



# CHELTENHAM

## BOROUGH COUNCIL

### Notice of a meeting of Licensing Committee

**Friday, 8 January 2016**  
**2.15 pm**  
**Pittville Room - Municipal Offices**

<b>Membership</b>	
<b>Councillors:</b>	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

<b>1.</b>	<b>APOLOGIES</b>	
<b>2.</b>	<b>DECLARATIONS OF INTEREST</b>	
<b>3.</b>	<b>PUBLIC QUESTIONS</b> These must be received no later than 12 noon on the fourth working day before the date of the meeting	
<b>4.</b>	<b>MINUTES OF LAST MEETING</b> To approve the minutes of the last meeting held on 4 December 2015	(Pages 3 - 8)
<b>5.</b>	<b>APPLICATION FOR PERMISSION TO PLACE TABLES AND CHAIRS ON THE HIGHWAY</b> The Stable, 40 Clarence Street, Cheltenham	(Pages 9 - 20)
<b>6.</b>	<b>APPLICATION FOR A STREET TRADING CONSENT</b> Miss Kirsty Westlake (Juicilicious)	(Pages 21 - 28)
<b>7.</b>	<b>REVIEW OF A PRIVATE HIRE DRIVER'S LICENCE</b> Mr Keith David Lewis – PHD116	(Pages 29 - 32)
<b>8.</b>	<b>ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION</b>	
<b>9.</b>	<b>DATE OF NEXT MEETING</b> 5 February 2016	

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

**Friday, 4th December, 2015**

**2.00 - 2.50 pm**

<b>Attendees</b>	
<b>Councillors:</b>	Roger Whyborn (Chair), Diggory Seacome (Vice-Chair), Andrew Chard, Wendy Flynn, Adam Lillywhite, Anne Regan, Rob Reid and Jon Walklett
<b>Also in attendance:</b>	Vikki Fennell and Louis Krog

### Minutes

- 1. APOLOGIES**  
Apologies were received from Councillors McCloskey and Thornton.
- 2. DECLARATIONS OF INTEREST**  
None
- 3. PUBLIC QUESTIONS**  
None
- 4. MINUTES OF LAST MEETING**  
The minutes of the last meeting held on 6 November 2015 were approved and signed as a true record.
- 5. MINUTES OF SUB COMMITTEE MEETINGS**  
The minutes of the sub-committee meetings held on 23 July 2015 and 23 October 2015 were approved and signed as a true record.
- 6. APPLICATION FOR A STREET TRADING CONSENT - NATHAN WORDEN**  
The Licensing Team Leader, Louis Krog, introduced the report regarding an application from Mr Nathan Worden for a street trading consent to sell hot and cold drinks, cakes and pastries from a Piaggio Ape 50 van on the High Street near the junction of Pittville Street. Mr Worden had applied for an annual consent from 07:00 – 15:00 Monday to Friday and 10:00 to 15:00 on Saturday and Sunday. Appendix 1 showed the location of the proposed trading pitch and Appendix 2 gave an image of the Piaggio Ape 50 van together with supporting documentation.

The Officer drew members' attention to the Council's policy on street trading in the town centre and conservation areas as set out in 3.3 and 3.4 of the report and advised that members needed to be satisfied that the location was suitable and complied with the Street Scene policy. The Officer advised that there were no objections and that the Officer recommendation was to grant the application with the reasons set out in 6.1 of the report.

The Officer reported that Mr Worden was unable to attend the hearing but was happy for the committee to discuss the matter in his absence.

The Chair reminded members of the requirement to decide whether the application was of general benefit to the town of Cheltenham.

In response to a question from a member, the Officer informed the committee that there were no similar licensed vans in this particular area of the town centre, although there was one on the Promenade. He continued that there was only a seasonal ice cream trader in this part of the High Street in the summer. The Officer circulated a map showing the location of other street traders in the town centre. In reply to a question on litter, the Officer pointed out that the applicant had addressed this in his supporting documentation, stating that he would have a litter receptacle and would take it away each day.

Some members expressed concern about the location of the van from a road and public safety aspect, stating that it was near a busy road junction used by many pedestrians and also as a drop off point, and near a bicycle rack, a bench and a lamp and felt that this was a very congested corner which was not ideal for the selling of food and drinks. Another member felt that it didn't enhance the town as a leisure and tourist destination, as it didn't offer anything extra that was not already provided for nearby and felt it cluttered up the area and was a potential safety issue.

The Officer advised that there had not been any objections from Gloucestershire Highways.

The Chair felt that this application did little harm and maybe enhanced the area. As there were no further questions, the Chair moved to vote on this application to trade on the High Street near the junction of Pittville Street.

Upon a vote, it was 2 for, 6 against.

**RESOLVED THAT, Mr Worden's application for a street trading consent be refused as it did not enhance the town's reputation as a tourist and leisure destination and did not comply with the Council's Street Scene Policy on the grounds of site location.**

**7. APPLICATION FOR A STREET TRADING CONSENT - NICKEY JAMES BRYAN**

The Licensing Team Leader, Louis Krog, introduced the report regarding an application from Mr Nickey James Bryan for a street trading consent to sell burgers, fish finger sandwiches, chips and pork tacos from a catering van measuring 3m long and 2 m wide on the High Street opposite the Regent Street junction. Mr Bryan had applied for a seasonal four month consent operating Monday to Saturday from 10:00 to 16:00, with no trading on Sunday. Appendix 1 showed the location of the proposed trading pitch and Appendix 2 gave an image of the catering van.

The Officer drew members' attention to the Council's policy on street trading in the town centre and conservation area as set out in 3.3 and 3.4 of the report and advised that members needed to be satisfied that the location was suitable and complied with the Street Scene policy. The Officer advised that there had

## Page 5

been two objections to this application, from Marks and Spencer and the Cheltenham Business Partnership and the details of these objections were set out in 4.1 of the report. The Officer informed members that the Officer recommendation was to refuse the application with the reasons set out in 6.1 of the report.

There being no questions to the Officer, the applicant was invited to speak in support of his application. Mr Bryan stated that he was setting up his own business and wished to bring good decent fresh homemade food to the street. He planned to provide burgers with a different twist using local suppliers. He also wished to cater for events and weddings and if this was successful he planned to make this his full time business.

In reply to a question from a member, Mr Bryan confirmed that he had his NVQ2 catering qualification and his level 2 in food hygiene and had nearly completed his level 3.

One member questioned whether an additional eating place was necessary when there was an abundance of other similar eating places in the nearby Regent Street area and other members expressed concerns about its location and the smells. In response Mr Bryan said that his idea was to offer a different style of burger using the influence from the USA of 3 small burgers each of a different flavour and that because this was different that it would generate custom. He advised that smells wouldn't be too overwhelming as fat would be collected in a tray and would not be burning fat. Mr Bryan said that his initial idea had been to trade in the Promenade but that due to seasonal markets and emergency access restrictions he had been advised against this, so he had thought of this High Street location. However, he said he would be open to moving his location but would still want to be in the central area.

It was pointed out by a member that the seasonal turkey van had moved because of the smell generated and was now by the Beechwood Arcade.

The Officer stated that if members felt the proposed location was not appropriate then an alternative could be considered. However the Chair advised members that the suitability of the proposed High Street location was for discussion now, not an alternative location which would have to come back to the committee.

Members felt that Marks and Spencer had a valid objection to the location of the van outside their premises and also that the appearance of the van was detrimental to the street scene policy. There was also concern about the increased footfall that the new John Lewis store might produce in this area, although the location was not on an emergency route. It was also pointed out that the application stated consent for selling other food products as well, which sounded different to those that Mr Bryan had outlined and there was concern as to what would in fact be offered in the end.

One member did state that more competition in an area could be good and that market forces would be a leveller. Another felt that Mr Bryan had put a lot of thought into his business venture but that he had not particularly sold it well to the committee.

In summing up, the Chair expressed concern about the nature of the merchandise and the related smells, the number of outlets in the area, and the aesthetic appearance of the van. He confirmed a major concern of the committee was the location and suggested that if Mr Bryan's application was refused today and if he re-applied with a different location, that the application fee could be waived, as the committee were unable to discuss a different venue at this meeting.

The applicant thanked the members for the points they had raised and informed them that he was in the process of decorating the van so it would be different to the picture before them. He said the points about the smells were valid and that he would be happy to move site, as he wanted to start up his business but also wanted to work with other businesses around, to help people and produce good food. He agreed that promoting his business in situations like this was not his best point.

The chair moved to vote on the application as submitted and whether it complied with and enhanced the street scene policy.

Upon on a vote, it was 1 for, 6 against, 1 abstention.

**RESOLVED THAT, the application for a street trading consent be refused because it did not comply with the provision of the Street Scene policy on the grounds of location and style of van, and was not in keeping with the streetscape and enhancement of the town as a tourist and leisure destination.**

It was however agreed that if Mr Bryan submitted an application with a location alternative, with or without alterations to the van, that the fee be waived.

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

The Chair raised the subject of holding committee meetings in the Pittville Room as opposed to the Council Chamber, as he felt the Chamber was rather imposing and formal and welcomed members thoughts on this.

Members agreed that the Pittville Room was more user-friendly and less intimidating for applicants who had to address the committee and were generally in favour of moving. However it was felt there could still be times if discussing a controversial topic that might attract a larger public attendance, that the Chamber would have to be used. The Officer advised that generally the Council Chamber was available should it be needed and that in conjunction with Democratic Services he would look at the feasibility of booking the Pittville Room for future meetings as soon as it was possible.

Upon a vote it was unanimous to move from the Council Chamber to the Pittville Room for Licensing committee meetings.

**9. DATE OF NEXT MEETING**

8 January 2016

Roger Whyborn  
**Chairman**

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**Licensing Committee – 8 January 2016**

**Highways Act 1980  
Local Government (Miscellaneous Provisions) Act 1982**

**Application for permission to place tables and chairs on the  
highway**

**The Stable, 40 Clarence Street, Cheltenham**

**Report of Licensing Team Leader**

**1. Summary and Recommendation**

1.1 An application has been received from The Stable Bar & Restaurant Limited in respect of The Stable, 40 Clarence Street, Cheltenham. The applicant wishes to place 3 picnic style tables with benches to seat a total of 12 on the pavement outside the premises at 40 Clarence Street.

1.2 It is intended that the benches be put out:

Monday	10:00 - 00:30
Tuesday	10:00 - 00:30
Wednesday	10:00 - 00:30
Thursday	10:00 - 00:30
Friday	10:00 - 00:30
Saturday	10:00 - 00:30
Sunday	10:00 - 00:30

1.3 A picture of the proposed structure(s) is attached at **Appendix A** and a location plan at **Appendix B**.

**1.4 The Committee can:**

**1.4.1 Grant the consent because the application is compatible with the current Street Scene Policy, or**

**1.4.2 Refuse the consent because the application falls outside the provisions of the current Street Scene Policy.**

**1.5 Summary of implications**

Legal No right of appeal.

**Contact officer: One Legal  
E-mail: [legalservices@teWKesbury.gov.uk](mailto:legalservices@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 1<sup>st</sup> 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 This section outlines the policies the council will apply when making decisions on applications for consents.

3.2 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.

**4. Consultee Comments:**

- 4.1 **Planning Enforcement** - Object on the basis that: Whereas no design details have been provided with the consultation/submission, the "picnic style" tables and benches described in the application conflicts with the design standards set out in Appendix G of the approved Policy. (para 2.2.1 specifically refers)

**Gloucestershire Constabulary** - We would like there to be some kind of barrier that designates the licenced area.

**5. Licensing Comments**

- 5.1 The Committee must determine the application with a view to promoting the Council's adopted policy.
- 5.2 This report has been brought to member's attention as prescribed in the scheme of delegation set out in the Street Scene Policy (page 6) adopted on 1<sup>st</sup> April 2013, whereby all new applications are referred to the Licensing Committee.
- 5.3 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.
- 5.4 The applicant has confirmed that it will be possible to remove the proposed benches during non-trading hours and confirmed their willingness to place barriers around the proposed tables and chairs area although at the time of writing this report, officers were not able to get any details of the barriers' design. Member may want to seek clarification on the proposed barriers' design.
- 5.5 In relation to the comments made by the planning enforcement officer, the referenced section of the policy is "*The furniture should be of a high quality and uniform style within the permitted area.*"
- 5.6 Members' attention is also drawn to the council's adopted "Pavement tables and chairs design guide" that will provide additional guidance on the appropriate use and design of tables and chairs. The design guide is attached at **Appendix C**.

**6. Officer recommendation**

- 6.1 The officer recommendation is that the application before the committee be granted but subject to an amendment to the proposed layout, it being that the bench and two seats on Clarence Street be excluded from the consent.

**Reason(s):** Officers recognise the policy objective to promote the 'cafe culture' in the town because of the added life and vitality this brings to the town and the vicinity. As a consequence the Council will look favourably on applications by operators in appropriate locations to put tables and chairs on the pavement outside premises.

The recommendation to grant the consent subject to a change is made on the basis that, allowing for barriers, there will be less than the recommended 1.8 meters of highway width remaining on Clarence Street.

Officers would also recommend that the consent would be subject to approval of the proposed design for canvas barriers.

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**Background Papers**

Service Records

**Case Officer**

**Contact officer: Mr Phil Cooper**  
**E-mail: [licensing@cheltenham.gov.uk](mailto:licensing@cheltenham.gov.uk)**  
**Tel no: 01242 775200**



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 Proposed Area

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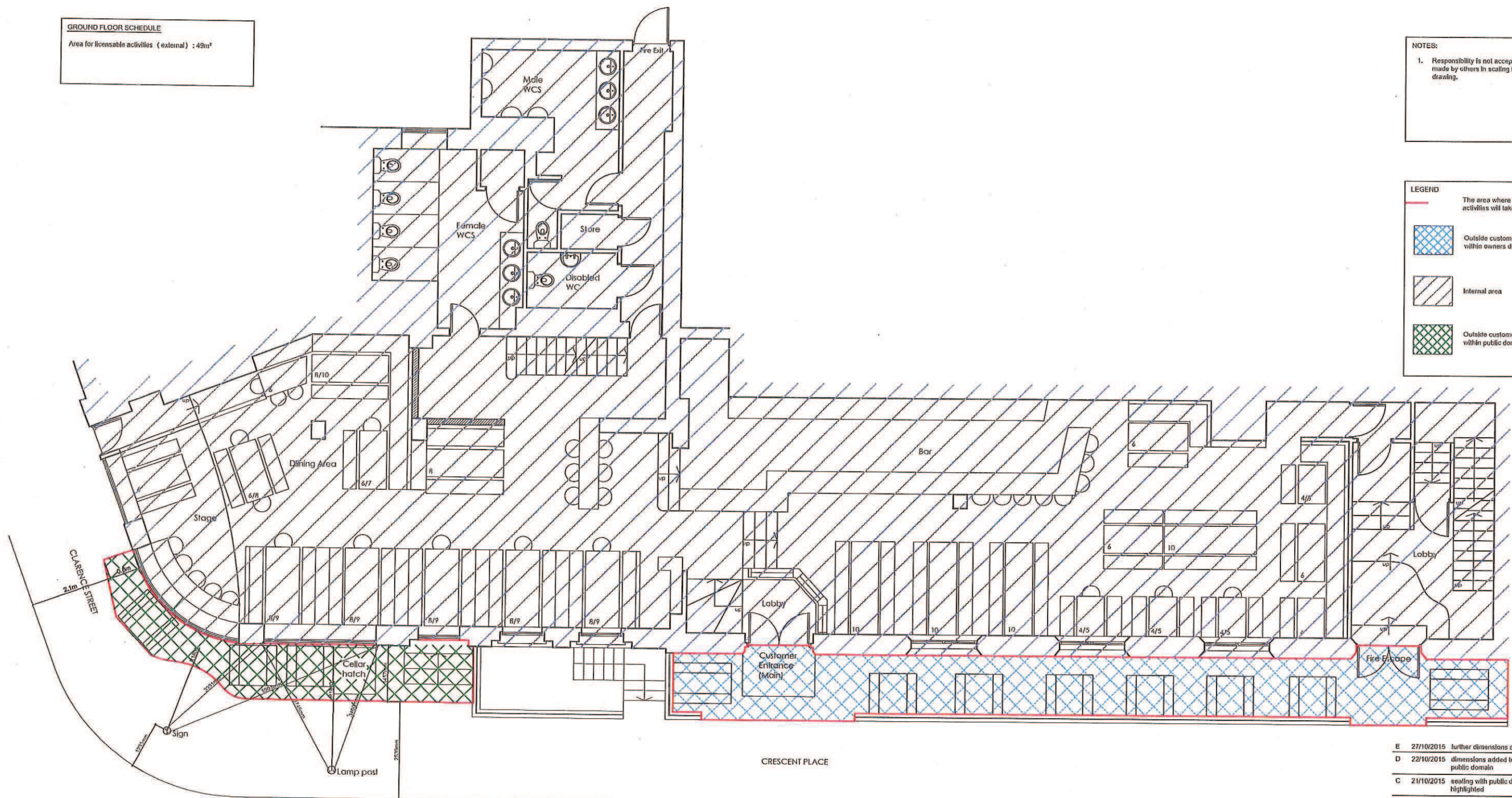


**GROUND FLOOR SCHEDULE**  
 Area for licensable activities (external) : 49m<sup>2</sup>


**NOTES:**  
 1. Responsibility is not accepted for errors made by others in scaling from this drawing.

**LEGEND**

- The area where licensable activities will take place.
- Outside customer area within owners demise
- Internal area
- Outside customer area within public domain



E	27/10/2015	further dimensions added
D	22/10/2015	dimensions added to seating within public domain
C	21/10/2015	seating with public domain highlighted
B	21/10/2015	2no. bench sets increased in size
A	16/10/2015	Additional external seating added

Rev	Date	Notes	Chk
 <b>ARC DESIGN BUILD LTD</b> 6 Sansome Lodge Worcester WR1 1LH 01905 330501 info@arcdesignbuild.com			
<b>Architect:</b> Esmond Murray Architects Ltd, 21 Van Diemens Lane, Bath, BA1 5TW			
<b>Project:</b> 40 Clarence Street & 1A Crescent Place, Cheltenham, GL50 3NX			
<b>Drawing title:</b> External Licensing Drawing			
Date:	22/09/15	Scale:	1:50 @ A1
Checked:	BD		
Project Ref:	M15-004	Drawing No:	500
Revision:	F		



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# Pavement tables and chairs design guide



## Introduction

Cheltenham Borough Council is happy to support and encourage continental style pavement cafes and bars. We wish to ensure that they enhance the unique character and appearance of the town.

This guide sets out the types of furniture and other equipment which are likely to be suitable in Cheltenham.

*These paragraphs must be read in conjunction with the relevant licence requirements and conditions.*

## Setting

The predominant colours in Cheltenham's streets are the shades of soft honey of the local stone and the creams of the rendered buildings. This is added to by the choice of paving in the pedestrian areas and newer pavements where the pale natural shades have been deliberately chosen to blend with the scene.

In summer the town is shaded by the green of many large trees and brightened by the flowering displays for which it is famous. These displays are

found in parks, pedestrian areas and dressing our buildings. They are an award winning summer feature which, along with our historic buildings form the context within which pavement bars and cafes operate.

The council realises owners and managers of restaurants will wish to have visibility in the street to attract customers, but this should not compete with or dominate the setting.

## Colours

Colours for furniture, barriers and associated equipment should be subdued and natural so that they sit comfortably in the streetscape. Those most suitable will be darker greens, browns, beiges and creams. Colours to avoid include reds, oranges, yellows, bright greens, purples, blues and white. Metal in natural silver and greys will be acceptable but stained or bare wood is not appropriate in such an urban setting and is more suited to rustic locations in the countryside.

## Signs and logos

Street advertising is something which the council controls by various legislation and for two particular reasons. One is highway safety - if drivers are distracted by a sign this can be dangerous - the other is the visual effect within the street or area.

Bearing in mind both of the above, any signs and logos on equipment such as umbrellas must be small, discreet and relate only to the business concerned. The highly coloured advertising for various beers seen in pub beer gardens for example, are not acceptable within the streets of Cheltenham.

Menu boards and signs needed for operational reasons must comply with general design guidance above.

## Tables and chairs

Tables and chairs need to be of a high standard both in terms of design and quality and must be well maintained. Mass produced domestic models in plastic are not considered suitable and are unlikely to be durable enough or meet health and safety regulations.

All of the furniture used in a particular location must be the same design and colour. Variation in pattern, for example in seating, stools, benches and chairs with or without arms - will be acceptable, but only if they are from the same design range.

Furniture must be located and retained within the designated area and must be arranged so that users remain within that area.

## Umbrellas

The earlier notes above relating to colour and logos are particularly applicable to umbrellas as they tend to be large and visible. In addition, they must not have a shiny or reflective finish.

Umbrellas should be stable, and must not overhang beyond the designated area. In the interests of safety, they should not be used in blustery or windy weather conditions.

## Heaters

Where portable heaters are used they must adhere to the general design requirements above. In addition they must be located within the designated area and not on its boundaries. They must not be used as part of the means of enclosure.

## Enclosure

When in use, the permitted area must be enclosed and clearly distinguishable. The means of enclosure may consist of solid or rope barriers at heights specified in the relevant conditions.

As an alternative, planters may be used and can often be attractive, but they must be convincing and well maintained. They must also be portable (see below) but must be robust enough so that they are not easily moveable by accident or mischief. They must also comply with height conditions.

When selecting a means of enclosure, consider the needs of people with impaired vision.

## Portability

When the pavement area is not being used by the operator, all of the items associated with that use must be removed from the highway. Thus it is essential that they be suitably portable and capable of storage elsewhere. It may also be necessary to remove items from the pavement in case of emergency and this should be borne in mind when considering handling procedures.

## Safety

The permission holder is responsible for the safety and suitability for use of all items placed on the highway. They should ensure that they are sufficiently robust and well maintained for their purpose. They are also responsible for the health and safety aspects relating to portability and handling procedures adopted in each case.

## Questions

Any questions and queries relating to this design advice should be directed in the first instance to the licensing section on 01242 264 217 or email [licensing@cheltenham.gov.uk](mailto:licensing@cheltenham.gov.uk)

## Licensing Committee – 8 January 2016

### Local Government (Miscellaneous Provisions) Act 1982

#### Application for a Street Trading Consent

#### Miss Kirsty Westlake (Juicilicious)

#### Report of the Licensing Team Leader

### 1. Summary and recommendation

- 1.1 We have received an application from Miss Kirsty Westlake for a street trading consent to sell healthy food and drinks from a Gazebo measuring 3m x 3m.
- 1.2 Miss Westlake has applied to trade on the Promenade outside Waterstones. **Appendix 1** shows the location of the proposed trading pitch.
- 1.3 Miss Westlake has applied to trade from January to April, June to September and November on the following days and times:

Monday	08:00 - 18:30
Tuesday	08:00 - 18:30
Wednesday	08:00 - 18:30
Thursday	08:00 - 18:30
Friday	08:00 - 18:30
Saturday	08:30 - 18:30
Sunday	08:30 - 18:30

- 1.4 An image of the trading unit is shown in **Appendix 2**.
- 1.5 **The Committee can:**
  - 1.5.1 **Approve the application because Members are satisfied that the location is suitable, or**
  - 1.5.2 **Refuse the application because it does not comply with the provision of the Street Scene policy.**

### 1.6 Implications

- 1.6.1 Legal
 

The Local Government (Miscellaneous Provisions) Act 1982 provides that a local authority can grant a trading consent for an individual within their area. Under the legislation consent can be granted for a period not exceeding 12 months. Consent must therefore be reviewed every 12 months. A local authority can apply reasonable conditions to the consent.

Any application should be considered in line with the Council's policy on Street Trading.

**Contact officer: Vikki Fennell**  
**E-mail: [vikki.fennell@tewkesbury.gov.uk](mailto: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 1<sup>st</sup> 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 & Objectives

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

Each application will be determined on individual merits and in view of promoting the principles and objectives contained in this policy.

In particular the policy aims to promote the following aims and objectives in reference to street trading activities:

- To have a clear & transparent policy governing street trading activities in the Borough.
- To enable the Council to manage all street trading activities in order to provide effective control measures.
- To ensure that all street trading activities meet the required quality standards, pose no risk to public health, safety & protection and do not prejudice the Council's efforts to improve the image, perception and attractiveness of the Town as a tourist and leisure destination, and is in keeping with the streetscape.
- To 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.

### 3.1 Site Assessment

Consent from static locations will not normally be granted where:

- A significant effect on road safety would arise either from the siting of the trading activity itself, or from customers visiting or leaving the site,
- There would be a significant loss of amenity caused by traffic, noise, rubbish, potential for the harbourage of vermin, odour or fumes,
- There is a conflict with Traffic Orders such as waiting restrictions,
- The site or pitch obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use for street trading purposes,
- The site does not allow the consent holder, staff and customers to park in a safe manner,
- The street trading activity is carried out after dusk and the site is not adequately lit to allow safe access and egress from the site for both customers and staff.

### 3.2 Public Safety

In the interests of highway safety, no activity will be permitted within a minimum of 2 metres of a kerb.

### 3.3 Conservation Areas

The scope of this part of the policy covers the entire borough. However, the town centre, amongst a number of other areas in the borough, has conservation area status and as a result the Council will adopt a more restrictive approach to applications for these areas in particular.

**3.4 Town Centre & Conservation Area**

Despite this, the Council would not wish to prevent a modest amount of street trading in these areas of the town of a type which could positively enhance the enjoyment of the town as a tourist and leisure destination. To this end, street trading will generally be permitted in these areas where it enhances the town’s reputation as a tourist and leisure destination, and is in keeping with the streetscape.

The appearance of a trader’s business must enhance, or at least not be detrimental, to the street scene.

**4. Consultee Comments**

**4.1 GCC Area Highways Representative** - *“This is not suitable to be placed on the Promenade as this would affect pedestrian access.”*

**Huffkins** – *“We wish to object to the new street trader application. We pay huge rates. We employ over 20 staff. We support numerous other local family businesses and support many other local businesses. How can the town high street remain vibrant if street traders are allowed to come into the promenade?*

*They do not have the overheads and yet they are allowed to occupy prime pitches. It is simply unfair and does not represent good competition. Please do not allow these self-serving traders to multiply. We already have a coffee van on the promenade. The high street will be destroyed.”*

**Cheltenham Business Partnership** – *“With Huffkins café and cafes in other establishments on the Prom, this would seem to be a direct competitor to established businesses.”*

**5. Licensing Comments**

- 5.1 The Committee must determine the application with a view to promoting the Council’s adopted policy.
- 5.2 This report has been brought to member’s attention as prescribed in the scheme of delegation set out in the Street Scene Policy (page 6) adopted on 1<sup>st</sup> April 2013, whereby all new applications are referred to the Licensing Committee.
- 5.3 Members must determine this application in respect of the location plan. A full consultation has taken place based on this location plan and layout only.
- 5.4 In accordance with the current Street Scene Policy members must determine and consider if an application of this type positively enhances the enjoyment and reputation of the town as a tourist and leisure destination whilst being in keeping with the streetscape.

**6. Officer recommendation**

6.1 The officer recommendation is that this application be refused.

**Reason(s):** Officers do not consider the application to be consistent with the current street trading policy for the following reasons:

- 1. The appearance of the proposed trading unit does not meet the required quality standards and will therefore prejudice the Council’s efforts to improve the image, perception and attractiveness of the Town as a tourist and leisure destination, nor is it “in keeping with the streetscape”. (Policy “3. Policy Principles, Aims & Objectives” & “3.4 Town Centre & Conservation Area)

2. The types of goods to be sold, although of a good quality, are not unique and are largely available from other existing street traders and retail units in the town.

For this reason the policy provision requiring goods to be of a “type which could positively enhance the enjoyment of the town as a tourist and leisure destination” is not satisfied. (Policy “3.4 Town Centre & Conservation Area”)

3. The proposed trading unit will substantially obstruct the public highway and right of way. The area relevant to the proposed trading location is already congested with a lot of existing street furniture, art, phone boxes and pavement licences for tables and chairs.

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**Background Papers**

Service Records

**Case Officer**

**Contact officer: Mr Phillip Bowen**  
**E-mail: [licensing@cheltenham.gov.uk](mailto:licensing@cheltenham.gov.uk)**  
**Tel no: 01242 775200**





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rev. data description by



**PROJECT**  
 Street Trading Licenses  
**TITLE**  
 Sheet 4 Promenade  
**CLIENT**  
 CBC Licensing

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## Cheltenham Borough Council

### Licensing Committee – 8 January 2016

#### Review of a Private Hire Driver's Licence

#### Mr Keith David Lewis - PHD116

#### Report of the Licensing Team Leader

#### 1. Executive Summary and Recommendation

- 1.1 Mr Keith David Lewis holds Private Hire driver's licence PHD116 which is due for renewal on 8 December 2016.
- 1.2 Mr Lewis has a number of penalty points on his driver's licence. The details of these are contained in the enclosed background papers. He also failed to declare these to the council in accordance with statutory and policy requirements.
- 1.3 In light of this an application for a review of Mr Lewis's Private Hire licence has been brought before the Committee to ensure that he remains a fit and proper person to hold such a licence.

#### 1.4 The Committee can:

- 1.4.1 **Resolve that no further action be taken in respect of Mr Lewis's Private Hire driver's licence because the Committee is satisfied that he remains a fit and proper person to hold such a licence; or**
- 1.4.2 **Resolve that Mr Lewis be required to successfully complete a DVSA taxi driving test within 2 months and at his own expense; or**
- 1.4.3 **Resolve to revoke Mr Lewis's Private Hire driver's licence because the Committee considers him no longer a fit and proper person to hold a Private Hire driver's licence.**
- 1.4.4 **If the Committee resolves to revoke Mr Lewis's Private Hire driver's licence, it can further resolve to do so with immediate effect in the interest of public safety.**

#### 1.5 Implications

- 1.5.1 Legal                      There is a right of appeal against a revocation of a licence is to the Magistrates' Court.

The Borough Council has the ability to suspend or revoke a private hire driver's licence with immediate effect if necessary in the interests of safety. There is a right of appeal against a suspension or revocation of a licence which, in the first instance, is to the Magistrates' Court.

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**2. Background**

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

**3. Policy Considerations - Relevance of Convictions, Cautions and Fixed Penalty Notices in Relation to the Licensing of Drivers and Operators**

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

3.2 Each case will be decided on its own merits. The Council will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision.

3.3 The overriding consideration is the safety of the public. The Council has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit, honest and not persons who would take advantage of their employment.

3.4 Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour which will be taken into account.

3.5 The Council will only consider spent convictions if it appears to be relevant for deciding whether the applicant is a fit and proper person to hold a licence and that justice cannot be done in the case, except by admitting or requiring evidence relating to that spent conviction.

3.6 For the purpose of these guidelines formal cautions and endorsable fixed penalties shall be treated as though they were convictions.

**Motoring Convictions - Hybrid Traffic Offences**

3.7 Hybrid offences will be treated as major traffic offences if the court awarded 4 or more penalty points for the offence and as minor traffic offences if the court awarded 3 or fewer penalty points for the offence.

**Motoring Convictions – Existing Drivers**

3.8 Private hire and hackney carriage drivers are professional drivers and must be aware of the safety of their passengers and the safety of their vehicles at all times. Any traffic offences could show a lack of responsibility whilst driving either due to the maintenance and safety of their vehicles or in the manner of their driving.

3.9 Convictions for traffic offences may not automatically prevent a person from proceeding with a renewal of their licence, or from keeping their licence.

3.10 An existing licence holder who has 7 penalty points or more on his or her driving licence due to multiple offences, or 6 penalty points or more for one isolated offence, will be required to appear before the Licensing Committee to explain their convictions. The Committee then have the option to:

1. Take no further action
2. Give a written warning
3. Require the driver to pass a DVSA private hire/hackney drivers test, at the driver's own expense, within 2 months of their decision

- 4. Revoke the licence.
- 5. Refuse to renew the licence (if such an application is being considered)

**4. Licensing Comments**

- 4.1 Members must be satisfied that Mr Lewis remains a fit and proper person to hold a Private Hire driver's licence.
- 4.2 Members are to note that a check of Mr Lewis's driving licence was made following a complaint made to the council stating that Mr Lewis had told the complainant of the penalty points and the fact that he had not declared these to the council. Officers therefore question Mr Lewis's insistence that he was not aware of his duty to notify the council of the penalty points.
- 4.3 Furthermore, Mr Lewis correctly answered the question about the requirement to disclose convictions to the council in his knowledge test in 2013.
- 4.4 For the avoidance of doubt, there is a statutory obligation on licensed drivers to submit certain information to the council as prescribed by it. The council's policy states in respect of this "*Licence holders must notify the Council in writing within 7 days if he or she is convicted or cautioned for an offence or receives a fixed penalty notice.*"
- 4.5 Mr Keith David Lewis has been sent a copy of this report and invited to attend this meeting to speak in support of his application and to answer members' questions or to be represented. In considering the application on its own merits Members should have regard to the adopted Probity Guide.

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**Background Papers**

Service Records

**Report Author**

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