



CHELTENHAM

BOROUGH COUNCIL

Notice of a meeting of Licensing Committee

Friday, 29 April 2016
2.15 pm
Pittville Room - 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 March 2016.	(Pages 3 - 10)
5.	APPLICATION FOR A STREET TRADING CONSENT Mrs Ellen Danter	(Pages 11 - 18)
6.	ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION	
7.	DATE OF NEXT MEETING 3 June 2016	

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

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Licensing Committee

Friday, 4th March, 2016

2.15 - 4.35 pm

Attendees	
Councillors:	Roger Whyborn (Chair), Diggory Seacome (Vice-Chair), Andrew Chard, Wendy Flynn, Anne Regan, Rob Reid, Pat Thornton, Jon Walklett, Helena McCloskey and John Payne (Reserve)
Also in attendance:	Vikki Fennell and Louis Krog

Minutes

1. APOLOGIES

Apologies were received from Councillor Lillywhite and Councillor Payne attended as substitute.

2. DECLARATIONS OF INTEREST

None

3. PUBLIC QUESTIONS

None

4. MINUTES OF LAST MEETING

The minutes of the last meeting held on 5 February 2016 were approved and signed as a true record.

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

The Licensing Team Leader, Louis Krog, introduced the report regarding an application from Mr Roman Wroath of Ella and Fleur Hot Yoga, to place an advertising board outside 23A Pittville Street, Cheltenham. The proposed advertising board measured 110cm x 60cm and complied with the sizes recommended in the council's policy. A picture of the proposed structure was attached at Appendix A. The Officer outlined the proposed times that the A board would be displayed and advised that the width of the pavement available was 4.2m. The proposed location of the A board was attached at Appendix B.

The Officer drew members' attention to terms of the policy as mentioned in 3.3 and 3.4 of the report and advised that one objection had been received from the Highways Enforcement Officers on the grounds of A boards being a nuisance to pedestrians and disabled people using the footway. The Officer pointed out that although the business operated from the first floor, the premises also benefitted from a shop front at street level and referred to the photograph at Appendix C. He advised that members should determine whether the location of the business on the first floor disadvantaged them and necessitated the need for additional advertising, or whether the presence of a street level shop frontage,

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small though it was, was sufficient advertising to negate the need for an A board. He asked members to be mindful of promoting the council's policy and advised that the Officer recommendation was to refuse the application on the grounds that the business had a presence at ground level.

Before moving on to questions to the Officer, Councillor Chard declared a personal interest, in that he knew the applicant having lived next door to him.

In reply to members' questions, the Officer advised that all new applications came before the committee and in addition there was an objection to this application. He also confirmed that the business was entirely on the first floor with a staircase leading from the shop front. Members expressed concern over the flow of pedestrian access around the A board in view of the number of bus stops in that area that were very popular, with queues forming past the bus shelters resulting in restricted access for wheelchair users and buggies. One member pointed out the inaccuracies in the scale of the submitted location plan.

The Chair invited Mr Wroath to address the committee in support of his application. Mr Wroath acknowledged members' concern about the bus stops and stated that he would offset the A board in relation to the last bus stop near his premises to create a larger space for people to move round. He felt that the other bus stops further down the street did not cause a problem. He told members that he felt their shop frontage was overwhelmed and lost, being situated between larger shops on either side. An A board would pinpoint where his business was and he informed members that he also wanted to advertise to people waiting for buses that his business had a juice and coffee bar upstairs.

In response to a question from a member about his business, Mr Wroath explained that primarily he ran hot yoga classes (45 minute yoga classes in a room heated to 40 degrees) with 4-5 classes a day. He wanted to expand his business into the next door property on the first floor with a treatment room and a café selling juices and healthy food. He continued that he didn't have any footfall from outsiders as yet into the café and so wanted to promote it.

One member suggested enlarging the advertising on the A board and putting it in the shop front or considering an overhead sign. The applicant pointed out that only people directly opposite would see any advertising in the shop frontage and not people further along the street. With regard to an overhead sign, the applicant felt this would be very expensive compared to an A board, with planning permission, design costs, installation etc, and told members that he wanted to be in central Cheltenham and not on an industrial park and that he wanted the business to look good, but that he was just starting out and couldn't afford good signage at this time.

In support of the application, some members agreed that people didn't always look up to see overhead signage and felt that the pavement was wide enough to be able to accommodate an A board. A member pointed out that other businesses with a larger frontage had been allowed an A board, so questioned how this could be refused and also felt that small businesses should be supported and encouraged.

There being no further questions and with the applicant not wishing to add anything else, the Chair advised the committee that he felt they could deviate

from the policy as the business was upstairs and the frontage was very narrow and he wanted to encourage businesses generally. He advised that if granted, the licence for the A board would be for 12 months from the date of this meeting.

Upon a vote, it was 5 for, 2 against and 2 abstentions.

RESOLVED THAT, Mr Roman Wroath's application to place an A board on the highway at 23A Pittville Street be granted for 12 months, as members were satisfied that the location was suitable.

6. TRANSFER AND RENEWAL OF SEX ESTABLISHMENT VENUE LICENCE

The Licensing Team Leader, Louis Krog, introduced the report regarding an application for the transfer and renewal of a sex establishment venue licence received on 11 January 2016 from Mr Massimo Salatino in respect of the premises located at 12-14 Bath Road, Cheltenham. The SEV licence was formerly held by Bath Road Property Limited and that company was dissolved on 1 December 2015. The Officer advised that the applicant had not applied to change any of the terms or hours of the existing licence.

A copy of the application form was attached at Appendix A, with a copy of the premises layout at Appendix B, a location map at Appendix C and a copy of the current licence at Appendix D.

The Officer informed members that no objections had been received from the Police, but 5 representations had been received from local residents and ward councillors, as well as comments from the Environmental Health Department and Gloucestershire Fire and Rescue Service and details of all of these were set out in the background papers. Members were reminded that objections on moral grounds were not relevant to either the mandatory or discretionary grounds for refusal.

Members were further advised to consider that the Licensing Department had been informed that on condition the SEV licence be granted, that the venue would trade under the name of Eroticats for March 2016, after which it would close for a total refit. Members were also reminded that the premises was situated in the relevant locality deemed to be inappropriate for the licensing of a SEV. Members were advised to consider granting the application as applied for, granting it subject to any additional terms, conditions or restrictions, or refusing the application.

Members expressed concerns regarding the comments from the Environmental Health Officer (EHO) and the Fire Service about the state of the premises and, following a site visit, still had serious concerns about it being fit for purpose. Members questioned the Officer about the provision of any documents to say the premises was compliant and asked for reassurance that a proper inspection would take place before the premises opened. The Officer informed members that another inspection by competent officers would take place before race week and advised them that whether they granted the licence or not, the EHO and Fire Officer had their own powers to close down or not allow the premises to open. He continued that he did not have papers from the EHO confirming that the work had been done, but that the applicant had such evidence with him, although he had not seen it. One member commented that if as stated in 7.6 of

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the report the premises would be shut after race week for a total refit, that any work done now would be superficial. Another member commented on the bad state of the exterior of the premises and the outside advertising and asked the Officer if there was a proposal to address this. The Officer stated there was no application to change this and the report looked at the condition of the premises as a whole.

Members questioned that as stated in 4.6 of the report that one ground for refusal was the condition of the premises, how could the committee grant a licence not knowing if the work had been suitably carried out. The chair felt this put members in a difficult position. A member asked if a condition could be put on the granting of the licence subject to the satisfactory inspection of the EHO.

The Legal Officer, Vikki Fennell, advised that the committee needed to make a decision to grant the licence or not, as this was not an Officer decision and reiterated that there were other powers that could close the premises down. On the suggestion of an adjournment of the meeting due to insufficient information from the EHO as to the safety of the premises, the Legal Officer advised the committee to listen to the views of the applicant, or refuse the licence.

The Chair invited Mr Brian O'Connell, Solicitor for the applicant, to address the committee in support of the application. The Solicitor commenced by saying that his applicant, Mr Massimo Salatino, was a man of good character who ran a number of clubs and had a full alcohol licence and a SIA licence. He confirmed that Eroticats had approached the club, but that no agreement had been made with them and informed members that it would be solely Mr Salatino running the club. The Solicitor confirmed that he had papers with him showing that various work had been carried out and that there was no asbestos. He continued that he could understand the committee's concern of adding conditions regarding the approval of the EHO and Fire Officer and suggested that he would be happy to accept a condition that the licence not be granted until such time as the premises was confirmed satisfactory to the Environmental Health and Fire Officers.

At this point the Chair asked to adjourn the meeting to discuss this matter with the Legal Officer.

Meeting was adjourned at 14.44 and reconvened at 14.51.

The Chair informed the applicant that the committee was happy to continue with the application and took on board the suggestion of the Solicitor of granting the licence subject to the approval of the EHO and Fire Officer.

The Solicitor recommenced his address. He stated that a licence had been granted in 2014 and renewed in 2015 and was run at that time by different people. The business closed due to a fall out between the ladies running the club and other members of the company. The Solicitor continued that when his client returned to the premises it was in a bad state of repair with much damage. However he pointed out that up until its closure there had been no objections, even from the Police and the club had been run properly. He acknowledged that the premises was in the area of zero SEVs, and commented that last time the committee were persuaded to use their discretion and although he knew some members were against this application, if it were

refused on the grounds of 4.6 c and d in the report, there was no right of appeal. He asked members to fetter their discretion and to consider granting the licence, on the basis that there was no major change to the application since last year, that the club up to closure had not caused any problems and that it had been run properly.

In response to a question from a member about relocating the premises out of the zero SEVs area, the Solicitor replied that finding suitable premises was very difficult and that the club had been previously run in this location. It was also pointed out that this matter had been discussed at length last time it came to committee. Some members further expressed their concern about the state of the premises, the furnishings, the safety aspect and the cleanliness of the interior. The Solicitor told members that it was in his client's best interest to make it look good, attractive and safe for his customers and that before opening items would be replaced and it would be thoroughly cleaned to a high level of hygiene. He further reminded members that if the work was not completed satisfactorily and if the EHO was still not happy then it would not be signed off and would not open. The Solicitor was questioned about the connection with Eroticats and the closure after race week for a total refit. He said that Eroticats was nothing to do with them and that his client won't deal with them and that if they were suggesting any arrangements with them then an agreement would be needed.

The Chair invited Councillor Klara Sudbury, councillor for College ward, to speak on behalf of the objectors. Councillor Sudbury thanked the committee for allowing her to speak and for the opportunity to revisit this application again and hoped the committee would see enough grounds for refusal. Cllr Sudbury's main concerns and reasons for refusal were:-

- The premises fell in the area of zero SEVs, as set out in the Council's own policy which had been the subject of a lengthy debate at council.
- The character of the surrounding area was not suitable for a SEV.
- The area needed to be upgraded and the recent opening of a wine bar in the vicinity was more akin to what was needed, but being close to a SEV was not ideal.
- Major concerns about the state of the premises and if the building would be left in a state of disrepair if there were disagreement within the company.
- Concern about public safety and the completion of works in time for opening and also the involvement of Eroticats, although Cllr Sudbury acknowledged that the Solicitor had addressed this latter point.
- Although no Police objections had been received, Cllr Sudbury was aware of the door staff trying to entice men into the venue leaving their female partners outside.

The Chair drew members' attention to 4.11 of the report concerning properties with sensitive uses or in sensitive locations and asked them to bear this in mind in their questioning.

In reply to a question to Cllr Sudbury about whether any of the complaints had been logged with the Police, Cllr Sudbury stated that these complaints were not of a criminal nature, but an enforcement issue and so had spoken with the Licensing Team who had in turn asked the manager to speak to the door staff.

In response to a question from a member, the Solicitor confirmed that the venue would trade under the name of Fantasy Champagne Bar and that there was no plan to change the name.

As there were no further questions, the Chair asked the applicant if he wished to add any further comments. In summing up the Solicitor reminded members of 6.3 of the report about decisions being made impartially, in good faith and on consideration of relevant matters. He pointed out that the venue was only on the other side of the road to an area where it could be allowed, and reminded members of the discrepancies there had been in previous Council minutes about the name of the area being considered and its boundaries. He suggested that had his client known about any complaints then these could have been addressed and that arguments about the venue ruining the area were unfounded. He reiterated that the venue had closed in June due to an internal argument and that up until that point it had been properly run. He confirmed that the works to the club advised by the Environmental Health and Fire Officers were being done and that if the work was satisfactorily completed then the licence should be granted.

Members adjourned at 15.29 and returned at 16.06.

Upon a vote for the transfer of the licence, it was 9 for, 1 abstention.

Upon a vote for the renewal of the licence, it was 5 for, 4 against, 1 abstention.

RESOLVED THAT, the transfer and renewal of the sex establishment venue licence to Mr Massimo Salatino in respect of Fantasy Champagne Bar, 12-14 Bath Road, Cheltenham be granted, subject to the following conditions and rationale:

- 1. The licence is granted subject to the completion of all of the works required by the Senior Environmental Health Officer and Fire Safety Officer and that the completed works be approved and signed off by the Environmental Health Officer and Fire Safety Officer.**
- 2. There is to be no promotional literature handed out in Cheltenham at all.**
- 3. Any name change must be referred back to the Licensing Committee.**
- 4. All previous license conditions continue.**

The committee is allowed to deviate from policy on the basis that the premises has operated satisfactorily before the policy was in force and since the policy has been made. It is merely the other side of the road and it is irrational not to renew on that basis.

Furthermore, the premises is open from 10:00pm to 4:00am which has very little or no impact on other businesses and operations in the area. The committee's rationale in deviating from policy on the proximity of parks, shops, churches etc, was that the premises would not be open at the same time as these other activities, i.e. before 22:00.

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

None

8. DATE OF NEXT MEETING

1 April 2016.

Roger Whyborn
Chairman

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Cheltenham Borough Council

Licensing Committee – 29 April 2016

Local Government (Miscellaneous Provisions) Act 1982

Application for a Street Trading Consent

Mrs Ellen Danter

Report of the Licensing Team Leader

1. Summary and recommendation

- 1.1 We have received an application from Mrs Ellen Danter for a street trading consent to sell hot turkey rolls, pork rolls, German & Gloucestershire Old Spot sausages and hot & cold drinks from a hot food unit measuring 4.8m x 2.4m.
- 1.2 Mrs Danter has applied to trade on approved site High Street 6. **Appendix 1** shows the location of the proposed trading pitch.
- 1.3 Mrs Danter has applied for a consent to trade from 11 November to 31 December 2016 and on the following days and times:

Monday	09.00 18.00
Tuesday	09.00 18.00
Wednesday	09.00 18.00
Thursday	09:00 21.00
Friday	09.00 18.00
Saturday	09.00 18.00
Sunday	11.00 17.00

- 1.4 An image of the trading unit is shown in **Appendix 2**.
- 1.5 The proposed trading location does comply with the council's adopted policy on street trading however the proposed type of trading and the proposed trading size do not.
- 1.5 **The Committee can:**
 - 1.5.1 **Approved 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 trading policy.**

1.6 Implications

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: One Legal
E-mail: legalservices@tewkesbury.gov.uk
Tel no: 01684 272015

2. Policy Principles, Aims & Objectives

This section outlines the policies the council will apply when making decisions on applications for street trading 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:

- prevent the obstruction of the streets by street trading activities;
- sustain established shopkeepers in the town;
- maintain the quality of the townscape and add value to the town;
- encourage inward investment; and
- promote quality markets.

2.1 Permitted locations for street trading

The council's adopted policy prescribes a number of permitted trading locations and associated permitted trading goods. These locations and permitted goods are outlined in the council's adopted policy that is available on the council's website.

2.2 Assessment criteria

In considering applications for the grant or renewal of a consent the following factors will be considered:

- **Needs of the Area** - The retail offer of each individual pitch. The goods complement and do not conflict with the goods sold by other retailers (including other street traders) within vicinity. This criterion permits the council to undertake a qualitative assessment of the goods to be sold by each competing applicant against those on sale in the adjacent area. The council does however recognise that the surrounding retail offer is subject to change therefore it will apply this criterion to applications for new or renewal applications.
- **Public Nuisance** – Whether the street trading activity represents, or is likely to represent, a substantial risk of nuisance to the public or properties in the vicinity from noise, misbehaviour, emissions, smells etc.

- **Public Safety** – Whether the street trading activity represents, or is likely to represent, a substantial risk to the public from the point of view of obstruction, fire hazard, unhygienic conditions or danger that may occur when a trader is accessing the site.
- **Appearance of the Stall or Vehicle** – Trading units must enhance the visual appearance of the street rather than detract from it and be constructed in a suitable scale, style and of appropriate materials. It should also be designed to be fully accessible for all customers and advertising material must be limited to the name of the stall, the type of product sold and a simple price list and be professionally designed and printed. The council will generally not permit trading units over 3 meters tall to avoid obstruction of sight.
- **Environmental Credentials** - The impact of the proposed operation on the local environment including street surfaces, tree pits & materials, power supply, carbon footprint, supply chain, packaging, waste minimisation, waste disposal and waste created by customers.

4. Consultee Comments

4.1 An objection has been received from the Cheltenham Business Partnership Manager:

“I would oppose this application on the basis that it contravenes the street trading policy, which states that this site should not be used for food and drink sales or by vehicles larger than 6m².”

5. Licensing Comments

5.1 The Committee must determine the application with a view to promoting the council’s adopted policy and Members should not arbitrarily deviate from the council’s policy.

5.2 As outlined above, this application does not fully comply with the council’s policy in that whilst the proposed location is an approved location (High Street 6), the location is not an approved location for the sale of hot food and drink and the permitted size for the aforementioned pitch is up to 6m² (64 square foot).

5.3 The policy outlines the following permitted trading types for the location in question:

- Signup Services
- Busking (when also selling merchandise)

5.4 The policy takes into account a number of factors when determining the permitted trading types. These are outlined in paragraph 2.2 above (“Permitted Locations”) and Members should take these into account when determining this application.

5.5 Whilst the policy creates a presumption against the grant of an application if the application does not comply with the policy, this position should not fetter the committee’s discretion to take into account the individual merits of the application and any circumstances that may warrant a deviation from the policy.

5.6 Members are reminded that clear and thorough reasons should be given for decisions made by the committee particularly where the decision is contrary to adopted policy.

6. Officer recommendation

6.1 The officer recommendation is that this application be refused.

Reason(s): The officer recommendation is based on the fact that the application does not comply with the council’s policy.

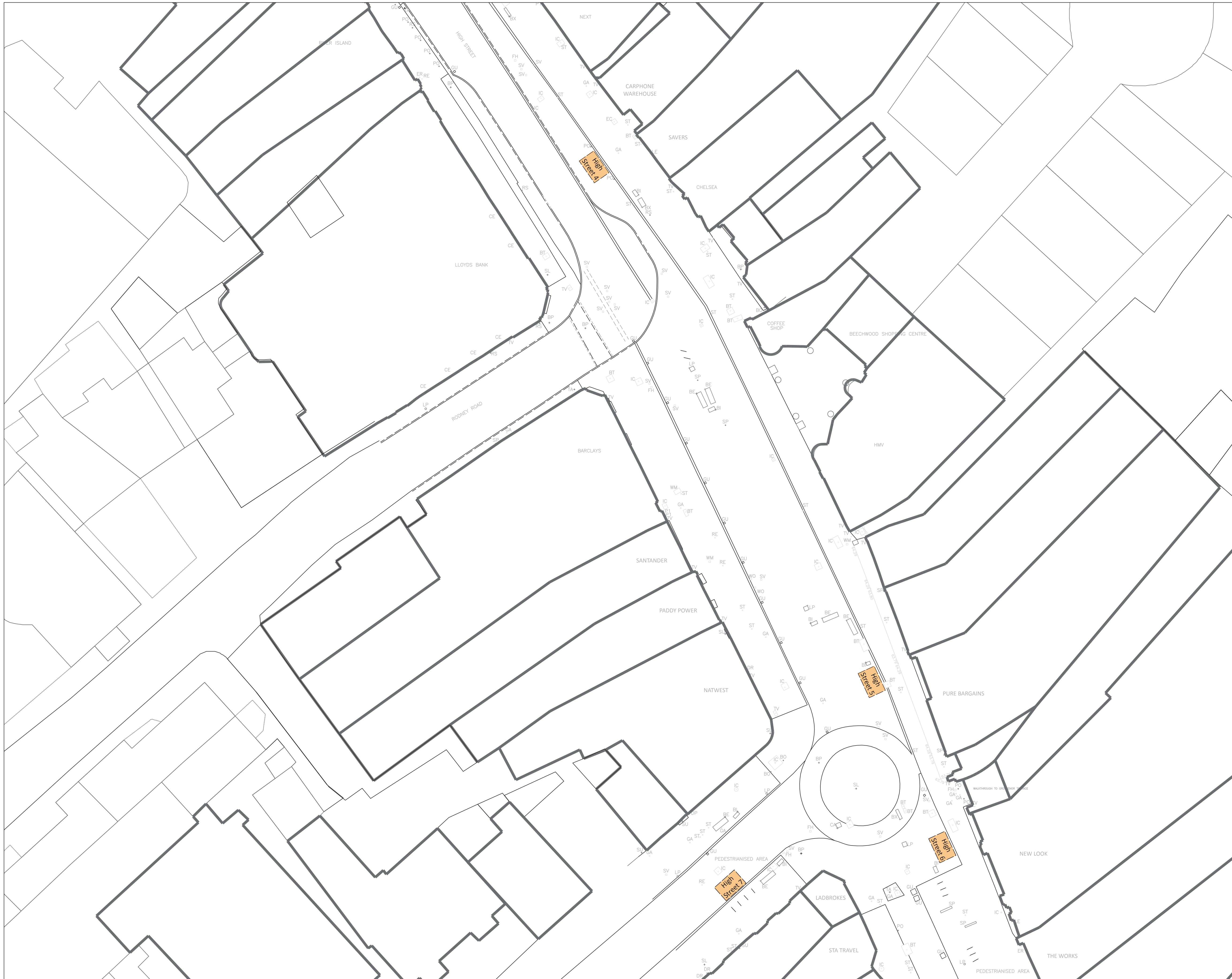
Background Papers

Service Records

Adopted Street Trading Policy

Case Officer

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



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rev.	date	description	by



PROJECT Street Trading Policy	
TITLE Sheet 3 High Street	
CLIENT CBC Licensing	
scale	status
date	
drawing number CBC_E&RS_T_28_P_03	revision

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