 hrs
Wednesday	12:00 - 18:00 hrs
Thursday	12:00 - 18:00 hrs
Friday	12:00 - 18:00 hrs
Saturday	12:00 - 18:00 hrs
Sunday	12:00 - 18:00 hrs

- 1.2 An image of the trading unit and a location map are attached at **Appendix A**.
- 1.3 **The Committee is recommended to resolve that:**
- 1.3.1 **The application be approved because Members are satisfied that it does comply with the Council's policy in relation to street trading in conservation areas; or**
- 1.3.2 **The application be refused because it does not comply with the Council's policy in relation to street trading in conservation areas.**

1.4 Implications

- 1.4.1 Financial **Contact officer: Sarah Didcote**
 E-mail: sarah.didcote@cheltenham.gov.uk
 Tel no: 01242 26 4125
- 1.4.2 Legal **Contact officer: Vikki Fennell**
 E-mail: vikki.fennell@tewkesbury.gov.uk
 Tel no: 01684 272015

2. Background

- 2.1 The current policy for *Town Centre Street Activities: Street Trading & Objects on the Highway* 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.
- 2.2 The above policy stipulates that all new applications for street trading consent will be referred to the Licensing Committee for determination.
- 2.3 Consultation was undertaken in accordance with the Council's normal consultation procedure for applications for street trading consent. No objections were received.
- 2.4 The following comments were made by the Council's Urban Design Manager:
*"We support the application - there isn't anywhere else nearby that has ice cream as a major part of its retail offer. It also puts a bit of activity back on the street in this location now the markets have gone, people will sit in the Long Gardens when the weather's hot - an ice cream vender on hand seems appropriate.
Can we ensure that they are dealing with any litter problem?"*

3. Policy Considerations

- 3.1 The Council's current policy in respect of street trading was implemented on the 1st of April 2013.
- 3.2 The current street trading policy aims to promote the following aims and objectives in reference to street trading activities:
- To have a clear & transparent policy governing street trading activities in the Borough.
 - To enable the Council to manage all street trading activities in order to provide effective control measures.
 - To ensure that all street trading activities meet the required quality standards, pose no risk to public health, safety & protection and do not prejudice the Council's efforts to improve the image, perception and attractiveness of the Town as a tourist and leisure destination, and is in keeping with the streetscape.
 - To avoid duplication with other statutory provisions and the Council's commitment to work in partnership with other enforcement agencies.
- 3.3 The proposed trading location is situated in a designated conservation area. The Council has adopted a more restrictive approach to street trading in the conservation areas of a type which could positively enhance the enjoyment of the town as a tourist and leisure destination.
- 3.4 To this end, the Council will normally only permit street trading where an applicant can satisfy the Council that the type of street trading they have applied for will enhance the town's reputation as a tourist and leisure destination and where the type of trading and pitch is in keeping with the streetscape.

4. Licensing Probity Guide

- 4.1 Cheltenham Borough Council's Licensing Committee operates in a quasi-judicial way in determining contentious licensing applications, policy issues and related matters.
- 4.2 The decisions that the Committee makes are significant and weighty. The Committee operates, for the most part, under its extensive delegated powers and it, rather than any other part of the Council, actually makes the decisions. The decisions can have a considerable effect on the value of premises or other capital assets, on the amenities of people living near licensed premises and on the lives of applicants. Furthermore if the Committee makes a wrong or irrational decision this may

mean that the Council will face substantial costs if there is a successful appeal against the decision or if the decision is the subject of a legal challenge from an aggrieved third party.

4.3 Some licensing legislation specifies procedures to be followed but in all cases human rights and natural justice considerations dictate that the Committee adheres to the following principles in that decisions must:

- Be made on the individual merits of a case.
- Have regard to all relevant national and local guidance.
- Be made impartially and in good faith.
- Be made by the body that receives all the relevant information and evidence.
- Relate to the issue or question placed before the committee.
- Be based only on consideration of relevant and material matters.
- Be rational and reasoned.
- Be made in a way that does not give rise to public suspicion or mistrust.

4.5 Licensing Committee Members must vote in the best interests of the Borough as a whole and must not vote on the basis of local ward interests that may be contrary to a balanced licensing assessment in the light of the evidence before the members and wider policies and guidance.

4.6 Licensing applications must be determined on the basis of the documents and information that have been formally submitted and where all parties have had a proper opportunity to consider them.

4.7 Members must read and carefully consider the content of the circulated report before the meeting and they must have regard to its contents in reaching their decisions.

4.8 Where Members propose to make a decision contrary to the officer recommendation clear licensing reasons must be established and these must be seconded and minuted.

5. Corporate Priorities

5.1 The Council has set out a commitment to ensure Cheltenham's natural and built environment is enhanced & protected and the town has a strong and sustainable economy.

6. Consultee Comments

6.1 No objections were received during the consultation period.

7. Licensing Comments

7.1 This report has been brought to member's attention as prescribed in the scheme of delegation set out in the Street Scene Policy (page 6) adopted on 1st April 2013, whereby all new street trading applications are referred to the Licensing Committee.

7.2 The Committee must determine the application with a view to promoting the Council's adopted policy.

7.3 In accordance with the current Street Scene Policy members must determine and consider if an application of this type positively enhances the enjoyment and reputation of the town as a tourist and leisure destination whilst being in keeping with the streetscape.

Background Papers

Service Records

Report Author

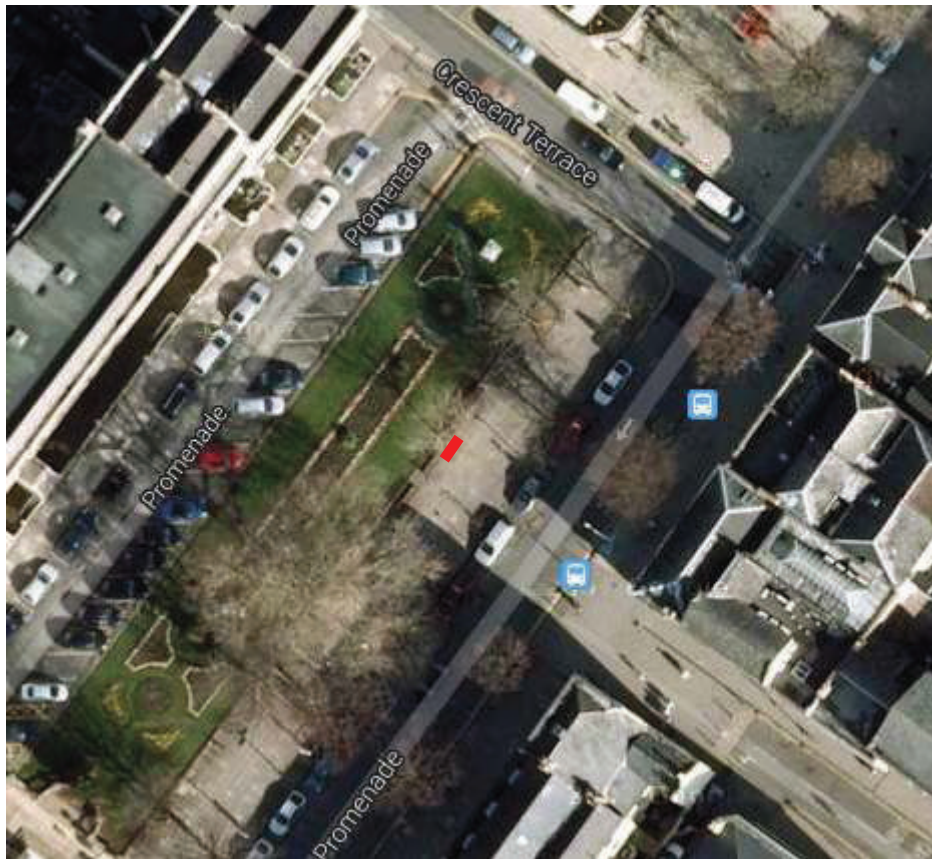
Contact officer: Mr Phil Cooper


E-mail: licensing@cheltenham.gov.uk

Tel no: 01242 775200

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 Proposed location of unit

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