



Notice of a meeting of Licensing Committee

Friday, 2 October 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 4 September 2015.	(Pages 3 - 8)
5.	LICENSING COMMITTEE RESPONSE TO ANIMAL LICENSING CONDITIONS - CONSULTATION Report of Senior Environmental Health Officer	(Pages 9 - 12)
6.	APPLICATION FOR PERMISSION TO PLACE TABLES AND CHAIRS ON THE HIGHWAY 81 The Prom, 81 Promenade, Cheltenham	(Pages 13 - 20)
7.	REVIEW OF A HACKNEY CARRIAGE DRIVER'S LICENCE Mr Neil Spencer – HCD757	(Pages 21 - 24)
8.	APPLICATION FOR PERMISSION TO PLACE AN OBJECT ON THE HIGHWAY - A BOARD 210 High Street, Cheltenham	(Pages 25 - 38)
9.	REVIEW OF A HACKNEY CARRIAGE DRIVER'S LICENCE	(Pages 39 - 42)

		Mr Aditya Rai – HCD085	
10.		LOCAL GOVERNMENT ACT 1972 - EXEMPT INFORMATION That in accordance with Section 100A(4) Local Government Act 1972 the public be excluded from the meeting for the 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: Information relating to any individual, Information which is likely to reveal the identity of an individual, Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.	
11.		EXEMPT MINUTES To approve the exempt minutes of the meeting held on 4 September 2015	(Pages 43 - 46)
12.		ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION	
13.		DATE OF NEXT MEETING 6 November 2015	

Contact Officer: Annette Wight, Democracy Assistant, 01242 264130
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Licensing Committee

Friday, 4th September, 2015
2.00 - 3.15 pm

Attendees	
Councillors:	Roger Whyborn (Chair), Diggory Seacome (Vice-Chair), Andrew Chard, Adam Lillywhite, Rob Reid, Pat Thornton, Jon Walklett and Tim Harman (Reserve)
Also in attendance:	Vikki Fennell and Phil Cooper

Minutes

1. APOLOGIES

Apologies were received from Councillors McCloskey, Regan and Flynn.

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 31 July 2015 were approved and signed as a true record.

5. REVIEW OF HACKNEY CARRIAGE DRIVER'S LICENCE - MR BARRY LEWIS

The Licensing Officer, Phil Cooper, introduced the report regarding the review of Mr Barry Lewis' Hackney Carriage Driver's Licence. Mr Lewis had held his licence since 2002 but on 10 August 2015 had been convicted of two offences under the Health Act 2006 of smoking in a smoke free place, namely a licensed private hire vehicle. Members were also advised that since 2008 Mr Lewis had been observed committing this offence on six occasions and details of the convictions were outlined in the background papers. Two of the offences were dealt with by way of a fixed penalty notice and Mr Lewis was prosecuted and found guilty on each of the other four occasions.

In view of this, members were advised to consider whether Mr Lewis was a fit and proper person to hold a Hackney Carriage Driver's Licence. If the Committee felt Mr Lewis was not a fit and proper person, members had the option to revoke his licence immediately in the interests of public safety.

In a reply to a question from a member, the Officer confirmed that there were no passengers in the vehicle when Mr Lewis was observed smoking.

Mr Lewis was invited to address the Committee. He told members that he had paid the two fixed penalty fines straightaway, that he no longer smoked in the

car and now used E cigarettes as he had been told to give up smoking by the hospital.

When asked by a member why there were six convictions listed in the report with fixed penalty charges, Mr Lewis replied he didn't know, he could only remember going to court twice. Mr Lewis said he admitted to two offences and that the other four were all E cigarettes and seen from a distance. He confirmed that his vehicle was open without a divide between front and rear seats. Mr Lewis, in reply to a question, suggested that E cigarettes came out in early 2008. Mr Lewis' offences related to the period April 2008 to March 2015.

The Chair reiterated to members that all six convictions were for nicotine cigarettes and the Officer reinforced this by adding, that it was a criminal offence to smoke proper cigarettes but **not** an offence to smoke E cigarettes. Thus each occasion was an offence because real cigarettes not E cigarettes were observed.

One member proposed that if the committee allowed Mr Lewis to keep his licence he should receive a written warning stating that if he was caught again smoking a real cigarette within his vehicle and convicted for the offence, that the Committee would revoke his licence.

It was agreed to have the addition to the recommendation for the licence to be permitted to continue, because the Committee thought that Mr Lewis was a fit and proper person to hold a licence but that he should receive a written warning.

Upon a vote on the amendment, it was (7 for, 1 against)

Upon a vote on the substantive, it was (6 for, 2 against)

RESOLVED THAT, Mr Barry Lewis' Hackney Carriage driver's licence be permitted to continue, because the Committee was satisfied that he was a fit and proper person to hold a licence but that he receive a written warning.

6. RENEWAL OF PRIVATE HIRE DRIVER'S LICENCE - MR MOHAMMED AKIL MIAH

To Note : This item referred to an **application** for a private hire driver's licence and not a renewal as stated in the agenda.

The Licensing Officer, Phil Cooper, introduced the report regarding an application from Mr Mohammed Akil Miah for a Private Hire Driver's Licence. Members were informed that Mr Miah had two convictions and a caution which were detailed in the background papers, along with details provided by Mr Miah during the interview and some additional information from the police

Mr Miah was invited to address the Committee. He informed members that these offences happened between 2003 and 2008 when he was young and that he was now 28, a family man and wished to change his line of work to a taxi driver so he could spend more time with his family. He said that they were mistakes he had made when he was younger, that he was not a violent person and had not been in any trouble for the past 7 years. When questioned over the

alleged use of a baseball bat, Mr Miah confirmed that he had picked up the bat from a basket in the garage and not from his car, but because the CCTV did not show him doing this and the next CCTV image showed him by his car with the bat, he said it had been only his word against the group of youths who were being racially abusive to him.

The Chairman reminded members that the policy referred to offences happening within the last 5 years as a consideration for refusal and that being a new application, any subsequent offence would come back to committee. If the committee were satisfied that Mr Miah was a fit and proper person to hold a Private Hire driver's licence, Mr Miah would still need to successfully complete all the assessments required including the Driver Vehicle Standard Agency's enhanced driving test and the Council's knowledge test and English proficiency test.

In view of the offences listed, members were asked to consider whether they were satisfied that Mr Miah was a fit and proper person to hold a Private Hire Driver's Licence.

Upon a vote, it was (7 for, 1 abstention)

RESOLVED THAT, Mr Miah's application for a Private Hire Driver's Licence be granted as the Committee considered him to be a fit and proper person to hold such a licence.

7. APPLICATION FOR A PRIVATE HIRE VEHICLE LICENCE - MR PAUL CLARKSON

The Licensing Officer, Phil Cooper, introduced the report regarding an application received from Mr Paul Clarkson for a Private Hire Vehicle Licence in respect of a Mercedes S Class vehicle. The Officer informed members that the vehicle did not comply with the Council's adopted policy as it had three seats available for passengers, whereas the policy requirement for licensed vehicles was a minimum of four passenger seats. In all other respects the vehicle complied fully with the Council's policy. Further details about the vehicle were included in the background papers. The Officer advised members to consider whether they were satisfied that there were sufficient reasons to depart from the policy and grant the licence if they felt it was suitable to be licensed as a private hire vehicle.

In response to a question from a member, the Officer said he was not aware of any other three passenger seater licensed vehicles in the Borough and that this was not because they had been refused but because they had not been requested.

The applicant Mr Clarkson addressed members and referred to the pictures and information in the papers and confirmed that he currently operated one E Class Mercedes in his business, that he was VAT registered and had a plate exemption. He stated that 95% of his work involved transporting one or two passengers and that he did not operate as a normal licensed taxi. He said that if his request for a private hire vehicle licence for a Mercedes S Class was granted then this would enhance his business and improve passenger comfort.

In reply to a question from a member, Mr Clarkson confirmed that he only has one car and that he would be swapping the make of cars, not adding an additional one.

The Chairman referred to the Officer recommendation in the report, which was welcomed by members, which recommended that there were sufficient reasons to deviate from the policy and grant the licence and he moved to vote.

Upon a vote, it was (8 for, 0 against)

RESOLVED THAT, the application be approved because the Committee was satisfied that there were sufficient reasons to depart from the policy requirement in this instance.

Subsequently the Chair stated that he felt the policy on this matter needed to be re-considered.

8. LICENSING COMMITTEE RESPONSE TO CHELTENHAM BOROUGH COUNCIL'S STREET TRADING POLICY CONSULTATION

The Licensing Officer, Phil Cooper, introduced the report on the Licensing Committee's response to Cheltenham Borough Council's Street Trading Policy consultation, which had been discussed and a response formulated at the Licensing Committee's meeting on 31 July 2015. A report had been produced and circulated and notes from the meeting were included in paragraphs 4.1 and 4.2 of the report.

The Chair of the committee had asked for the following comment to be added:

- That the committee was concerned about the amount of prescription of the products to be sold in the various locations, whilst recognising the general need to avoid the sale of certain products where these locations were unsuitable.

Members were asked to ratify the notes from the previous meeting, as shown in the report and amended as above, as being their response to the current street trading consultation.

Upon a vote, it was (8 for, 0 against)

RESOLVED THAT, that the comments in paragraph 4 of the report, together with the additional comment as above, be approved as the committee's response to the consultation.

9. LOCAL GOVERNMENT ACT 1972 - EXEMPT INFORMATION

RESOLVED 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:

Information relating to any individual,

Information which is likely to reveal the identity of an individual,

Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

10. REVIEW OF A HACKNEY CARRIAGE DRIVER'S LICENCE

Members were advised that they had the following recommendations to vote on:

Whether the licence holder's Hackney Carriage driver's licence be continued with no further action, because the Committee was satisfied he was a fit and proper person to hold such a licence; or

Whether licence holder's Hackney Carriage driver's licence be revoked as the Committee considered him not a fit and proper person to hold such a licence.

Upon a vote, it was (8 for, 0 against)

RESOLVED THAT, the licence holder's Hackney Carriage driver's licence be continued with no further action, as the Committee was satisfied that he was a fit and proper person to hold such a licence.

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

None

12. DATE OF NEXT MEETING

2 October 2015

Roger Whyborn
Chairman

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Cheltenham Borough Council

Licensing Committee – 2 October 2015

Licensing Committee Response to Animal Licencing Conditions Consultation

Report of Senior Environmental Health Officer

1. Executive Summary and Recommendation

1.1 Under the Council's constitution the Licensing Committee are a consultee to Cabinet on the adoption of new animal licence conditions for animal boarding establishments, pet vending and dog breeding. Renewal of the animal boarding conditions includes separate commercial kennels, catteries and home boarding conditions alongside pet vending conditions and new dog breeding conditions.

1.2 An eight week consultation period has been set between the 14th August and the 9th October 2015.

1.3 The Licensing Committee heard a presentation on potential contentious issues on Friday 4th September following the Licensing Committee meeting. On Thursday 10th September 2015 they met to discuss their concerns and consider a response. An email was sent to the Licensing Committee Members on Wednesday 16th September requesting comments on a new drafted condition.

1.4 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 & 5; and

2.1.2 Approve paragraph 5 as the committee's response to the consultation.

3. Implications

<p>How may the decision contribute to the Council's Corporate Priorities?</p>	<ul style="list-style-type: none"> • Sustain and grow Cheltenham's economic and cultural vitality. <ul style="list-style-type: none"> - ensure level playing field for licenced animal business by keeping conditions up-to-date and adopting nationally recognised model conditions. - Help ensure the welfare of animals within the borough • People live in strong, safe and healthy communities <ul style="list-style-type: none"> - Reduce risk of animal to human (zoonosis) and animal to animal infection - Help ensure the welfare of animals within the borough
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Financial

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4. Background

4.1 The CBC proposed licence condition documents being consulted upon are currently found on the documents page of the web consultation:

http://www.cheltenham.gov.uk/downloads/download/1265/animal_licensing_consultation

4.2 When responses are received, the proposed conditions have been updated to include the consultees' request(s). Requests are added as and when received and are highlighted in yellow. Yellow highlighted areas also indicate areas of potential concern. Green highlights represent areas of conflict between consultees and **will require cabinet decision**.

4.3 Model conditions were published by the Chartered Institute of Environmental Health or were based on their publications (i.e. home boarding model conditions).

4.4 Other professional bodies have been involved in the production of the documents including: [Advisory Council on the Welfare Issues of Dog Breeding](#); [British Small Animal Veterinary Association](#) (BSAVA); [British Veterinary Association](#); [Cats Protection](#); [Corporation of London](#); [Department for Environment Food and Rural Affairs](#) (DEFRA); [Dogs Trust](#); [Epping Forest District Council](#); [International Cat Care](#) (was the Feline Advisory Bureau); [The Kennel Club](#); LACORS (now merged into Local Government Association); [Ornamental Aquatic Trade Association](#) (OATA); Pet Industry Federation (PIF) (was the Pet Trade and Industry Association); [Rabbit Welfare Association and Fund](#) (RWAF); [Reptile and Exotic Pet Trade Association](#) (REPTA); [Royal Society for the Protection of Animals](#) (RSPCA);

4.5 Following the presentation on 4th September, the report author stated the following in relation to Cheltenham Borough Council's current conditions:

- Do not reflect the current legislation (including the Animal Welfare Act 2006)
- Are open to interpretation
- Do not define numbers
- No current dog breeding conditions

4.6 In brief the proposed conditions will:

- Ensure compliance with legislation
- Be up-to-date with current guidance
- Provide clear guidance to licence holders and enforcers on the requirements
- Define numbers
- Provide dog breeding conditions

4.7 Members' concern regarding Dangerous Wild Animal sales
 Members raised concerns regarding a) pet vendors stocking 'dangerous wild animals' and b) the sale of 'dangerous animals' not categorised as dangerous under the dangerous wild animals acts.

4.8 It is acknowledged the majority of dangerous wild animals likely to be present in the UK are on the dangerous wild animal list. Dangerous wild animal conditions are to be dealt with on an individual basis and are not part of the consultation.

4.9 The proposed pet vending conditions require the reporting to CBC of the sale of any animal falling under the dangerous wild animal act schedule (pet vending model condition A13.2).

4.10 Some people may have a perceived fear of dangerous animals based on social history e.g. fear of any spider or snake species. However, most do not actually cause any harm over and above a sharp bite.

- 4.11 Any placid animal species may become dangerous if they hold the potential to be aggressive and have the equipment to inflict damage: nails, claws, teeth and beak etc.
- 4.12 To protect the welfare of animals, their keepers and their neighbours from aggressive behaviour, the training and knowledge along with the provision of appropriate pet care advice to owners is therefore important. The proposed pet vending conditions address this under 'A14 - Pet Care Advice, Staff Training and Knowledge'.
- 4.13 Licensing Committee concerns regarding catteries
- Members were concerned that the proposed cattery conditions were significantly longer than the other proposed conditions. They wished to be sure cattery owners were aware of the new licence conditions including unit dimensions.
- 4.14 The report author made contact with the licenced catteries and confirms that the current licensees will easily comply with the unit dimensions.
- 4.15 At the time of writing this report one cattery manager has requested minor changes to the conditions and these have been added.
- 4.16 Licensing committee concerns regarding kennels
- Councillors were concerned that dogs would not receive adequate exercise for their needs as they were being confined all day within a kennel with only a small run. The kennels in the council's area have now been contacted and the report author confirms that commercial kennels indicate resident dogs are taken for regular walks and/or are given access to enclosed fields and so would already be complying with the proposed condition in 5.2.
- 4.17 The wording in 5.2 is not specific to a daily requirement. This is due to different dogs having different needs (e.g. old rheumatic lab compared to a young springer spaniel) and to prevent dogs having to be taken out when the weather is not conducive to their health (very wet, cold or windy).

5. Licensing Committee's Response

- 5.1 The licensing committee support the adoption, in principle, of the model conditions by cabinet.
- 5.2 The committee propose the following be included into the "CBC Licence Conditions for Dog Boarding – Kennels" following condition 4.2.6 (under 'Kennel size, layout and exercise facilities'):

"Suitable and adequate exercise in an outdoor environment (separate to the kennel areas) must be ensured for all boarded dogs that require it, to ensure a dog's environmental and normal behaviour needs are met."

This condition reflects animal welfare needs specified in the Animal Welfare Act 2006 but not covered by the model conditions (produced in 1995).

Background papers

Currently all proposed model conditions and guidance documents are available on the downloads page for the web consultation:

http://www.cheltenham.gov.uk/downloads/download/1265/animal_licensing_consultation

Pet Vending: CIEH 2013 model pet vending conditions:

<http://www.cieh.org/WorkArea/showcontent.aspx?id=47606>

Dog Breeding (no dog breeders currently licenced although there are likely to be some in the borough). CIEH 2014 Model licence conditions and guidance for dog breeding:
<http://www.cieh.org/WorkArea/showcontent.aspx?id=50814>

Animal Boarding:

CIEH 1995 Dog boarding model conditions for **Kennels:**

http://www.cieh.org/uploadedFiles/Core/Policy/Publications_and_information_services/Policy_publications/Publications/Dog_Boarding_Guide.pdf

CIEH 2014 model conditions for **Catteries:**

<http://www.cieh.org/WorkArea/showcontent.aspx?id=49634>

Home Dog Boarding standard conditions to the animal boarding conditions see 'Proposed Home Boarding Conditions July 2015'. Adapted from the LACORS guidance of 2005

[http://www.southsomerset.gov.uk/media/4409/Appendix%201%20-%20LACORS%20Model%20Licence%20Conditions%20for%20Home%20Boarding%20\(Dogs\)%20Animal%20Boarding%20Establishments%20Act%201963.pdf](http://www.southsomerset.gov.uk/media/4409/Appendix%201%20-%20LACORS%20Model%20Licence%20Conditions%20for%20Home%20Boarding%20(Dogs)%20Animal%20Boarding%20Establishments%20Act%201963.pdf)

and 14th October 2009 Update and clarification note:

<http://www.instituteoflicensing.org/Public/National%20Events/Zoo%20Licensing/lacors%20home%20boarding%20update.pdf>

Legislation:

Animal Welfare Act 2006 <http://www.legislation.gov.uk/ukpga/2006/45/contents>

Pet Vending:

Pet Animals Act 1951 - <http://www.legislation.gov.uk/ukpga/Geo6/14-15/35/contents>

Pet Animals (Amendment) Act 1983 - <http://www.legislation.gov.uk/ukpga/1983/26/contents>

Dog Breeding:

Breeding of Dogs Act 1973 - <http://www.legislation.gov.uk/ukpga/1973/60/contents>

Breeding of Dogs Act 1991 - <http://www.legislation.gov.uk/ukpga/1991/64/contents>

Breeding and Sale of Dogs (Welfare) Act 1999 -

<http://www.legislation.gov.uk/ukpga/1999/11/contents>

Breeding of Dogs (Licensing Records) Regulations 1999 -

<http://www.legislation.gov.uk/uksi/1999/3192/contents/made>

Animal Boarding:

Animal Boarding Establishments Act 1963 - <http://www.legislation.gov.uk/ukpga/1963/43/contents>

Report Author:

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Cheltenham Borough Council

Licensing Committee – 2 October 2015

Highways Act 1980

Local Government (Miscellaneous Provisions) Act 1982

Application for Permission to Place Tables and Chairs on the Highway

81 The Prom, 81 Promenade, Cheltenham GL50 1PJ

Report of the Licensing Officer

1. Executive Summary and Recommendation

- 1.1 An application has been received from Rajinder Singh Boyal in respect of 81 The Prom, 81 Promenade, Cheltenham GL50 1PJ.
- 1.2 The applicant seeks permission to place 3 tables and 5 chairs on the highway outside the premises from 08:00 to 22:00 hrs, every day.
- 1.3 **Appendix A** shows photographs of the furniture and a plan showing how the tables and chairs will be positioned. **Appendix B** shows the location of the premises.
- 1.4 **The Committee is recommended to resolve that:**
 - 1.4.1 **The application be approved because Members feel the application is compatible with the current Street Scene Policy, or**
 - 1.4.2 **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

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- 1.5.2 Legal

No right of appeal.

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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 The following responses were received from consultees:

Senior Enforcement and Compliance Officer (Planning), Cheltenham Borough Council

I wish to formally object to this application on the following grounds:

The application does not reflect the policy aims and objectives in that:

Notwithstanding that the tables and chairs are not of a quality befitting this important heritage frontage, the placing of chairs and tables on this frontage, together with its attendant canvas barrier and unspecified other objects which may be placed inside the cordoned off area, will be seriously harmful to the intrinsic special architectural and historic qualities of this nationally important Grade II* Listed Terrace and Listed railings, piers and walls.

Further, the position of the chairs/tables at the foot of the stairway entrance to the premises is a public safety hazard and obstruction.

Landscape Architect, Cheltenham Borough Council

Following discussion with colleagues I am writing to object to the above application for the following reasons:

81, The Promenade is part of the Grade II* Listed Regency Terrace, which includes the Municipal Offices. The boundary of a listed building has a major effect on the setting of the listed building. In the case of this Regency Terrace the boundary treatment – wrought iron railings on a stone plinth – forms an essential element of the cohesive visual appearance of the terrace. Placing tables and chairs outside on the pavement would visually disrupt the uniformity of the boundary and harm the setting of the listed building.

It is noted from the drawing that it is proposed to place a barrier around the seating area. No details of the appearance of this barrier have been supplied, but it represents a further boundary beyond the historic wrought iron railings and would therefore harm the setting of the listed building.

The building is situated in the Montpellier Character Area of Cheltenham's Central Conservation Area. Cheltenham Borough Council is committed to the preservation and enhancement of the town's conservation areas. There is no precedent for outdoor tables and chairs along the footway of the Inner Promenade and the proposal would therefore neither preserve nor enhance the character and appearance of this part of the conservation area.

The footpath is not wide enough to accommodate the proposal. The drawing shows that 1.4m width of footway is required for the seating area. This would leave 1.8m clear for pedestrians. This is not sufficient – best practice guidance requires a minimum width of 2m.

Townscape Manager, Cheltenham Borough Council

I particularly agree the points [above] regarding narrowing of the carriageway (1.8m is not sufficient space) also the point about the barriers.

Gloucestershire Constabulary

Police have no objections to table and chairs at the above premises.

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.

5. Policy Principles, Aims and Objectives

- 5.1 This section outlines the policies the Council will apply when making decisions on applications for consents.
- 5.2 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.

6. Licensing Comments

- 6.1 The Committee must determine the application with a view to promoting the Council's adopted policy and should only depart from the policy where there are clear and defensible reasons for doing so.
- 6.2 Members will note that the applicant has proposed leaving 1.8m space between the barriers surrounding the furniture and the kerbside. Consultees have commented that this is insufficient. Members are advised that the current policy does not specify a minimum distance in relation to applications for tables and chairs, but in general terms the Committee normally expects a minimum of 1.8m clearance to be left in respect of all objects on the highway.
- 6.3 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

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VERY ON ORDERS OVER £50 (EX VAT)
SEE PAGE 7 FOR DETAILS

FURNITURE

OUTDOOR

Stainless Steel Square Bistro Tables

Sturdy, practical metal tables for use in cafes, patios and terraces. Weather-resistant, rust-resistant and easy maintenance.

- Aluminium Alloy Base
- Stainless Steel Top
- 720mm High Table
- Indoor / Outdoor Use
- Flat Pack for Easy Self-Assembly

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PAGES 759-758

BOLERO

Specification
1U-U427 Size (mm): 720(H) x 600(W) x 600(D). Weight 7.1kg.
1U-CG834 Size (mm): 720(H) x 700(W) x 700(D). Weight 13.6kg.

Ref	Desc	Each	BULK SAVER 5+
1U-U427	600mm Square	£42.99 (£51.59)	£40.99 (£49.19)
1U-CG834	700mm	£52.99 (£63.59)	£50.99 (£61.19)

FURNITURE

OUTDOOR

Stacking Wicker Chairs

Light, simple, strong and stylish chairs for use in bistros, cafes, bars and clubs. Weather and rust-resistant with easy care wipe clean PVC seat and back.

BULK SAVER
FROM £25.99
EACH CHAIR

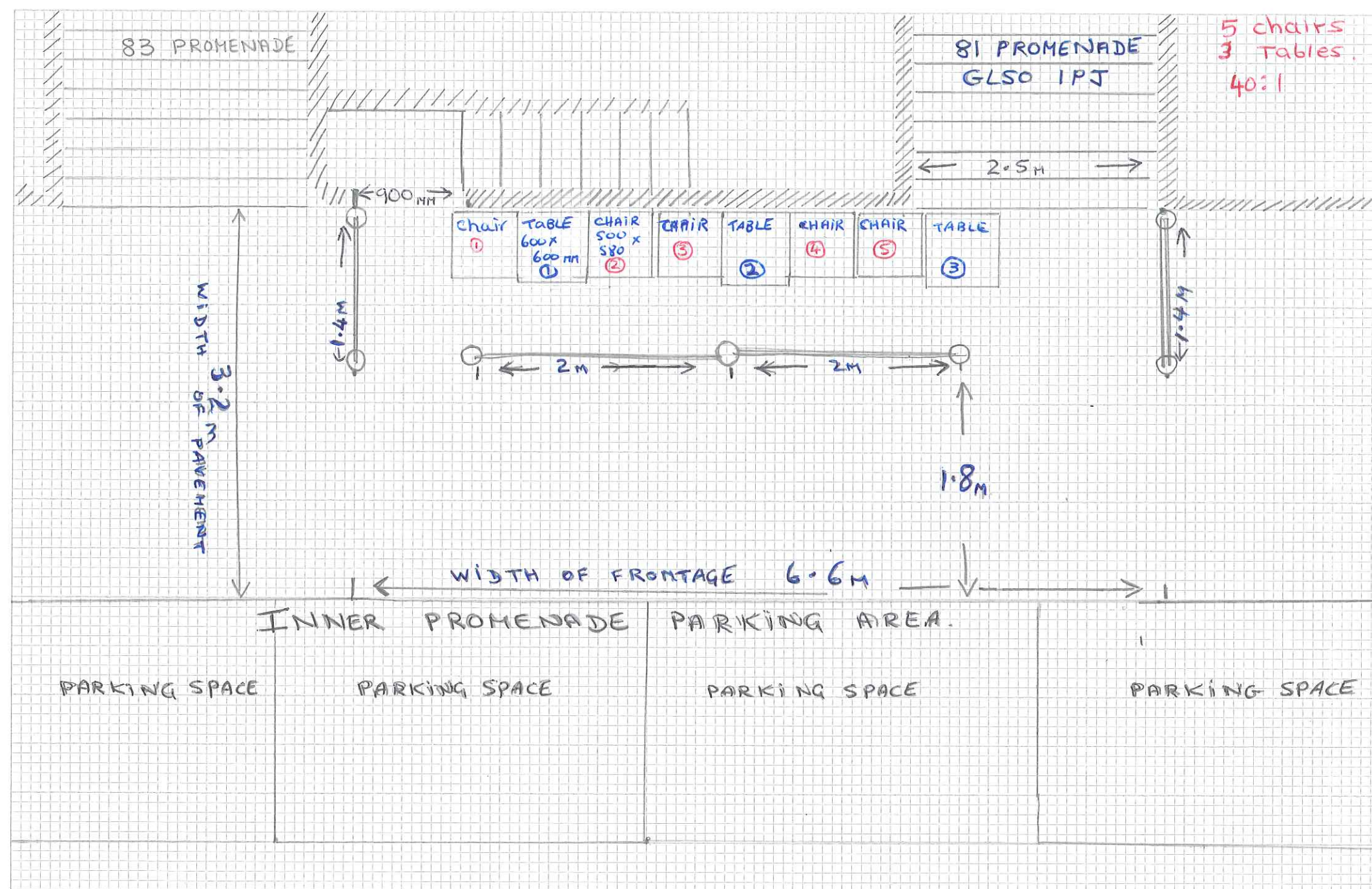
1 2

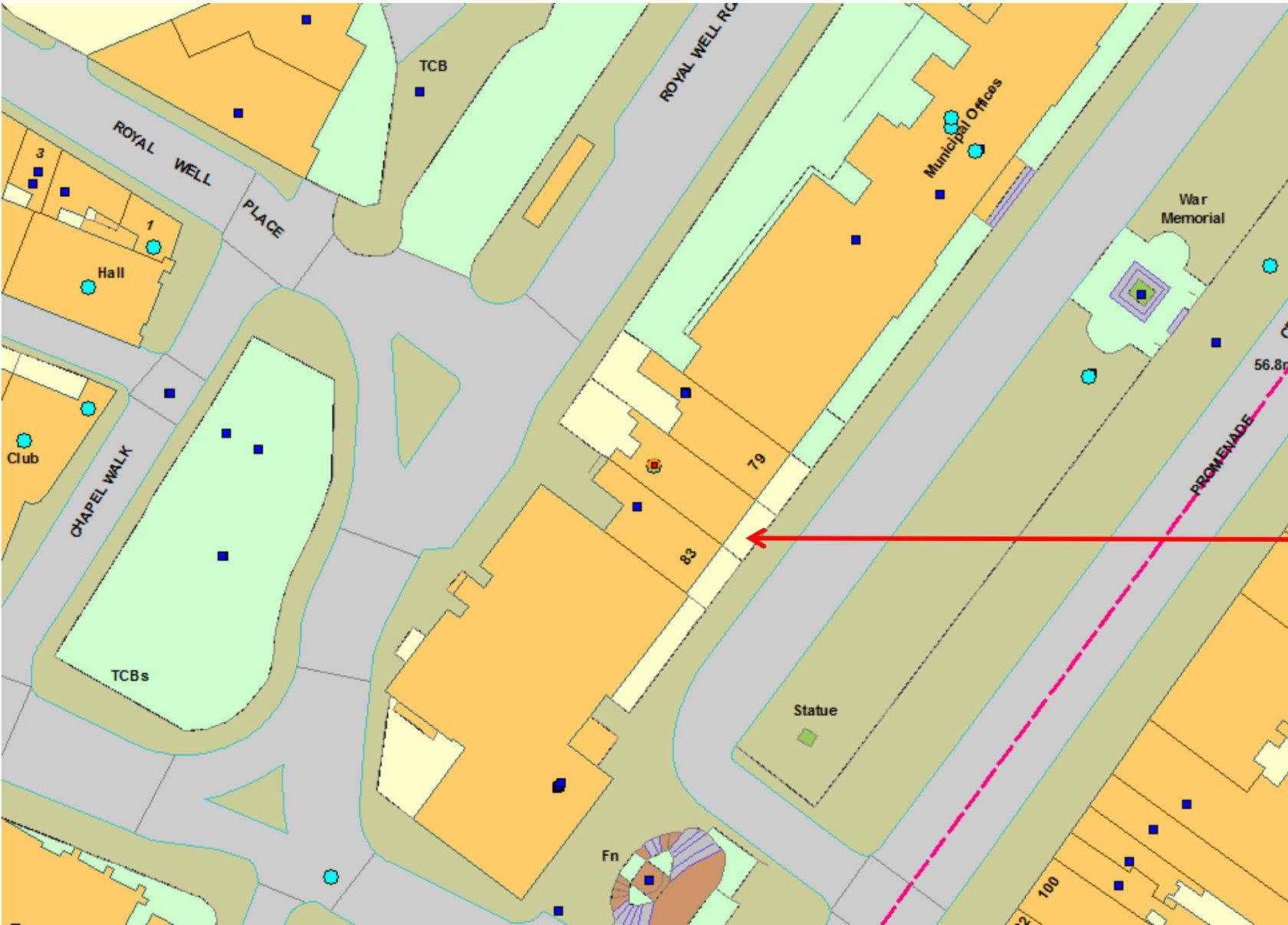
- Aluminium Frame
- PE Wicker Seat & Back
- 450mm Seat Height
- Indoor / Outdoor Use
- Stackable for Easy Storage

Specification
Standard Size (mm): 735(H) x 530(W) x 580(D). Frame Size (mm): 25(Ø) x 1.8(Thick). Weight each 3.88kg.

Ref	Qty	Each Pack	BULK SAVER 5+
1U-U422 Natural	4	£107.96 (£129.55)	£103.96 (£124.75)
1U-U507 Black	4	£107.96 (£129.55)	£103.96 (£124.75)

BOLERO





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Cheltenham Borough Council

Licensing Committee – 2 October 2015

Review of a Hackney Carriage Driver's Licence

Mr Neil Spencer - HCD757

Report of the Licensing Team Leader

1. Executive Summary and Recommendation

1.1 Mr Neil Spencer holds Hackney Carriage driver's licence HCD757 which is due for renewal on 4 February 2018.

1.2 The council has received a number of complaints from the public about Mr Spencer's behaviour. In light of this officers have taken the view that his Hackney Carriage driver's licence should be brought before the committee for a review.

1.3 The details and nature of these complaints are outlined in the attached background papers.

1.4 The Committee is recommended to resolve that;

1.4.1 Mr Spencer's Hackney Carriage driver's licence be continued with no further action, because the Committee is satisfied that he is a fit and proper person to hold such a licence, or

1.4.3 revoked as the Committee considers Mr Spencer not a fit and proper person to hold a Hackney Carriage 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 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 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 and the risks to the safety and comfort of the public.

3.2 In setting out its policy, the Council seeks to promote the following objectives:

- The protection of the public and public safety;
- Cheltenham Borough Council's priorities;
- *The establishment of a professional and respected licensed trade;*
- Access to an efficient and effective public transport service;
- The protection of the environment. (Page 3) [Emphasis added]

3.3 Fit & Proper Test

When an application is made for a Hackney Carriage or Private Hire driver's licence the Council must be satisfied that the applicant is a fit and proper person and shall not license drivers unless they are satisfied of this. *The onus is on the applicant to prove they are a fit and proper person, rather than for the Council to prove that they are not.* (Page 6) [Emphasis added]

- 3.4 If there is sufficient evidence that a person is not fit and proper or if there are grounds to question or doubt the evidence provided, that could amount to good reason to refuse a licence. (Page 6)

3.5 Code of Good Conduct for Licensed Drivers

- 3.6 Once a hackney carriage or private hire driver's licence has been granted, the licence holder will be subject to the Council's Code of Good Conduct for licensed drivers. A copy of the adopted Code of Good Conduct is attached at **Appendix A** for Members' information.

4. Licensing Comments

- 4.1 The committee must be satisfied that Mr Spencer continues to be a fit and proper person to hold a Hackney Carriage driver licence.
- 4.2 In assessing his fitness, Members must take into account the contents of the officer's report including the background papers, the council's adopted policy and Mr Spencer's explanation.
- 4.3 Whilst the council does not take decisions to revoke licences lightly, the establishment of a professional and respected licensed trade is also very important.
- 4.4 Mr Neil Spencer has been sent a copy of this report and invited to attend this meeting to speak in support of his application and to answer members' questions or to be represented. In considering the application on its own merits Members should have regard to the adopted Probity Guide.

Background Papers

Service Records

Report Author

Contact officer: Mr Louis Krog
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242775200

Code of Good Conduct for Licensed Drivers

The Council has adopted the following Code of Good Conduct, which should be read in conjunction with the other statutory and policy requirements set out in this document. This is promoted in conjunction with the Codes Of Practice in relation to targeting crime in Cheltenham and reducing crime and disorder.

Codes of Practice in Relation to Targeting Crime in Cheltenham, Reducing Crime and Disorder

Licence holders shall:-

- a) Always be polite and courteous to all members of the public, avoiding the use of bad language, even when provoked;
- b) Ensure that where an incident occurs requiring the attendance of Police, that the Police are promptly alerted so that the offender may be dealt with in an appropriate manner;
- c) Make themselves available to Police for the taking of statements etc following any incident in which they are involved and which requires Police investigation;
- d) Will not refuse a fare, unless they have reasonable cause to do so;
- e) NOT attempt to 'detain' passengers in the vehicle following a non-payment, to prevent possible allegations of kidnap, assault etc.;
- f) Consider installing CCTV their vehicle;
- g) Consider a small lockable safe in the boot of each vehicle for use of placing cash to reduce the amounts held by each individual;
- h) Ensure that where practical that they check for left property after every fare and in any case at the conclusion of their duty.
- i) Take proper care of any property left by passengers in the vehicle and take steps to assist in its return to the owner or to hand it in at the police station;
- j) Seek to develop a good rapport and working relationship with all other members of the night-time economy, including the emergency services and Taxi Marshalls;
- k) Ensure when dropping off 'vulnerable' passengers at night that they wait until they can confirm that the person is safe before driving off. '
- l) Consider operating a 'buddy' system with another driver or group of drivers to provide mutual support and conduct regular safety checks, particularly at night.
- m) Drive with care and due consideration for other road users and pedestrians
- n) Obey all Traffic Regulation Orders and directions at all time;
- o) Not consume alcohol or misuse drugs (legal or illegal) immediately before or at any time whilst driving or being in charge of a hackney carriage or private hire vehicle;
- p) Fulfil their responsibility to ensure compliance with legislation regarding the length of working hours.

Responsibility to Passengers

Licence holders shall:-

- a) Maintain the vehicle in a safe, clean and satisfactory condition at all times;
- b) Attend punctually when undertaking pre-booked hiring;
- c) Assist, where necessary, passengers into and out of vehicles;
- d) Offer passengers reasonable assistance with luggage;
- e) Take the most time efficient route, bearing in mind traffic problems, and known diversions, and explain any diversion from the main route;
- f) If a taximeter is fitted, use the meter at all times;

- g) When using the meter, do not start the meter until the passenger is seated in the vehicle;
- h) If a hackney carriage is travelling outside the licensed area, agree the fare in advance. If no fare has been negotiated in advance for a journey going beyond the licensed area, then the driver must adhere to the meter;
- i) Private hire drivers will ensure the passenger has pre booked and agrees to the fare before setting out.

Responsibility to Residents

To avoid nuisance to residents when picking up or waiting for a fare, a driver shall:-

- a) Not sound the vehicle's horn between 2330 hours and 0700 hours;
- b) Keep the volume of any sound reproducing equipment (e.g. radio) to a minimum;.
- c) Switch off the engine if required to wait.
- d) When parked at Private Hire offices or elsewhere, take whatever steps are necessary to avoid disturbance to residents.

At Taxi ranks and other places where Taxis ply for hire by forming queues, drivers shall, in addition to the requirements above:-

- a) Park in an orderly manner and proceed along the designated rank in order and promptly;
- b) Remain in the vehicle.

Drivers' Dress Code

In order to raise the profile of the licensed trade, drivers should operate at all times in a professional manner and conform to minimum standard of dress and personal hygiene.

The following are deemed unacceptable:-

- a) Clothing not kept in a clean condition or which is torn or damaged;
- b) Words or graphics on any clothing that is of an offensive or suggestive nature or which might offend;
- c) Sportswear (e.g. football/rugby kits, track suits, beach wear etc.);
- d) Sandals with no heel straps, flip flops or any other form of footwear not secured around the heel;
- e) Drivers not having either the top or bottom half of their bodies suitably clothed;
- f) Shorts, other than tailored shorts;
- g) Very short skirts.

Cheltenham Borough Council

Licensing Committee – 2 October 2015

Highways Act 1980 Part VIIa Local Government (Miscellaneous Provisions) Act 1982

Application for permission to place an object on the highway – ‘A’ Board

Report of the Senior Licensing Officer

1. Executive Summary and Recommendation

- 1.1 Mr Raja Beirouti has made an application to place an A-board on the highway to promote his Photographic store which is located at 210 High Street, Cheltenham, GL50 3HF.
- 1.2 The proposed location of the A-board is on the High Street Adjacent to the frontage of the store shown at **Appendix A**.
- 1.3 It is intended that the A-board be in position:

Monday	09:00 – 17:30
Tuesday	09:00 – 17:30
Wednesday	09:00 – 17:30
Thursday	09:00 – 17:30
Friday	09:00 – 17:30
Saturday	09:00 – 17:30
Sunday	- Closed
- 1.4 **An image of the A-board is attached at Appendix B.**
- 1.5 The applicant has submitted a letter in support of his application and this is shown as **Appendix C** and photographs as **Appendix D**
- 1.6 The recommendations have regard to the individual merits of this application and the established policy. The policy seeks to avoid a proliferation of A-boards and objects on the highway whilst having regard to cases where there is a clear commercial need for this form of advertising.
- 1.7 **The Committee is recommended to resolve that:**
 - 1.7.1 **The application be approved because Members are satisfied there are sufficient reasons to deviate from the policy in respect of objects placed on the highway; or**
 - 1.7.2 **The application be refused because Members are not satisfied that the A-board complies with the Council’s adopted policy in respect of objects placed on the highway.**
- 1.8 **Summary of implications**

1.8.1 Financial

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

1.8.2 Legal

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

2. Background

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

3. Policy Principles, Aims and Objectives

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

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

- To have a clear & transparent policy governing all decisions relating to objects placed on the highway.
 - To enable the Council to manage all objects placed on the highway in order to provide effective control measures.
 - To ensure that all objects placed on the highway meet the required quality standards, pose no risk to public health, safety & protection and to ensure that these objects do not obstruct the highway.
 - To avoid duplication with other statutory provisions and the Council's commitment to work in partnership with other enforcement agencies.
- 3.2 In setting the policy principles relating to 'A' boards, the Council seeks to strike a balanced approach between promoting the Council's priorities, in particular strengthening the Borough's economy by assisting and promoting local businesses but at the same time ensuring the free passage along footpaths and maintaining the visual street environment by the controlled use of 'A' boards in the streets.
- 3.3 To this end the Council will permit one 'A' board per premises subject to that premises meeting all of the conditions stipulated below. Please note that one 'A' board will be permitted *per premises*, not per business. Premises housing more than one business will therefore, subject to the requirements shown below, be permitted only one 'A' board. In these circumstances the Council will encourage businesses to share the use of the 'A' board.

3.4 Conditions of Consent

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

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

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

3.5 Revised Outdoor Advertising Protocol

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

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

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

4. Consultation

- 4.1 A consultation was carried out between 8 September 2015 and 22 September 2015.
- 4.2 One objection has been received from the Senior Planning Enforcement Officer:

Further to my discussion with you just now, I write to formally object to this application. I understand that the objection raised today will be taken into account as this is the sixth day since your email below.

The A board is contrary to the adopted policy, and if allowed, will set a precedent for any trading company in the central commercial area to have A boards.

I understand the case for the A board is based on trading needs.

There may be many reasons why businesses are struggling, or fail, but the lack of an unauthorised sign is not considered to be a legitimate one.

The reasons for the present difficulty could include;

- *Poor business management.*
- *Under funded businesses (now apparent in down turn).*
- *Questionable product line / price. Hard times has produced increased competition.*
- *Unattractive premises, fascia and window display (the art of window dressing was a trade in itself).*
- *General down turn in economy.*

The success or failure of a company cannot rely on the presence of an A board.

5 Licensing Comments

- 5.1 The application does not comply with the Policy requirements in that the premises have direct Street Frontage and also the proposed Board exceeds our size requirements. The application also sits in a conservation area.
- 5.2 The reason that the Council's policy only permits A-boards directly outside the premises - and even then only when the premises is disadvantaged due to having no direct street frontage - is to avoid a proliferation of 'directional' A-boards on other streets. Whilst it may be appropriate for the Committee to deviate from their policy, they should only do so if there are clear and justifiable reasons for doing so, bearing in mind that such a decision may be seen as setting a precedence.
- 5.3 This application must be determined on individual merits taking into account the information received and in accordance with the council's current adopted policy in respect of objects placed on the highway.
- 5.4 The Committee must seek to promote its own policy and only deviate where there are sufficient and justifiable reasons for doing so.

Background Papers	Policy on Measures to Control Street Scene Activities in Cheltenham: Street Trading, Objects on the Highway and Charitable Collections.
Report Author	Contact officer: Andy Fox - Senior Licensing Officer E-mail: licensing@cheltenham.gov.uk Tel no: 01242 775004

TECOP
(closed)

Banning Street

Stops

4.6 m.

Pavement.

ROAD (HIGH STREET)

3.8 m.

Bus / Emergency access

Lamp post



6.6 m

Pavement : NO street furniture.

SHOPS

0.6 m width of road

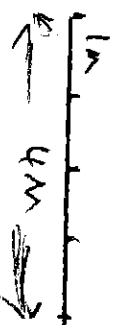
5 m.

width of shop

(Shop stops) 210 H.S.

SCALE

1 cm = 1 metre



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To the attention of the A board licensing committee

I write this letter in support of my application for an A board outside Snappy Snaps at 210 High Street in Cheltenham. This board has been a boon to our business during the lean years, and it is no exaggeration to say that it will possibly be the saviour of it during the coming ones. The whole neighbourhood is being redeveloped, by that I mean the extension of the Brewery, which entails the closing of the Tesco Metro (see Photo) and the subsequent loss of an enormous part of the footfall in this part of the High Street. I am keen to share with you the following percentage figures for our shop, as well as putting them into context. Those figures can be checked with the owner of our franchise, the Timpson group of key-cutting fame.

In 2012, our turnover was down by 13.2% on the previous calendar year. In January 2013, I phoned the council to apply for permission to display an A board, and was told that I could apply if I wished, but I was unlikely to be successful since the policy did not allow shops with street frontage to display a board. The cost of the application was a factor in me not engaging into what I understood would be a futile exercise. I have had very positive results when I had displayed a board in some of my other shops, namely the Snappy Snaps in Hampstead, north London, and the Oxford Cornmarket Street branch. The sales of the advertised service ALWAYS rose when a board was displayed, so in despair at a situation where the Cheltenham shop was threatening to become non-viable, I decided to test the waters and display a board. The results were staggering:

Our 2013 turnover, when numerous other shops were going out of business, was up by 19.3%, with passport photo sales, one of our most profitable products and the service advertised on the board, rose by considerably more.

Our 2014 sales were up by a further 8.5%, still bucking the high street downward sales trend, and that DESPITE the upheaval of phase 1 of the Brewery development. Passport photo sales were even stronger.

2015 sales started strong, with January up by 7.6 % compared to January 2014. By then I was being requested to take the board in by the council, and for the following 5 months, the board was only intermittently put out. The figures speak for themselves: sales till were down by 4.3%, flat, 10.1%, 2.9% and 3.8% for the following months. In July, I decided to leave the board out for a further confirmatory test, and sales went UP by 2.6% .

I do not believe that a loosening of the policy to restrict A-boards will result in a forest of dangerous and unregulated safety hazards. To name just 2 of the prettiest towns in England where such a draconian policy does not exist, Warwick and Oxford, it is plain that a simplified set of guidelines will suffice. I have done considerable research into major towns and cities' policies, and it seems that the vast majority relies on a common sense approach, and Section 137 of the Highways Act 1980 is deliberately not enforced.

I am now in despair at seeing my sales go down further, especially since we are at present surrounded by development work at the Patisserie Valerie building which has all but obscured us from view (see photo), and is due to continue till well into 2016. We are also looking at phase 2 of the brewery development which will take place imminently and will close down ALL the shops on the north side of the High Street for a considerable length of time. Our site was due a complete shop

refit in early 2016, and I am worried that a dramatic fall in sales will leave me unable to complete that task. My lease ends in 2018, and I am keen to extend it and continue trading on the site.

As a last word, please note that our board, if authorized, will be tucked right against our building in what is a 50ft wide pedestrianized street. None of our boards in any of our shops have ever caused an obstruction, and I would not be displaying it if it did, and if I did not strongly believe it was essential to the survival of what is a marginally profitable business. Please also note that we have demonstrated a reasonable longevity (12 years and counting) on a site which had previously seen 2 tenants in 5 years. I wish for that to continue for many more years, and am counting on your support in the matter.

Sincerely,

Raja Beirouti

Franchisee

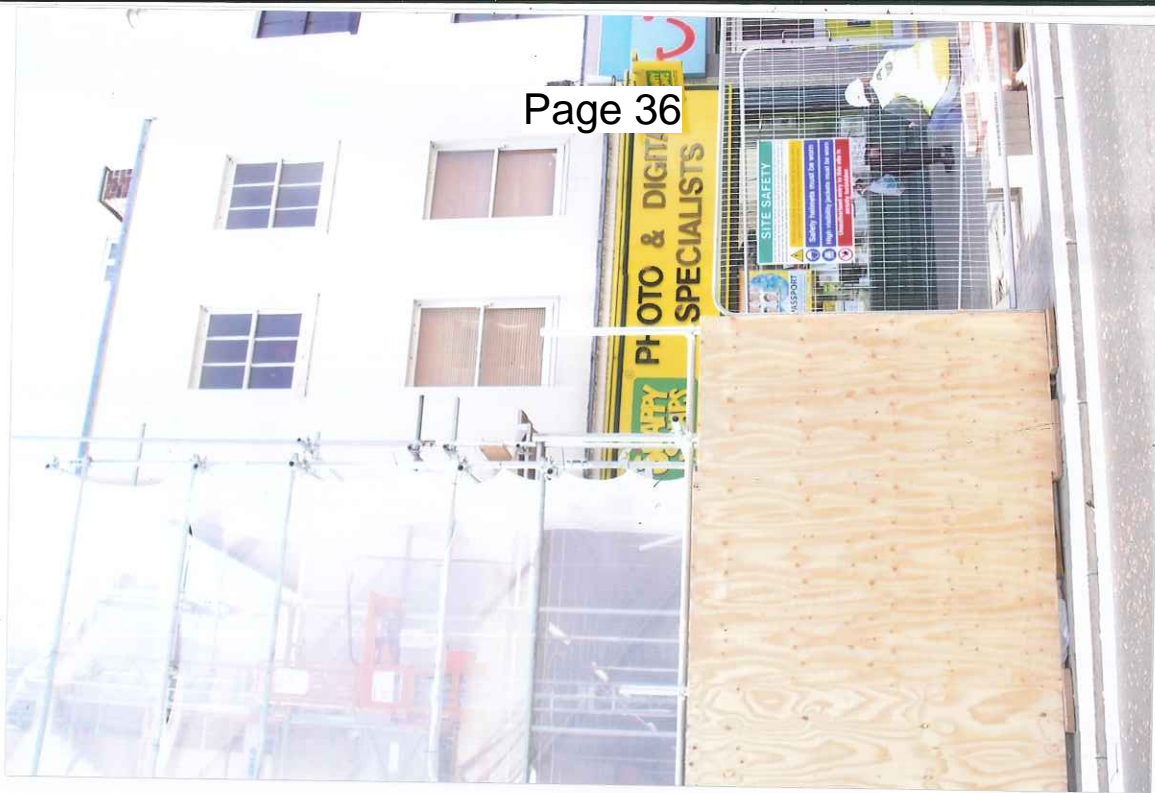
Snappy Snaps Cheltenham

0777 553 4905

Photo Glossary:

1. The A-Board.
2. Tesco Metro closed down, building demolition to start soon.
3. Scaffolding to our right (Paparrito's).
4. Scaffolding to our left, Patisserie Valerie (very intrusive).
5. Scaffolding to our left, alternative view.
6. More misery.







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Cheltenham Borough Council

Licensing Committee – 2 October 2015

Review of a Hackney Carriage Driver's Licence

Mr Aditya Rai – HCD085

Report of the Senior Licensing Officer

1. Executive Summary and Recommendation

- 1.1 Mr Rai Green holds Hackney Carriage driver's licence HCD085 which is due for renewal on 30 June 2015 (his renewal is progressing).
- 1.2 On Tuesday 8th September, Mr Rai notified the Council, by email to the Licensing and Business Support Manager that he had been charged with a number of offences. The details of the offences are outlined in the background papers.
- 1.3 Mr Rai did on second submission of his renewal application declare that he had a court hearing pending.
- 1.4 In light of this the Licensing Officers have taken the view that Members of Committee should be aware of the charges because of:
 - 1.4.1 The nature of the charges; and,
 - 1.4.2 The need to ensure that Mr Rai is judged to be a fit and proper person to hold a Hackney Carriage driver's licence.
- 1.5 **The Committee is recommended to resolve that:**
 - 1.5.1 **Mr Rai's Hackney Carriage driver's licence be continued with no further action, because the Committee is satisfied that Mr Aditya Rai is a fit and proper person to hold such a licence; or**
 - 1.5.2 **Mr Rai's Hackney Carriage driver's licence be revoked as the Committee considers him not a fit and proper person to hold a Hackney Carriage driver's licence.**

1.6 Implications

- 1.6.1 Financial

Contact officer: Sarah Didcote
E-mail: sarah.didcote@cheltenham.gov.uk
Tel no: 01242 264125
- 1.6.2 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

- 2.1 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 The question for the committee is therefore whether, given the nature of the alleged offences, Mr Rai is a fit and proper person to hold a licence.

3. Policy Considerations

- 3.1 Decision making in relation to licensing is an onerous duty, dealing with both the livelihood of the Licensee/Applicant and the risks to the safety and comfort of the public.
- 3.2 Cheltenham Borough Council's policy on the relevance of convictions relates to the Council's assessment of the suitability of an applicant for licensing as a driver of taxis and/or private hire vehicles in terms of their criminal and driving records. Specifically, it is to be applied where an applicant for a driver's licence has received a relevant conviction, charge, caution or fixed penalty.
- 3.3 Each case will be decided on its own merits. Although an applicant may have convictions that would fall under the guidelines in this policy, the Council will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision.
- 3.4 The overriding consideration is the safety of the public. The Council has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit, honest and not persons who would take advantage of their employment.
- 3.5 Appendix J, paragraph 1 sets out the council's policy on offences of dishonesty.
- 3.6 It states:

New applicants

Drivers of hackney carriage and private hire vehicles are expected to be persons of trust. It is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare and in other ways.

Passengers may include especially vulnerable people.

Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing. In certain situations drivers will know that a property is empty whilst the occupants are away on holiday for a set period of time after taking them to the airport or railway station.

The widespread practice of delivering unaccompanied property is indicative of the trust that businesses put into drivers.

For these reasons a serious view is taken of any convictions involving dishonesty. In general an applicant with convictions for dishonesty, as listed below, which are less than 4 years old, is unlikely to be considered favourably.

- a. Theft
- b. Burglary
- c. Fraud
- d. Benefit fraud (including offences under ss.111A and 112 of the Social Security Administration Act 1992)
- e. Handling or receiving stolen goods

- f. Forgery
- g. Conspiracy to defraud
- h. Obtaining money or property by deception
- i. Other deception

Existing Licence Holders

An existing licence holder who is convicted of one or more of the above offences, is likely to have their licence revoked. In these circumstances, the applicant has the right of appeal to the Magistrates' Court, such appeal to be lodged within 21 days of the decision being notified.
[Emphasis added]

4. Licensing Comments

- 4.1 The council has a statutory duty to ensure its licensed drivers are, and continue to be, fit and proper people.
- 4.2 Members are to note that the council's policy also makes reference to *charges* in relation to sexual and indecency offences.
- 4.3 Mr Rai made his original renewal application on 29 May 2015 and did not declare any pending court proceedings however officers were made aware of the pending case against Mr Rai.
- 4.4 Licensing then contacted Mr Rai and invited him into the offices and asked him whether he wished to reconsider how he had filled out the form, Mr Rai elected to complete a new application form dated 21 May 2015.
- 4.4 Finally, it is clearly relevant for the committee to take into consideration the fact that Mr Rai has been found guilty of the offences. However, the committee must bear in mind that it is not the Committee's role to make a judgement on Mr Rai's guilt or innocence.
- 4.5 The Committee's primary concern must be public safety. Therefore the Committee should take into account the situation and circumstance that have led to a charge and, taking these into account, determine whether Mr Rai is a fit and proper person.
- 4.6 Mr Aditya Rai has been sent a copy of this report and invited to attend this meeting to speak in support of his application and to answer members' questions or to be represented. In considering the application on its own merits Members should have regard to the adopted Probity Guide.

Background Papers

Service Records

Report Author

Contact officer: Mr Andy Fox – Senior Licensing Officer
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 775004

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