



CHELTENHAM

BOROUGH COUNCIL

Notice of a meeting of Licensing Committee

Friday, 4 September 2015
2.00 pm
Council Chamber - Municipal Offices

Membership	
Councillors:	Roger Whyborn (Chair), Diggory Seacome (Vice-Chair), Andrew Chard, Wendy Flynn, Adam Lillywhite, Anne Regan, Rob Reid, Pat Thornton, Jon Walklett and Helena McCloskey

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 LAST MEETING To approve the minutes of the last meeting held on 31 July 2015	(Pages 3 - 8)
5.	REVIEW OF HACKNEY CARRIAGE DRIVER'S LICENCE - MR BARRY LEWIS Report of Licensing Officer	(Pages 9 - 12)
6.	RENEWAL OF PRIVATE HIRE DRIVER'S LICENCE - MR MOHAMMED AKIL MIAH Report of Licensing Officer	(Pages 13 - 16)
7.	APPLICATION FOR A PRIVATE HIRE VEHICLE LICENCE - MR PAUL CLARKSON Report of Licensing Officer	(Pages 17 - 20)
8.	LICENSING COMMITTEE RESPONSE TO CHELTENHAM BOROUGH COUNCIL'S STREET TRADING POLICY CONSULTATION Report of Licensing Officer	(Pages 21 - 24)

9.		<p>LOCAL GOVERNMENT ACT 1972 - EXEMPT INFORMATION</p> <p>That in accordance with Section 100A(4) Local Government Act 1972 the public be excluded from the meeting for the 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.		<p>REVIEW OF A HACKNEY CARRIAGE DRIVER'S LICENCE</p> <p>Report of Licensing Team Leader</p>	(Pages 25 - 32)
11.		<p>ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION</p>	
12.		<p>DATE OF NEXT MEETING</p> <p>2 October 2015</p>	

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

Licensing Committee

Friday, 31st July, 2015
2.00 - 3.15 pm

Attendees	
Councillors:	Roger Whyborn (Chair), Andrew Chard, Wendy Flynn, Adam Lillywhite, Anne Regan, Rob Reid, Pat Thornton, Jon Walklett and Helena McCloskey
Also in attendance:	Vikki Fennell and Phil Cooper

Minutes**1. APOLOGIES**

Apologies were received from Councillor Seacome

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. PUBLIC QUESTIONS

There were no public questions

4. MINUTES OF LAST MEETING

The minutes of the last meeting held on 3 July were approved and signed as a correct record.

5. APPLICATION FOR PERMISSION TO PLACE AN OBJECT ON THE HIGHWAY - ON THE PROMENADE BY THE LONG GARDENS

The Licensing Officer, Phil Cooper, introduced the report regarding an application by Cheltenham North Rotary Club for permission to place an object on the highway.

The Licensing Officer explained that the object was a real Christmas tree to be placed on the Promenade by the Long Gardens and taxi rank, from 3rd to 29th December this year. He explained that the dimensions of the object were included in the report at paragraph 1.2 and pictures of the location were included in the report at pages 13 and 15. He highlighted that since the report was produced the applicants had revised the height of the tree from 20 feet to 13 feet. The Licensing Officer reported that objections had been received from consultees which were reproduced at paragraph 4 of the report. He commented on these as follows :

- the area highways representative had said the location was suitable, but had expressed concern about its proximity to the taxi rank and whether revellers may try to climb it. Members were advised that the queue at the taxi rank was marshalled by official taxi marshals, and also that the situation could be monitored and if a risk was observed then the permission could be withdrawn. The council's health and safety

representative had met the applicants on site and had discussed their plans and given them advice and did not object to the proposal

- the council's built environment team and trees officers had objected due to the branches and cables in the trees overhead, but Members were advised that the applicants had reduced the height of the tree from 20 feet down to 13 feet in order to address this issue.

The Licensing Officer advised that the applicant was present to answer questions. Having heard the information and read the submissions, Members were asked to approve the permission if they thought it was suitable or appropriate, or to refuse it if they thought it was not suitable or appropriate. He reminded Members that they did have the option of applying such conditions to the permission as they thought appropriate.

In response to questions from Members the Licensing Officer said that the built environment team had not provided any new comments further to the proposed reduction in height of the tree.

The applicant, Mr Roger Champness was invited to address the Committee. He explained that originally an application had been made to erect a tree in front of the war memorial as a prominent position in the Promenade from where to collect donations. This position had the added advantage of being close to a source of electricity. The new application was for a position opposite Ormond Place which would leave 5m clear for pedestrians. The footprint would be 2.5 x 2.5m. They proposed to lay down boarding and the tree would be secured in to a heavy drum. It would be surrounded by a crowd enforcement barrier which would be locked together. The Rotary Club would gain access to the tree once a week in order to hang mementos from the public. Mr Champness explained that they realised a 20ft tree would be too large to handle and 13 ft would be more acceptable. The tree would form part of the Christmas decorations in Cheltenham.

The Chair welcomed the proposal from the Rotary Club to erect a Christmas tree in the town and believed that the majority of the concerns raised in the report had been addressed by the decrease in height of the tree and the conventional steel railings. In terms of attaching the tree to the lamp post Mr Champness confirmed that this was no longer necessary with the reduced tree size as this would be well supported as it would be secured within the heavy steel drum. He explained that Christmas trees had been erected in other towns by the Rotary Club and these had been successful in terms of raising funds for charity.

Mr Champness and officers gave the following responses to questions raised by Members :

- money would only be collected in person on site (mostly on Saturdays) or online or via the Tourist Information Centre
- a banner advertising sponsors would be put up around the railings to improve their appearance
- the application was for the tree to be in position until 29 December as it was understood that planning permission would be required if it was for a longer period. Members asked whether Mr Champness would consider applying for planning permission if the tree was to be a regular

fixture over the festive period to avoid having to reapply each year. It was confirmed that public liability insurance was in place.

- The organisers of the farmers market had been contacted and did not object to the location of the tree
- Mr Champness was concerned about the time his application had taken as the original one had been submitted in February; he did not wish to see it deferred once again; he emphasised that this represented an ideal opportunity to start something ongoing. He had tried hard to meet the requirements of the council and believed with the reduction in height of the tree this had been achieved

Some members of the committee believed they had insufficient information to make a decision bearing in mind the lack of comment from the built environment team but the Chair believed whilst more information was desirable sufficient answers had been provided to members.

Upon a vote it was (8 for, 1 abstention)

RESOLVED THAT

The application be approved because Members are satisfied that the proposed object is within the scope of the Council's adopted policy in respect of objects placed on the highway

6. APPLICATION FOR STREET TRADING CONSENT - MR ADRIAN PAUL WOOD

The Licensing Officer, Phil Cooper, introduced the report regarding an application from Mr Adrian Wood for 2 street trading units to sell seasonal fruit, vegetables and salad. He explained that the first application related to the corner of Church Street and High Street as illustrated in the report. The second application related to the High Street near the entrance to Beechwood Shopping Centre as shown in the report.

The Licensing Officer explained that in relation to Church Street/High Street location, objections had been received from the area highways representative, the council's licensing team leader, and the council's built environment team. The objections related to the location of the unit and the safety of pedestrians due to the fact that the proposed unit would fill the pavement, meaning that pedestrians would need to walk in the street or on the pavement on the other side. He stated that Church Street was open to vehicles although it was not a busy road.

Members were advised that the applicant had stated his willingness to reduce the size of the trading unit if the Committee thought it necessary. He reported that the Council's public realm designer had also commented that that area of the High Street would be undergoing extensive roadway improvements from December this year and indeed works were already taking place. The Licensing Officer explained that if the committee were minded to grant street trading consent, it must be observed that trading would have to cease whenever roadway improvements were being carried out. He added that in relation to the High Street location near the entrance to Beechwood shopping centre, no objections had been received.

The Licensing Officer explained that in relation to each of the locations, the committee was asked to consider whether the proposed trading was appropriate given the policy requirement that such trading must be of a type that positively enhanced the enjoyment of the town as a leisure destination. He also highlighted that the committee should also give due to consideration to any effect the proposals may have on road safety and obstruction of the highway.

The Licensing Officer gave the following responses to Members' questions:-

- It was not known how long the traffic works would take, although this would be beyond December
- The height of the kerb had not been measured in the context of the policy in terms of trading near kerbs "no activity will be permitted within a minimum of 2 metres of a kerb". Although it was noted that Members may depart from the policy if there were clear and defensible reasons to do so.

Members noted that there was very little traffic on Church Street and that the specific location had been used in the past by a flower seller.

Speaking on behalf of Mr Adrian Wood, Mr Knightly explained that Mr Wood had to leave his current premises by 4 September due to the commencement of the Brewery Phase 2 development. He said that Mr Wood was the only independent grocer in Cheltenham and was a major draw in terms of footfall to his current location in the Lower High Street. He now had to search for an alternative site within his budget. The Licensing team had been consulted in terms of finding a street trading pitch which would be potentially suitable for the High Street. Two potential locations were being applied for –the High Street in front of the Beechwood Arcade which was a wide street and the second was in Church Street where Mr Wood was keen to work with Licensing to find a suitable pitch where the stall would be set up on a daily basis.

Mr Knightly and Mr Wood gave the following responses to members' questions :

- the proposed hours of trading would be 8.30-5.30 Monday to Saturday with no trading on Sunday
- street trading pitches would be limited to 10 lines of produce due to the limited space
- having two trading pitches would add to the offer in the town
- it was confirmed that on the Church Street site customers would be served from Church Street and not the High Street. Members were concerned about pedestrian congestion from inside Church Street
- the presentation of the stall would not be detrimental to the street scene and there would be no bags or bowls of produce on the ground as there were on the current site; it was highlighted that in any case on a street trading site the same sort of stock could not be carried
- no flowers would be sold on site
- waste would be limited due to the lower levels of stock and any empty boxes would be stored under the tables; there would be higher specification produce sold and as the street trading pitch started fresh every day there would be no rubbish left on the pitch overnight

- it was accepted that no trade would take place during the roadworks
- when asked about the use of the car park in the Lower High Street Mr Wood explained that Woodys was the last stall to leave the market as it was the only one which had been trading well. He left the market to relocate to the shop on the Lower High Street.
- It was confirmed that currently a street pitch was the only affordable option for Woodys to be able to stay in Cheltenham. Going forward it would very much depend on the High Street in terms of the cost of renting and this would continually be reviewed based on turnover and profit. In the interim street trading pitches were viable options and it was understood that a street trading licence was for a one year period and unless there was an objection or any changes, this would not have to come before committee again.

Members acknowledged that Woodys brought life and vibrancy to the High Street and had a loyal clientele. One member believed that a street trading stall would not be appropriate at the Beechwood Arcade end of the High Street. Members highlighted that the site at Church Street should not encroach on the High Street as per the comments from the built environment team.

The following two votes were taken :

Application (1)-corner of Church Street and High Street

RESOLVED that (unanimous)

The application be approved because Members are satisfied that the application complies with the provision of the Street Scene policy and the location is deemed suitable in that it enhances the town's reputation as a tourist and leisure destination, and is in keeping with the streetscape

Application (2)-location on the pedestrianised High Street by Beechwood Arcade

RESOLVED that (8 in favour, 1 abstention)

The application be approved because Members are satisfied that the application complies with the provision of the Street Scene policy and the location is deemed suitable in that it enhances the town's reputation as a tourist and leisure destination, and is in keeping with the streetscape

7. LOCAL GOVERNMENT ACT 1972 - EXEMPT INFORMATION

8. EXEMPT MINUTES

The exempt minutes of the meeting held on July were approved and signed as a correct record with one amendment.

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

- 10. DATE OF NEXT MEETING**
4 September 2015

Roger Whyborn
Chairman

Cheltenham Borough Council

Licensing Committee – 4 September 2015

Review of Hackney Carriage Driver's Licence

Mr Barry Lewis

Report of the Licensing Officer

1. Executive Summary and Recommendation

1.1 Mr Barry Lewis has held his Hackney Carriage driver's licence with Cheltenham Borough Council since 2002.

1.2 On 10 August 2015 Mr Lewis was convicted of 2 offences under the Health Act 2006. Details of the conviction and Mr Lewis's conviction history are included in background papers.

1.3 In light of this Members of the Committee should be aware of the conviction 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 Hackney Carriage driver's licence.

1.4 The Committee is recommended to resolve that Mr Lewis's Hackney Carriage driver's licence be:

1.4.1 permitted to continue with no further action taken because the Committee considers Mr Lewis to be a fit and proper person to hold such a licence, or

1.4.2 revoked because the Committee considers Mr Lewis to no longer be a fit and proper person to hold such a licence.

1.4.3 Subject to 1.4.2, if the Committee determines that Mr Lewis's licence should be revoked as he is not a fit and proper person, the Committee may also consider whether that revocation should have immediate effect in the interests of public safety.

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 decision to revoke 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 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.
- 3.5 The Health Act 2006 prohibits smoking in enclosed places; all licensed vehicles are designated as an enclosed public space and therefore it is unlawful for any person to smoke in a licensed vehicle at any time, including any time when it is not being used for hire.

4. Licensing Comments

- 4.1 The role of the Committee is to ensure that the people licensed by the Council as Hackney Carriage drivers are fit and proper people to hold such a licence. The overriding consideration is the safety of the public and Members should take into account whether the applicant or licence holder has demonstrated that they are capable of abiding by the law and the conditions that their licences are subject to.
- 4.2 Both the Health Act 2006 and Cheltenham Borough Council's adopted licensing policy make clear that it is unlawful for any person to smoke in a licensed hackney carriage or private hire vehicle at any time, even if it is not being used for the purpose of carrying passengers at the time.
- 4.3 Members will see from the background papers that Mr Lewis has a significant history of offences of this nature. The matter is being referred to the Committee because the consistent repetition of the offence brings into question whether Mr Lewis is a fit and proper person to hold a Hackney Carriage drivers licence.
- 4.4 Mr Lewis has been sent a copy of this report and invited to attend this meeting to speak and to answer Members' questions or to be represented. Members should have regard to the adopted Probity Guide.

Background Papers

Service Records

Convictions

Report Author

Contact officer: Philip Cooper

E-mail: licensing@cheltenham.gov.uk

Tel no: 01242 775200

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Cheltenham Borough Council

Licensing Committee – 4 September 2015

Renewal of Private Hire Driver’s Licence

Mr Mohammed Akil Miah

Report of the Licensing Officer

1. Executive Summary and Recommendation

- 1.1 Mr Mohammed Akil Miah has applied for a Private Hire driver’s licence.
- 1.2 Mr Miah 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 Miah 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 Miah’s application be:**
 - 1.4.1 **granted as the Committee considers Mr Miah to be a fit and proper person to hold a Private Hire driver’s licence, or**
 - 1.4.2 **refused as the Committee considers Mr Miah not to be a fit and proper person to hold Private Hire driver’s licence.**

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 renew 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.
- 3.5 In general an applicant with convictions for violence, as listed below (or similar offences), which are less than 5 years old, is unlikely to be considered favourably.
- a. Common assault
 - b. Affray
 - c. S5 Public Order Act 1986 offence (harassment, alarm or distress)
 - d. S.4 Public Order Act 1986 offence (fear of provocation of violence)
 - e. S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
 - f. Obstruction
 - g. Possession of offensive weapon
 - h. Criminal damage
- 3.6 An isolated conviction, without disqualification, for an offence such as dangerous driving or driving without due care and attention, will require careful consideration of the facts and will at the very least merit a warning as to future driving and advice on the standard expected of hackney carriage and private hire vehicle drivers. However, where the conviction is within 6 months prior to the date of the application the application will normally be refused.
- 3.7 More than one conviction for this type of offence within the last 5 years is likely to merit refusal.
- 3.8 Where an applicant has been disqualified from driving because of a major traffic offence the application will generally be refused unless a period of 2 years free from conviction has elapsed from the restoration of the DVLA licence.

4. Licensing Comments

- 4.1 Mr Miah has been interviewed about all of his convictions and an account of that interview is enclosed with the background papers to the report. Members will note that in certain respects Mr Miah's explanation differs from that provided by the police and Members may wish to ask Mr Miah to clarify those points.
- 4.2 The Council has a statutory duty to be satisfied that the people to whom it grants private hire licences are fit and proper people to hold such a licence, and the safety of the public is the overriding factor that Members should take into account.

- 4.3 If the Committee is satisfied that Mr Miah is a fit and proper person to hold a Private Hire driver's licence, it will be subject to Mr Miah's successful completion of all the assessments required in accordance with the Council's current policy including the Driver Vehicle Standard Agency's enhanced driving test, and the Council's knowledge test and English proficiency test.
- 4.4 Mr Miah 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**

Details of convictions

Account of interview conducted on 17 August 2015

Report Author

Contact officer: Philip Cooper

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Tel no: 01242 775200

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Cheltenham Borough Council

Licensing Committee – 4 September 2015

Application for a Private Hire Vehicle Licence

Report of the Licensing Officer

1. Executive Summary

- 1.1 An application has been received from Mr Paul Clarkson for a Private Hire vehicle licence.
- 1.2 The vehicle in question, a Mercedes 'S' Class, has three passenger seats and therefore does not comply with the Council's adopted policy in as much as it has fewer passenger seats than the minimum required under the policy, which is four.
- 1.3 In light of this Members of the Committee should be aware of the application because of:
 - 1.3.1 The fact that the vehicle falls outside the requirements of the Council's policy; and
 - 1.3.2 The need to ensure that the vehicle is suitable to be licensed as a Private Hire vehicle.

1.4 The Committee is recommended to resolve that:

- 1.4.1 **Mr Clarkson's application for a Private Hire vehicle licence is granted because the Committee is satisfied that there are sufficient reasons to depart from the policy requirement in this instance; or**
- 1.4.2 **Mr Clarkson's application for a Private Hire vehicle licence is refused because the vehicle does not comply with the requirements of Cheltenham Borough Council's adopted policy.**

1.5. 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 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 Cheltenham Borough Council's Licensing Policy for Private Hire and Taxis was approved on 15 July 2014.
- 2.2 In setting out its policy, the Council seeks to promote the following objectives:
 - a. The protection of the public and public safety;
 - b. Cheltenham Borough Council's priorities;
 - c. The establishment of a professional and respected licensed trade;
 - d. Access to an efficient and effective public transport service;
 - e. The protection of the environment.

The aim of the licensing process, in this context, is to regulate the Hackney Carriage and Private Hire trade in order to promote the above objectives.

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 The following requirements are applicable to all applications for new and replacement Private Hire Vehicle licences. The vehicle must:

- a) Be any colour other than silver (as identified on the vehicle's registration document);
- b) Be less than 5 years from date of manufacture;
- c) Comply with vehicle specifications (see **Appendix B**);

3.3 [Extract from Appendix B]

Passenger capacity

All vehicles must be capable of carrying a minimum of 4 or a maximum of 8 adult passengers in safety and comfort.

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. Licensing Comments

5.1 Members should refer to the enclosed background papers in which Mr Clarkson has provided a written explanation to support his request to license a vehicle with fewer than 4 passenger seats, as well as photographs of the vehicle in question and a description of the type of work, journey and passenger he intends to accommodate using the vehicle.

5.2 Whilst the Council's adopted policy stipulates four as the minimum number of seats required for licensed vehicles, Members will be aware that they may depart from the policy in individual cases where clear and defensible reasons to do so have been established.

5.3 The recommendation of Officers is that there are sufficient reasons to deviate from the policy and grant the licence given the individual circumstances of the application, but the matter has been referred to the Committee as only the Committee has the authority to deviate from the adopted policy.

Background Papers

Service records

Officer's report refers to Cheltenham Borough Council's Policy, Guidance and Conditions for Private and Taxis, approved 15 July 2014

Contact Officer

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Tel no: 01242 775004

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Cheltenham Borough Council

Licensing Committee – 4 September 2015

Licensing Committee Response to Cheltenham Borough Council's Street Trading Policy Consultation

Report of the Licensing Officer

1. Executive Summary

- 1.1 Under the Council's constitution, the Licensing Committee acts as consultee to the Lead Member on the adoption and review of the Council's Street Trading Policy.
- 1.2 Under the above mentioned delegation, the Licensing Committee met on Friday 31 July 2015 to discuss the policy and formulate a response.
- 1.3 This report sets out the Committee's response for ratification.

2. Recommendation

2.1 The Committee is recommended to:

2.1.1 Note the comments in Paragraph 4; and

2.1.2 Approve these as the committee's response to the consultation.

3. Implications

How does the decision contribute to the Council's Corporate Priorities?

- Cheltenham has a clean and well-maintained environment.
- Cheltenham's natural and built environment is enhanced and protected.
- Carbon emissions are reduced and Cheltenham is able to adapt to the impacts of climate change.
- Cheltenham has a strong and sustainable economy.

Financial

Contact officer: Sarah Didcote
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Tel no: 01242 26 4125

Legal

Contact officer: Vikki Fennell
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Tel no: 01684 272015

4. Committee's Response

4.1 Permitted Locations (para 4.1)

Members of the Licensing Committee felt that the proposal to have a limited number of prescribed locations in the town centre where trading will be allowed, thereby prohibiting street trading in any other location in the town centre, is far too restrictive. Whilst the Committee did not disagree with the proposal for having a number of pre-approved locations (listed in Annex 1 of the draft policy), Members felt that the Committee should retain the ability to determine applications on a case-by-case basis where they are not in an approved location.

Members felt that this power should be explicitly expressed in the Policy so that when the Committee approves such an application they will not be doing so in contravention of the Policy. The Committee felt strongly that the proposal to have prescribed, limited locations in the town centre should be referred to as *guidelines* to which the Committee should have regard when making its decisions, without it being a prescribed policy position.

In terms of the locations proposed in Annex 1 of the draft policy, Members felt that the sites shown are suitable but said that another location should be included, that being the site outside Marks and Spencer on the High Street (currently and in previous years occupied on a seasonal basis by a static ice cream trader).

In terms of “security of tenure”, members proposed the adoption of a 3 year street trading consent (subject to the ability for the Committee to review where necessary), however it has been clarified that the law permits a maximum 12 months for the duration of a street trading consent.

4.2 **Special Conditions for Mobile Ice Cream Traders** (Annex 2)

The current and proposed policies both prohibit trading by mobile ice cream traders in the following locations:

1. a) High Street (from Sandford Park entrance to Townsend Street)
- b) Promenade (from High Street to Montpellier Walk)
- c) Clarence Street
- d) North Street
- e) Pittville Street
- f) Regent Street
- g) Rodney Road
- h) Winchcombe Street (from High Street to Warwick Place)
- i) Imperial Square
- j) Montpellier Walk
- k) Montpellier Street
- l) Warden Hill Road (within 100 metres of frontage to Bournside School), both sides of the road in any direction, except in the lay- by opposite to number 89, during the period half an hour before school opening to 1 hour after closing during school terms).
- m) Loweswater Road (from the junction with Alma Road to the junction with Langdale Road during the above period and times).
- n) Evesham Road and roads adjacent to Pittville Park.
2. Trading prohibited within 75 metres of the gates of all schools, except Bournside School (see Special Condition 1) on both sides of the road in any direction during the period half an hour before school opening to one hour after closing during school terms.

Members of the Licensing Committee expressed a desire for this list of prohibited locations to be reviewed to ensure that they are still appropriate.

In terms of location (l), Warden Hill Road, Members felt that the section “except in the lay-by opposite to number 89” should be removed because trading is not appropriate in that location due to the heavy traffic and the proximity of the school.

In terms of the prohibition of trading within 75 metres of gates of all schools, Members felt that consideration should be given to increasing this prohibition to 200 metres.

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