



CHELTENHAM

BOROUGH COUNCIL

Notice of a meeting of Licensing Committee

Friday, 6 November 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 2 October 2015	(Pages 3 - 10)
5.	APPLICATION FOR PERMISSION TO PLACE TABLES AND CHAIRS ON THE HIGHWAY Caffe Dolcetti, 4 Regent Street, Cheltenham	(Pages 11 - 18)
6.	REVIEW OF A HACKNEY CARRIAGE DRIVER'S LICENCE Mr Neil Spencer – HCD757	(Pages 19 - 22)
7.	BRIEFING NOTE Licensing up-date	(Pages 23 - 24)
8.	ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION	
9.	DATE OF NEXT MEETING 4 December 2015	

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

Licensing Committee

Friday, 2nd October, 2015

2.00 - 4.00 pm

Attendees	
Councillors:	Roger Whyborn (Chair), Andrew Chard, Wendy Flynn, Adam Lillywhite, Anne Regan, Rob Reid, Jon Walklett, Tim Harman (Reserve) and Helena McCloskey
Also in attendance:	Andy Fox and Peter Lewis

Minutes

1. APOLOGIES

Apologies had been received from Councillor Thornton and Councillor Diggory Seacome and Councillor Tim Harman was attending as his substitute.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. PUBLIC QUESTIONS

None received.

4. MINUTES OF LAST MEETING

The minutes of the last meeting held on 4 September 2015 were approved and signed as a true record.

5. LICENSING COMMITTEE RESPONSE TO ANIMAL LICENSING CONDITIONS - CONSULTATION

The Senior Environmental Health Officer, Sadie Hawson, introduced the report regarding the Licensing Committee response to the consultation on Animal Licensing Conditions. 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. An eight week consultation period took place between 14 August and 9 October 2015.

The members of the Licensing Committee had heard a presentation on potential contentious issues on 4 September following the Licensing Committee meeting and they met subsequently to discuss their concerns and consider a response. Licensing Committee Members were emailed details regarding a new drafted condition which Members were now being asked to approve as part of their response to the consultation.

In response to questions from Members, the officer confirmed that there was a regular inspection of all dog boarding kennels and all the ones registered in

Cheltenham did have outside facilities. The inspection was currently done on an annual basis but there was the intention to make an additional unannounced inspection once a year. A member asked whether daily exercise was a requirement for dogs in kennels. The officer referred members to paragraph 4.17 in the report which highlighted that the wording in the additional condition did not specify "daily" as different dogs would have different requirements. Although it was envisaged that the exercise probably would be daily there may be exceptions in the case of bad weather or smaller dogs for example. She added that the addition of "daily" may make the condition less enforceable.

After further discussion Members felt it was important that the word was incorporated in some way and upon a vote it was unanimously:

RESOLVED THAT the adoption in principle of the model conditions by Cabinet be supported subject to the following being 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 daily environmental and normal behaviour needs are met."

6. APPLICATION FOR PERMISSION TO PLACE TABLES AND CHAIRS ON THE HIGHWAY

Councillor Adam Lillywhite declared an interest in this item as he knew the applicant personally and left the room for the duration of this item.

The Senior Licensing Officer, Andy Fox, introduced the report regarding an application that had been received from Rajinder Singh Boyal in respect of 81 The Prom, 81 Promenade, Cheltenham GL50 1PJ. The applicant was seeking permission to place 3 tables and 5 chairs on the highway outside the premises from 08:00 to 22:00 hrs, every day. Appendix A showed photographs of the furniture and a plan showing how the tables and chairs will be positioned and Appendix B showed the location of the premises.

The officer circulated a late amendment which he had received from the applicant which responded to some of the objections and reduced the request to 2 tables and 4 chairs and suggested there could be flexibility on the types of chairs. Members were given a few minutes to read the details. The officer confirmed that the objectors had not been advised of the amended proposals as it had been received too late.

The chair invited questions to the officer from members. One member referred to examples in the document circulated where the space between the barrier and the pavement is less than 1.8m and asked whether these premises had been given exempt status. The officer referred members to paragraph 6.2 in the report which highlighted that there was not a minimum distance specified in the policy. The committee would normally expect a minimum of 1.8 m but sometimes would accept less depending on the circumstances.

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The officer confirmed that the enforcement officers went out on a regular basis to check that the limits agreed were being adhered to.

The chair invited the applicant to speak in support of their application.

Mr Boyal highlighted that Montpellier had very similar architectural features in common with the Promenade and in the light of the objections to his application he had made a study of other properties and taken photographs which he had included in the document circulated to members today. He had found a great variety of the types of chairs and barriers used. He explained to Members that he had spent a considerable amount of money improving the property and restoring many of the original features inside with the advice of the council's conservation officers. In his opinion barriers were important but if the committee didn't want them he would be happy to leave them out. It was his understanding that there had been tables and chairs outside the property before so they must have been given permission at some stage. The applicant suggested that because of the location of his business he needed more help than businesses in Montpellier to promote his business to passers by. He had already received compliments and prizes for the floral displays he had put up outside the building.

In response to questions from Members he confirmed that staff would be coming up the stairs with hot food and therefore if barriers were there, there was no risk of the staff coming into contact with the public.

In the discussion that followed a member suggested that the council should be encouraging cafe culture and generally diners now expected to see outside facilities. Cars parked in the inner promenade spoil the view much more so they would prefer to get rid of them if possible. Another member supported the view that the committee should be as supportive as possible to businesses but they felt that Montpellier was totally different to the Promenade. The Promenade with its clean lines was an essential tourist attraction to the town and nothing should be done which could detract from this view.

A member suggested it would be difficult to make a decision because the objectors had had no opportunity to make a response to the amendments circulated. The chair suggested that the objections had been related to the principles of tables and chairs on the pavement in this location and therefore they would not be likely to change their view. Similarly the Highways Authority had made no objections to the original application and therefore would be unlikely to make any objections to this revised plan.

The chair advised members that he intended to take a straw poll of members to establish who was in favour of the principle of tables and chairs in this location. A vote established that the committee were split 4:4.

The chair then proposed an amendment that a barrier at 1.8 M was inserted at a low height in front of the tables as opposed to only having barriers at the end of the tables:

Upon a vote this was LOST
Voting (For 2, Against 5 with 1 abstention)

The chair proposed an amendment that the no of chairs was reduced to two tables and four chairs as opposed to the original application of three tables and five chairs.

Upon a vote this was CARRIED
Voting (For 6, Against 1 with 1 abstention)

Members agreed that if they supported the application, they would be happy to delegate discussions on the choice of furniture type with the applicant to officers.

Members then voted on the substantive motion as amended set out in 1.4.1 of the report. Upon a vote it was 4 for, 4 against and with the Chair's casting vote it was

RESOLVED THAT, the application in respect of 81 The Prom, 81 Promenade, Cheltenham, for 2 tables and 4 chairs to be on the highway outside the premises with no barrier in front of the tables but only at each end from 08:00 to 22.00 every day be approved, as members felt the application was compatible with the current Street Scene Policy.

7. REVIEW OF A HACKNEY CARRIAGE DRIVER'S LICENCE

The Senior Licensing Officer, Andy Fox, introduced the report regarding a review of the Hackney Carriage driver's licence HCD757 for Mr Neil Spencer which was due for renewal on 4 February 2018.

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

The details and nature of these complaints were outlined in the attached background papers. He referred members to the witness statement of Councillor Max Wilkinson and advised that he was not a community protection officer as stated in the paperwork. The officer explained that Mr Spencer had received a verbal warning after the first occurrence, a written warning after the second occurrence and advised that any further incident would be brought before the committee. The officer also circulated to members a copy of an e-mail he had received from Inspector Tim Waterhouse of the Gloucestershire Constabulary who had written in support of Mr Spencer. Members were given time to read the e-mail.

The chair invited the applicant to speak in support of his renewal.

Mr Spencer said that he had never received any written or verbal warning and it had been a case of no further action on the first incident. As he went on to give details of the incident it became clear that this did not relate to any of the previous incidents set out in the background papers. Mr Spencer maintained that he had not received a copy of the background papers but only the agenda papers with a covering letter. Mr Spencer also advised the committee that he had suffered a recent bereavement of a close family member and he was visibly upset.

The legal officer advised that it was very important that Mr Spencer had access to all the relevant papers which the committee were considering.

Upon a vote the committee apologised to Mr Spencer if that was the case and unanimously

Resolved that consideration of the application for Mr Spencer's Hackney Carriage driver's licence be deferred in order to him to consider all the necessary paperwork.

After the applicant had left, the Senior Licensing Officer, assured members that all the necessary background papers had been sent to Mr Spencer. In the circumstances he would arrange to meet with him before it was brought back to committee.

8. APPLICATION FOR PERMISSION TO PLACE AN OBJECT ON THE HIGHWAY - A BOARD

The Senior Licensing Officer, Andy Fox, introduced the report regarding an application from Mr Raja Beirouti to place an A-board on the highway to promote his photographic store which is located at 210 High Street, Cheltenham, GL50 3HF.

The proposed location of the A-board was on the High Street Adjacent to the frontage of the store shown at Appendix A. It was intended that the A-board be in position from Monday to Saturday between the hours of 09:00 – 17:30.

An image of the A-board was attached at Appendix B and the applicant had also submitted a letter in support of his application and this was shown as Appendix C and photographs as Appendix D.

There were no questions for the officer and the applicant was not present at the meeting.

The chair highlighted the extent of the current work on the adjoining property at Patisserie Valerie and suggested if they were to grant permission for the A-board it should be deferred until this work was finished. Another member had a contrary view suggesting that the A-board should be permitted for a limited period to compensate for any lack of business whilst work was underway next door.

In the discussion that followed, members did not consider that the photos supplied supported the applicant's case for an A-board as the shopfront was very visible and already contained large advertisements. They suggested that there could be other possible reasons for the reductions in business reported by the applicant particularly the move to Digital photography. They noted the licensing officer's comments in section 5 of the report and did not see any reason for deviating from the current policy.

Upon a vote it was

RESOLVED THAT

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.

Voting For 6, Against 1 and 1 abstention.

9. REVIEW OF A HACKNEY CARRIAGE DRIVER'S LICENCE

The Senior Licensing Officer, Andy Fox introduced the report regarding a review of the Hackney Carriage driver's licence HCD085 for Mr Rai Green which is due for renewal on 30 June 2015. He clarified that this renewal was still progressing and Mr Rai was still continuing to drive in the meantime. The report explained that 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. Mr Rai did on the second submission of his renewal application declare that he had a court hearing pending. In light of this the Licensing Officers have taken the view that Members of Committee should be aware of the nature of the charges and determine whether they judged Mr Rai to be a fit and proper person to hold a Hackney Carriage driver's licence. The officer advised members that paragraph 4.2 had been included in error.

The chair invited the applicant to speak in support of this review.

Mr Rai explained that he was a third-year student in the final year of his degree. He had sent an e-mail to the housing board on October 2013 to say he had stopped working but after a couple of months he was pressurised for payments on his car rental and insurance and started working at weekends only. He acknowledged that he should have informed housing benefits. He maintained that he had not made any profit during the period and it had been his understanding that he did not need to declare it in those circumstances. He had been fined £820 by the court. He was not currently receiving any benefits.

A member asked for clarification on the type of work he was doing for leisure@. The applicant advised he was a qualified sports instructor and had been earning 25 to £40 a session but no more than £300 per month in total. He was not paid in cash.

In summing up he advised the committee that he had two children and another one on the way and his taxi driving was his bread-and-butter and he urged the committee to give him one last chance and assured them that they would not see him again.

The committee retired to consider their verdict and on their return the chair explained their rationale. They were mindful of these circumstances and were of the view that if they agreed to the applicant keeping his licence they would not see him again before this committee. They were confident that the public would be honestly charged for their taxi journeys and therefore they were minded to treat this case leniently.

Upon a vote it was unanimously

RESOLVED THAT:

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.

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

The minutes of the last meeting held on 4 September 2015 were approved and signed as a true record.

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

There was no urgent business.

13. DATE OF NEXT MEETING

The date of the next meeting was 6 November 2015.

Roger Whyborn
Chairman

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Cheltenham Borough Council

Licensing Committee – 6 November 2015

Highways Act 1980

Local Government (Miscellaneous Provisions) Act 1982

Application for Permission to Place Tables and Chairs on the Highway

Caffe Dolcetti, 4 Regent Street, Cheltenham

Report of the Licensing Officer

1. Executive Summary and Recommendation

- 1.1 An application has been received from Mr Robert Gibson in respect of Caffe Dolcetti, 4 Regent Street, Cheltenham, GL51 1HE.
- 1.2 The applicant seeks permission to place 2 tables and 4 chairs on the highway outside the premises from 10:00 to 18:00 hrs every day.
- 1.3 **Appendix A** shows photographs of the location and **Appendix B** is a plan showing how the tables and chairs will be positioned and includes photos of the furniture.
- 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 **Contact officer: Sarah Didcote**
E-mail: sarah.didcote@cheltenham.gov.uk
Tel no: 01242 26 4125
- 1.5.2 Legal No right of appeal.

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

2. Background

- 2.1 The current policy for *Town Centre Street Activities: Street Trading & Objects on the Highway* was approved on 1st April 2013. A copy of the whole policy has previously been circulated to members and extracts are included in the application pack that was given to the applicant.

3. Consultation and Feedback Page 12

- 3.1 No responses were received from consultees other than Gloucestershire Constabulary who pointed out that the width of the pavement in this location is insufficient for furniture (see further comments under paragraph 6).

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.

- 5.3 Each application is assessed against the outlined conditions included in the application pack and this policy.5.4 No object and its associated activity may generate noise which is likely to cause nuisance or annoyance.
- 5.5 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.
- 5.6 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.
- 5.7 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.
- 5.8 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.
- 5.9 For health and safety reasons, the Council will not permit glass top tables.
- 5.10 Where consent has been issued for tables and chairs to be placed on the highway the Council may permit, within reason, other objects to be placed inside the area that has been cordoned off with barriers.
- 5.11 When in use the pavement area will need to be enclosed, to demarcate the permitted area and contain the tables and chairs, thus making it distinguishable to other pavement users, and particularly to assist blind and visually impaired pedestrians.
- 5.12 The layout of furniture and means of enclosure will only be approved if adequate provision has been made for customers with disabilities.
- 5.13 The enclosure shall be removed outside the hours of operation or when it is not intended to operate on the pavement within that period. The materials should therefore be lightweight in construction and portable but stable enough to prevent collapse if accidentally walked/stumbled into.
- 5.14 The design of the barrier should complement the character of the surrounding area and in any event must have bars/elements at around 100mm and 1,000mm above ground level.

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 are advised that the Council's standard expectation in respect of all objects on the highway is that a minimum of 1.8m clearance will be left available for passers-by and other road users. In this instance the amount of space left for passers-by would be a maximum of 1.55m. This distance has the potential to be reduced by customers using the furniture who may move it, as the tables and chairs are not enclosed by barriers.
- 6.3 Members will note that the Council's conditions relating to tables and chairs on the public highway include the requirement that the furniture must be enclosed within barriers to demarcate the permitted area. This application does not include such barriers and the amount of space left for passers-by would be considerably reduced if barriers were used.
- 6.4 For the reasons explained above, officers recommend that permission to place tables and chairs on the highway should be refused in this case, because the proposals would constitute a clear obstruction of the public highway.

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

Background Papers

Service Records

Report Author

Contact officer: Mr Philip Cooper

E-mail: licensing@cheltenham.gov.uk

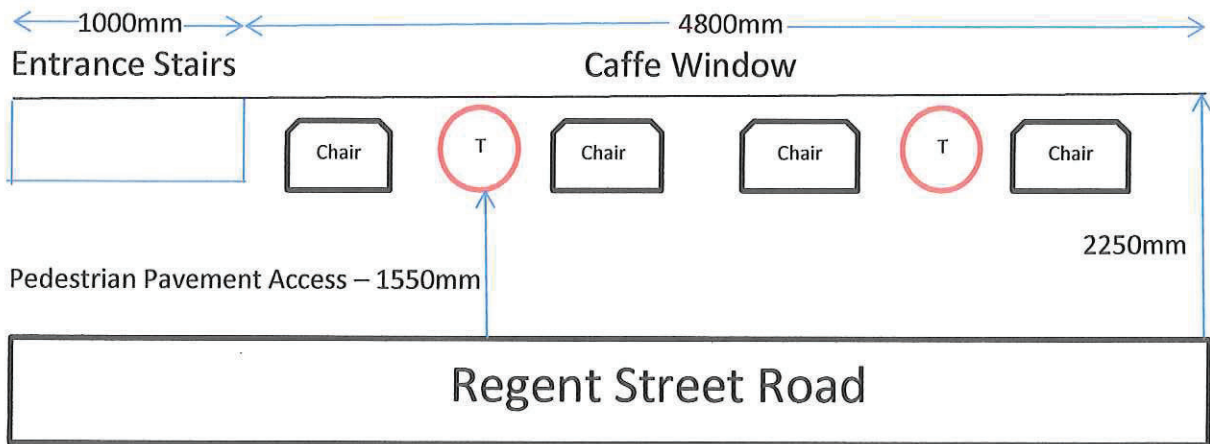
Tel no: 01242 775200



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Caffe Dolcetti Street Seating Plan

4 Regent Street, Cheltenham



Chair Width = 69cm
Chair Depth = 69cm
Table Diameter = 70cm

Proposal to have two tables and four chairs.
All to be removed at night and stored within the premises.
No umbrellas will be used or pavement barriers.

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Licensing Committee – 6 November 2015

Review of a Hackney Carriage Driver's Licence

Mr Neil Spencer - HCD757

Report of the Licensing Officer

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**
- 1.4.2 **Mr Spencer's licence be 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 ar **Page 20**;
- 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 This matter was brought before the Licensing Committee on Friday 2nd October 2015. On that occasion the committee decided to defer the matter to give Mr Spencer the opportunity to familiarise himself with the background papers.

4.2 The committee must be satisfied that Mr Spencer continues to be a fit and proper person to hold a Hackney Carriage driver licence.

4.3 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.

4.4 Whilst the council does not take decisions to revoke licences lightly, the establishment of a professional and respected licensed trade is also very important.

4.5 Members will note that the background papers contain copies of 2 witness statements (one signed by a complainant, the other by Mr Spencer). On each statement the occupation of the witness is shown as "Community Protection Officer". This should be disregarded as neither of the witnesses is a community protection officer.

4.6 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 Philip Cooper
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.

Briefing Notes

Committee name: Licensing Committee

Date: 6 November 2015

Responsible officer: Licensing and Business Support Team Leader

This note contains information to keep Members informed of matters relating to the work of the Cabinet or a committee but where no decisions from Members are needed.

If Members have questions relating to matters shown, they are asked to contact the Officer indicated.

Taxi & Private Hire Licensing Deregulation

On the 1st of October 2015, section 10 and 11 of the Deregulation Act 2015 came into force.

Section 10 ("Taxis and private hire vehicles: duration of licences") introduced a standard 3 year duration for all driving licences issued to taxi and private hire drivers.

Before this date, drivers were permitted the option of a 1 or 3 year licence. The change in law now only permits a 1 year licence in exceptional circumstances.

Section 10 also introduced a standard 5 year licence for operators of private hire vehicles.

Section 11 ("Private hire vehicles: sub-contracting") repealed the restrictions preventing out of district sub-contracting by operators of private hire vehicles.

Before this date, operators of private hire vehicles were not able to lawfully sub-contract work to another licensed operator that was not licensed by the same licensing authority. For example, operator A licensed by Cheltenham Borough Council could only sub-contract to operator B if operator B was also licensed by Cheltenham Borough Council.

Section 11 of the Deregulation Act removed these restrictions making it possible for an operator of private hire vehicles to now sub-contract work to any other licensed operator regardless of where they are licensed in the country.

As a consequence of the above, it is very likely that vehicles not licensed by Cheltenham Borough Council but working in and around the town will become more widespread.

This causes difficulties for officers because there is a lack of regulatory and enforcement powers against drivers and vehicles not licensed by Cheltenham Borough Council. This is a national problem for licensing authorities

Late Night Refreshment Licensing Exemptions

Also on 1 October 2015, a new power for local authorities to exempt certain premises from requiring a late night refreshment licence (i.e. the provision of hot food and drink between 23:00 and 05:00) was introduced.

Paragraph 2A of Schedule 2 to the 2003 Act (as inserted by the Deregulation Act 2015) gives licensing authorities powers to exempt premises, in certain circumstances, from the requirement to

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have a licence to provide late night refreshment. The powers therefore allow licensing authorities to choose to apply an exemption specifically where they think it will be helpful to businesses and where there are no problems with antisocial behaviour or disorder associated with the night time economy.

The powers allow a relevant licensing authority to exempt the supply of late night refreshment if it takes place:

- a) on or from premises which are wholly situated in a designated area;
- b) on or from premises which are of a designated description; or
- c) during a designated period (beginning no earlier than 11.00 p.m. and ending no later than 5.00 a.m.).

When choosing to designate particular categories of premises as exempt, a licensing authority can only exempt types of premises set out in the regulations. These are:

- motorway service areas;
- petrol stations;
- local authority premises (except domestic premises) unless there is an event taking place at which more than 500 people are present;
- schools (except domestic premises) unless there is an event taking place at which more than 500 people are present;
- hospitals (except domestic premises);
- community premises (church, chapel, village, parish or community hall or other similar building) unless there is an event taking place at which more than 500 people are present;
- licensed premises authorised to sell by retail alcohol for consumption on the premises between the hours of 11pm and 5am.

The aforementioned regulations have not been made yet but it is expected that these will be in place early November.

Officers will do initial work to assess the impact and necessity of the new power after which time any proposals will be put to Members for consideration.

The Government has produced guidance on the new power. The guidance is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/464869/Guidance_on_the_licensing_of_late_night_refreshment.pdf.