



CHELTENHAM

BOROUGH COUNCIL

Notice of a meeting of Licensing Committee

Thursday, 12 January 2017

6.00 pm

Pittville Room - Municipal Offices, Promenade

Membership	
Councillors:	Wendy Flynn (Chair), David Willingham (Vice-Chair), Mike Collins, Tim Harman, Adam Lillywhite, Paul McCloskey, Dennis Parsons, Diggory Seacome, Max Wilkinson and Pat Thornton

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 9 November 2016.	(Pages 3 - 10)
5.		REVIEW OF STREET TRADING CONSENT Mr Adrian Wood t/a Woody's Fruit & Veg	(Pages 11 - 18)
6.		REVIEW OF A PRIVATE HIRE DRIVER'S LICENCE Mr Keith David Lewis	(Pages 19 - 22)
7.		APPLICATION FOR A SEXUAL ENTERTAINMENT VENUE LICENCE	(Pages 23 - 48)
8.		ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION	
9.		DATE OF NEXT MEETING Wednesday 8 February 2017 at 6pm.	

Contact Officer: Annette Wight, Democracy Assistant, 01242 264130

Email: democratic.services@cheltenham.gov.uk

Licensing Committee

Wednesday, 9th November, 2016

6.10 - 8.25 pm

Attendees	
Councillors:	David Willingham (Chairman), Mike Collins, Tim Harman, Adam Lillywhite, Paul McCloskey, Dennis Parsons and Diggory Seacome
Also in attendance:	Vikki Fennell and Phil Cooper

Minutes

1. APOLOGIES

Apologies were received from Councillors Flynn and Wilkinson. In the absence of the Chairman Councillor Flynn, the Vice Chairman Councillor David Willingham took the chair for the meeting.

2. DECLARATIONS OF INTEREST

None

3. PUBLIC QUESTIONS

None

4. MINUTES OF LAST MEETING

The minutes of the last meeting held on 12 October 2016 were approved and signed as a true record. A member questioned whether in this digital paper saving age, a paper copy of the minutes was required to be signed. As it was a regulatory committee, the Legal Officer felt that it was, but this would be checked.

5. REVIEW OF A PRIVATE HIRE DRIVER'S LICENCE - MR HOLDER

Please note that the order of the agenda was altered, so that the agenda item for Mr Chimuka was the final hearing.

The Licensing Officer, Phil Cooper, introduced the report regarding the review of Mr Duncan Clive Holder's Private Hire Driver's Licence PHD303. Mr Holder had been a licensed private hire driver since 2003 and his licence is due for renewal on 6 March 2018. However, in October 2016 Mr Holder pleaded guilty to the offence of plying for hire without the correct licence, having accepted a journey during the March race week without that journey being booked through a private hire operator. The court fined Mr Holder and ordered him to pay costs. The Officer informed members that during the 13 years Mr Holder had been licensed with the council, there had not been any history of complaints or other convictions prior to that recent incident.

The Officer advised the committee to consider whether, in light of the conviction, they felt that Mr Holder remained a fit and proper person to hold a

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private hire driver's licence. The options for the committee were to allow the licence to continue or to revoke the licence. If the committee allowed the licence to continue, they could choose to issue a written warning which would be kept on record. If revoked, the committee could decide to revoke with immediate effect in the interest of public safety.

In reply to questions from members the Officer confirmed that the officers who had reported the offence were from Gloucester City Council helping out Cheltenham officers during race week and that Mr Holder was only licensed in Cheltenham. The Officer also confirmed that he didn't have any other information on the incident other than what was provided in the background papers and that statements had been provided to the court but were not now needed as Mr Holder had pleaded guilty.

A member questioned why Mr Holder's fine and costs were considerably higher than the other two reviews to be discussed. The Legal Officer, Vikki Fennell, was unsure as all 3 cases had been heard on the same day feasibly with the same Magistrates, however she advised that a means form has to be completed and this could have had a bearing on the outcome. The Officer reminded members that the level of the fine did not reflect the severity of the offence and that it was the same offence in all three cases.

Another member asked if a record was kept of how many times Officers approached private hire drivers to ply for hire, where the driver did refuse to take them. The Licensing Officer advised that no such records were kept as if an offence was not committed the Licensing team would not be informed. It was also confirmed that an alleged offence could be reported by anyone, including members of the public, and would need to be proven beyond reasonable doubt that it had happened with witness statements provided.

The Chair invited Mr Holder to speak in support of his review. Mr Holder told members that it was a genuine mistake. He was not plying for hire as it was race week and he was busy enough. He continued that he had finished for the evening and had pulled over in a quiet spot to text his wife when he was approached and that he thought the two people were lost, so he tried to book a fare for them by texting it through to the operator. He had pleaded guilty as he was unaware that booking a fare via text for someone else was still considered illegal. In response to a question from a member, Mr Holder confirmed that he had 'pre-book only' signs on the side of his car. Mr Holder was reminded that individuals have to book their fare not the driver.

Mr Holder informed members that he had contacted the Magistrates Court about the level of his fines and was informed that £1,000 costs was awarded to Cheltenham Borough Council to cover their legal fees and the fine of £500 was due to his income.

There being no further questions or comments, the committee voted to debate the matter in private and Mr Holder was asked to leave the room at 18.30.

Mr Holder was asked to return to the committee room at 18.43.

The Chair moved to vote on 1.3.1 of the report, being that Mr Holder's licence be continued with no further action.

Upon a vote it was unanimous with 7 for, 0 against.

RESOLVED THAT, Mr Duncan Clive Holder's private hire driver's licence be continued with no further action as the Committee was satisfied that he was a fit and proper person to hold such a licence.

The Committee decided not to issue a written warning, but wished it put on record should Mr Holder come before committee again, that he had been reminded that plying for hire and driving with someone in his car that had not been pre-booked, invalidated his insurance and was a potential safety issue.

6. REVIEW OF A PRIVATE HIRE DRIVER'S LICENCE - MR REHMAN

The Licensing Officer, Phil Cooper, introduced the report regarding the review of Mr Aziz Ur Rehman's Private Hire Driver's Licence PHD021. Mr Rehman had been a licensed private hire driver since 2010 and his licence is due for renewal on 11 July 2019. However, in October 2016 Mr Rehman pleaded guilty to the offence of plying for hire without the correct licence, having accepted a journey during the March race week without that journey being booked through a private hire operator. The court fined Mr Rehman and ordered him to pay costs. The Officer informed members that during the 6 years Mr Rehman had been licensed with the council, there had not been any history of complaints or other convictions prior to this recent incident.

The Officer advised the committee to consider whether, in light of the conviction, they felt that Mr Rehman remained a fit and proper person to hold a private hire driver's licence. The options for the committee were to allow the licence to continue or to revoke the licence. If the committee allowed the licence to continue, they could choose to issue a written warning which would be kept on record. If revoked, the committee could decide to revoke with immediate effect in the interest of public safety.

A member questioned the Officer as to where the incident had taken place, however the Officer replied that he did not have this information which was in the statements that went to the Magistrates Court.

There were no further questions as other relevant questions had already been covered in the previous agenda item.

The Chair invited Mr Rehman to speak in support of his review. Mr Rehman told members that he was very sorry about the offence, that he had paid the fine and learnt his lesson and wouldn't do it again. He continued that he has had a clean driving licence with no points since 2007 and been a private hire driver since 2010 with no previous offences and had a copy of his driving licence and DBS certificate with him should members have wished to see them. He said he was a family man, his wife didn't work and apologised again.

In reply to questions from members, Mr Rehman stated that it was about 8pm on 17 March and that he was in Pittville Street planning to go to KFC to get some dinner. He confirmed he was not in the taxi rank but behind it, outside Subway. He also confirmed that he had 'pre-book only' signs on the sides of his car. He said he was asked to go to Gloucester and that the fare would be £30. When questioned on this price by a member when the normal fare to

Gloucester would only be £16-£17, Mr Rehman said they were race week prices. Mr Rehman admitted he made a mistake and was ashamed. Mr Rehman confirmed he didn't attempt to notify his controller of this fare, but did inform the council of the offence afterwards.

There being no further questions, Mr Rehman summed up by reiterating he had learnt from his mistake, he was sorry and assured the committee it wouldn't happen again and he would follow the regulations properly in future.

The committee voted to debate the matter in private and Mr Rehman was asked to leave the room at 18.56.

Mr Rehman was asked to return to the committee room at 19.05.

The Chair moved to vote on 1.3.1 of the report, being that Mr Rehman's licence be continued with no further action.

Upon a vote it was unanimous with 7 for, 0 against.

RESOLVED THAT, Mr Aziz Ur Rehman's private hire driver's licence be continued with no further action as the Committee was satisfied that he was a fit and proper person to hold such a licence.

The Committee decided not to issue a written warning, but wished it put on record should Mr Rehman come before committee again, that he had been reminded that plying for hire and driving with someone in his car that had not been pre-booked, invalidated his insurance and was a potential safety issue.

7. LOCAL GOVERNMENT ACT 1972 - EXEMPT INFORMATION

RESOLVED THAT in accordance with Section 100A(4) Local Government Act 1972 the public be excluded from the meeting for the remaining items of business as it is likely that, in view of the nature of the business to be transacted or the nature of the proceedings, if members of the public are present there will be disclosed to them exempt information as defined in paragraph 1 and 7, part 1 Schedule 12A (as amended) Local Government Act 1972, namely:

Information relating to any individual,

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

8. REVIEW OF A PRIVATE HIRE DRIVER'S LICENCE - MR CHIMUKA

Please note that although the committee voted to go into exempt session, there was subsequently nothing discussed that could not be put into the public minute, therefore there is no exempt minute. Members had been given time to read the exempt minutes and background papers of the Licensing Committee dated 10 April 2015.

The Licensing Officer, Phil Cooper, introduced the report regarding the review of Mr Ephraim Chimuka's Private Hire Driver's Licence PHD555. Mr Chimuka had been a licensed private hire driver since 2007 and his licence is due for renewal on 13 December 2017. However, in October 2016 Mr Chimuka

pleaded guilty to the offence of plying for hire without the correct licence, having accepted a journey during the March race week without that journey being booked through a private hire operator. The court fined Mr Chimuka and ordered him to pay costs. The Officer drew members' attention to the fact that the report referred to a previous licensing committee hearing in April 2015 at which Mr Chimuka's fitness as a private hire driver was considered. That hearing involved a different set of circumstances and Mr Chimuka was not convicted of any offence and on that occasion the committee determined to allow Mr Chimuka's licence to continue with no further action.

The Officer advised the committee to consider whether, in light of this recent conviction, they felt that Mr Chimuka remained a fit and proper person to hold a private hire driver's licence. The options for the committee were to allow the licence to continue or to revoke the licence. If the committee allowed the licence to continue, they could choose to issue a written warning which would be kept on record. If revoked, the committee could decide to revoke with immediate effect in the interest of public safety.

There being no questions to the Officer, as relevant questions had already been covered in the previous two review agenda items, the Chair invited Mr Chimuka to speak in support of his review. Mr Chimuka admitted to members that he was wrong. He said he was parked outside The Stable, which gave him easy access to the ring road around Cheltenham, he was eating a sandwich and it was his intention to wait for a fare. The Officers approached him and asked to go to Gloucester. He thought they were a couple and that the lady looked pregnant and he pointed out the taxi rank. Mr Chimuka said they asked him again and as he was concerned about the lady as he knew the taxi rank queue was very long, he said yes. He wanted to help the lady who he thought looked upset and to get her home safely during race week. He apologised again for what he did.

In reply to questions from members, Mr Chimuka confirmed he was married with two children, that The Stable was in Clarence Street nearly opposite the library and the offence took place at approximately 9pm. When asked why he changed his mind, Mr Chimuka repeated that he thought the lady was pregnant and knowing that it was very busy and that they wouldn't get a taxi very soon, he wanted to help. Mr Chimuka confirmed that he did have 'pre-book only' stickers on the inside of his vehicle windows, but that these maybe less visible as his rear windows were tinted.

A member referred to the hearing on 10 April 2015, when Mr Chimuka had been before the committee and had said that he was an honest and trustworthy person, and asked Mr Chimuka if he still considered himself to be honest and trustworthy. Mr Chimuka replied that he admitted when he had done something wrong and was trustworthy. Mr Chimuka was further questioned about the advice the committee had given him following the serious allegations that led to his hearing in 2015. Mr Chimuka replied that he had learnt from this and that he had fitted audio and video devices in his car, so that he had proof of any allegations made against him. When asked, he confirmed that on the day of the offence in March 2016, the audio / video devices were not operating as they only worked when the ignition was turned on.

There being no further questions, Mr Chimuka was invited to sum up. He stated that he admitted he was wrong on the day, that he believed himself to be honest and trustworthy and that he wouldn't be back before the committee again as he would now stick to the rules as stated with no grey areas.

The committee voted to debate the matter in private and Mr Chimuka was asked to leave the room at 19.29.

Mr Chimuka was asked to return to the committee room at 20.12.

The Chair moved to vote on 1.3.1 of the report, being that Mr Chimuka's licence be continued with no further action.

Upon a vote it was unanimous with 0 for, 7 against.

The Chair moved to vote on 1.3.2 of the report (with a slight change in the order of the wording), being that Mr Chimuka's licence be revoked.

Upon a vote it was unanimous with 7 for, 0 against.

Upon a further vote on 1.3.3 of the report, for the licence to be revoked with immediate effect,

It was unanimous 7 for, 0 against.

RESOLVED THAT, Mr Ephraim Chimuka's private hire driver's licence be revoked with immediate effect as the Committee no longer considered him to be a fit and proper person to hold such a licence.

The Committee's rationale was as follows:-

- The overriding consideration was 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, honest drivers, and not persons who take advantage of their employment;
- The safety of the citizens of Cheltenham and those visiting the town was of paramount importance. There was a duty on the council to ensure that anyone in a licensed vehicle was safe;
- Mr Chimuka implied that he would stick to the rules now but the evidence showed that he had not done so before and he admitted to there being a pattern of behaviour;
- Mr Chimuka appeared before the committee in April 2015 and his fit and proper status was brought into question at that time. It was not a unanimous decision from the committee for him to continue to hold a licence;
- Mr Chimuka was convicted of plying for hire without the right to do so which again threw into question the trustworthiness of him as a driver;
- Plying for hire would have invalidated his car insurance which could have potentially seriously endangered the lives of the passengers he was carrying in the vehicle;
- The committee and the council were put in an untenable position in that if there were to be a further incident the reputation of the council would

be in jeopardy given this was the second time that Mr Chimuka had appeared before the committee in an 18 month period;

- Members felt that his demeanour before the committee did not appear to be one of a man of credibility, trustworthiness or honesty;
- Mr Chimuka's behaviour had given the committee the impression that if he saw an opportunity present itself to him, he would take it as an opportunity to earn more money or to take advantage of a lone female;
- Given that he had appeared before the committee in April 2015 where the rules were made clear to him, he had acted in blatant contravention of those rules possibly endangering the safety of the public;
- There was a cumulative impact in that Mr Chimuka had already been given a second chance to prove himself in April 2015 and he had failed to do so.

The Legal Officer advised Mr Chimuka that he had the right of appeal to the Magistrates Court within 21 days of the date of the decision letter that would be sent to him.

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

The Licensing Officer informed the Committee that a new application for a sexual entertainment licence had been received in the last week, relating to the Two Pigs premises in Church Street for a licence on four occasions each year when there was racing. This was now out for consultation until 2 December and would come before the Committee at the January meeting. It was suggested that this meeting be held in the Council Chamber. The Officer informed members that a site visit would be arranged. He also informed members that the other sexual entertainment venue in Cheltenham still had a licence as it was an annual licence, although the premises was currently closed.

One member asked the Licensing Team to ensure that applicants were aware that they could be represented at committee and that they understood the committee procedure. It was also suggested that plain simple English be used where possible.

10. DATE OF NEXT MEETING

Wednesday 7 December 2016 at 6pm.

David Willingham
Chairman

2. Background

- 2.1 Mr Wood has held a trading consent for the location he is presently trading at since April 2016. The consent was issued following consultation in accordance with the normal procedures.
- 2.2 Since trading, the location has presented the council with a number of issues; these are outlined in paragraphs 1.2 and 1.3 above.
- 2.3 The choice of the present location was discussed with officers prior to making the formal application. Officers felt that the trading would positively enhance the area and that part of the High Street. However, the subsequent issues were not anticipated during the discussions.
- 2.4 Prior to his current location, Mr Woods had two trading pitches, one located on Church Street and another on the High Street. These locations were not suitable for the type of operation and as a consequence Mr Wood consolidated the two consents to trade from a single location.
- 2.5 The primary problem associated with the current trading location is the risks associated with the mixed used space.
- 2.6 Officers have been working with Mr Wood to explore solutions to the risks highlighted. The preferred option was to close the High Street entrance to the Henrietta Street car park to vehicles by blocking access using tree boxes similar to those on the High Street.
- 2.7 However, the proposed scheme caused a number of complications that have proven prohibitive, namely difficulties with establishing rights of way, excessive costs on the licence holder and the requirement to obtain planning permission.
- 2.8 Whilst the space continues to be accessible by both vehicles and pedestrians, officers consider the site to be unsuitable for continued use and as a consequence are recommending to the Licensing Committee that the consent for that particular location be revoked.
- 2.9 Officers are keen to stress that there is recognition of the fact that Mr Wood has been trading in Cheltenham for a long time and his trading does generate positive activity in lower High Street that enhances the area. Therefore officers are working with Mr Wood to find an alternative and more suitable location. Discussions are currently ongoing with Mr Wood and his agent to take this forward and we anticipate a new application to be made.

3. Officer recommendation

- 3.1 The officer recommendation is that this consent be revoked.

Reason(s): As set out in the body of this report.

Background Papers

Service Records

Case Officer

Contact officer: Mr Louis Krog
E-mail: louis.krog@cheltenham.gov.uk
Tel no: 01242 264217

Appendix 1 - Review of Street Trading Consent (Mr Adrian Wood t/a Woody's Fruit & Veg)





Health and Safety Risk Assessment

Directorate: Public Protection	Service: Car Parks / Property / Woodies	Assessor: Sadie Hawson SEHO (no consultation)
Activity: Fruit and Vegetable Stall – Woodies - High Street, Car Park - South Entrance. The stall takes up less than ½ the public road entrance width. Woodies side loading delivery vehicle has been witnessed to park opposite the stall, on the entrance road to the car park, when this occurs approximately > 2/3 of the entrance width is taken up. A traffic island adjoining the side of 285 the high street, with a no entrance sign on, also restricts the traffic through route. With a ½ entrance width, with no staff, customers or debris from the stall, there is sufficient space for a vehicle to pass. With <1/3 entrance width there is only just enough space for one vehicle to pass with no space for any people or debris between the two vehicles and the stall.		Date: 27th July 2016 Version 1 (2 pages)

What are the hazards?	Who might be harmed and how?	Risk Rating without control Measures?	What are you doing already to control the risk?	Risk Rating with Control Measures	Is there any further action required?	Action by whom?	Action by when?	Completed when?
1-Struck by Vehicle - Road Traffic Accident	Child / Elderly / Disabled/ Adult / Employee / Public associated with stall. -Person struck by vehicle entering Car Park. - Person struck by stepping into path of vehicle. Vehicle factors: -Speed -Driver distracted by street activity or in car / other distraction -Limited line of sight on approach. A vehicle can commit to entrance and speed before seeing stall. - If stall spills onto street it is more likely to be seen by approaching drivers however not if this line of sight is blocked by vehicles use the loading bay outside 277 & 275 High Street	L-3 x S-3 Risk High	The requirement for people to move to allow a vehicle to pass will normally slow down traffic reducing the likelihood of being struck. One-way traffic prevents contraflow and lowers the likelihood via less distraction and decreased through-put of road. No signs to car parking via the South entrance. The North entrance & exist is clearly marked providing the main access via Swindon Road. However old maps and local knowledge will still know of the, South, High Street entrance. This entrance however has a lower use than the main one reducing the likelihood of being struck. When goods are displayed on the high street they can be seen by an approaching driver, this increases the likelihood of a driver seeing the stall in the entrance road before committing to	L-2 x S-3 Risk High	Yes – consideration of Road closure - consider bollards / cones on pavement and/or clear signs in accordance with highways recommendations - to allow only emergency vehicle access (if required see 4 below) but prevent car park use. Before road closure granted:- No loading or unloading markings to be made on entrance road, to prevent Woodies loading and unloading vehicle opposite stall. Segregation- Mark ground to define spaces for : stall; customer; vehicle access route. (This may facilitate segregation but could encourage space ownership by driver or customer, potentially preventing or delaying movement and initiating aggressive behaviour or encouraging faster movement in designated space– discuss	CBC Property (see 4) & GCC Highways signs, markings and segregation ? Car Parks enforcement of loading areas. Property - clear conditions in land use agreement	As soon as reasonably practicable	



Health and Safety Risk Assessment

What are the hazards?	Who might be harmed and how?	Risk Rating without control Measures?	What are you doing already to control the risk?	Risk Rating with Control Measures	Is there any further action required?	Action by whom?	Action by when?	Completed when?
Cont...	<p>Person factors:</p> <ul style="list-style-type: none"> -Distraction, purchasing or other -Lack of awareness when stepping out of delivery van or serving -Loss of control to animal or child -Disability limiting awareness of risk, impaired hearing, sight or slow reaction speeds. - Poor visibility to driver due to clothing, size, location etc. <p>Environmental factors:</p> <ul style="list-style-type: none"> -Poor Street lighting (Autumn and Winter) restricts visibility of area. -Road condition from stall activity / spill, extends stopping time 		<p>turning and it is likely speed reduction will occur.</p> <p>(Driver recognition of stall and people may ensure slower approach speeds and potentially reduced impact damage but this is dependent on the individual being hit.)</p>		<p>for urban design before implementation).</p> <p>Loading bay outside 277, 275 be temporarily removed from operation during market stall sale times. To ensure good line of sight to stall from approaching vehicle.</p> <p>Ensure north entrance to high street car park is kept clear and open to ensure primary access route.</p> <p>Ensure goods sales are always placed on the street to enhance chances of stall being seen by approaching drivers.</p> <p>Consider – street lighting to facilitate visibility (avoiding glare and dazzle).</p>	for Woodies and enforcement of such (EHO if requested but no legal enforcement powers).		
2-Slip, trip – fall (STF),..	Child / Elderly / adult / employee. Slip or trip on debris – plastic bag, food, or box from stall	L-2 x S-2 Risk Med	Woodies area of work (not CBC) – presume: - Boxes and produces kept tidy - Spills, fruit drop picked up when occur	L-1 x S-2 Risk Low	Checks to ensure area is kept tidy	Choice: Car Parks; Licencing; Property; CPO's EHO's	ASARP	
3-STF into path of Vehicle	As above into path of vehicle	L-2 x S-3 High	As above	L-1 x S-3 Med	Yes - as 2 above	"	"	
4- If road closed Restriction at entrance prevents emergency vehicle access	Injured party or personal property within the car park or adjoining buildings. Delay in treatment or fighting of fire due to access diversion from south entrance to north.	L-1 x S -3 Med	Access via south entrance is currently available. Town one way system reduces likelihood that south access will be required easiest route via north entrance.	L-1 x S -3 Med	Any road closure to the south entrance should still allow emergency vehicle access at all times (if consultation with the emergency services requires it).	Property consult emergency services regarding access.		

Health and Safety Risk Assessment



Review Schedule

Your risk assessment should be reviewed **annually**, or sooner if you think it might no longer be valid, e.g. following an accident in the workplace, or if there are any significant changes to the hazards in your workplace, such as new equipment or work activities.

Date of Review?	Reviewed by?	Reason for review?	What changes/amendments have been made to risk assessment following the review?



Health and Safety Risk Assessment

Risk Rating

High (3) Death, major injury or work related illness, permanent harm or disability	S E V E R I T Y	3	6	9
Medium (2) Injuries or work related illness where people are unable to undertake their normal work for more than 3 days ; semi permanent harm or injury		2	4	6
Low (1) All other minor injuries – first aid treatment with no permanent harm – minor cuts and bruises		1	2	3
LIKELIHOOD				
Low (1) Where harm is unlikely to occur under normal circumstances. Low expectation of occurrence	Medium (2) Where harm is likely to occur in time or exposure to the hazard exists intermittently or hazardous event occurs occasionally	High (3) Where the hazard is likely to occur imminently or in the very short term, OR exposure is permanent or occurs frequently OR much evidence of previous harm		

What does my risk rating mean?

Low (1-2)	Medium (3 -4)	High (6 -9)
Work can proceed – significant action is not required other than monitoring that things do not change and that existing measures are being monitored and maintained	Work may proceed if additional control measures are implemented within strict timescales. These measures and timescales must be proportionate to the potential consequences	Immediate action is required to control the risk before any further activity

- 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 fit and proper 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 **Fit and Proper Person**

There is no absolute definition as to what constitutes a “fit and proper person”. However, considering the range of passengers that a driver may carry, for example, elderly people, unaccompanied children, people with disabilities, those who have had too much to drink, lone women and foreign visitors, the Council will want to have confidence that such people would be able to rely on the driver.

Some important areas that will be considered by the Council are:

- a. Honesty and trustworthiness – licensed drivers and operators often have knowledge that a customer is leaving a house empty; they have opportunities to defraud drunken, vulnerable or foreign people or to steal property left in cars. For example, any passenger would expect to be charged the correct fare for a journey and then given the correct change, they would also expect a driver to hand in any article left by a passenger in a vehicle, and also to maintain confidentiality between driver and fare.
- b. Courtesy - taxi drivers are often subject to unpleasant or dishonest behaviour. The Council does not consider that this excuses any aggressive or abusive conduct on the part of the driver. A driver will not be expected to have any convictions or cautions for offences of a violent or threatening nature.
- c. Consistently good and safe driving - those paying for a transport service rely on their driver to get them to their destination safely. They are professional drivers and should be fully aware of all Road Traffic legislation and conditions attached to the licence.
- d. Good knowledge of the area that they are working in.
- e. Good physical and mental health.
- f. Ability to read, speak and understand English, together with a working knowledge of arithmetic in giving the correct change, etc.

3.6 **Hybrid Traffic Offences**

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.

- CU10 Using a vehicle with defective brakes
- CU20 Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition
- CU30 Using a vehicle with defective tyre(s)
- CU40 Using a vehicle with defective steering
- CU50 Causing or likely to cause danger by reason of load or passengers
- CU80 Breach of requirements as to control of the vehicle, mobile telephone etc

SP10 Exceeding goods vehicle speed limit

SP20 Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)

SP30 Exceeding statutory speed limit on a public road

SP40 Exceeding passenger vehicle speed limit

SP50 Exceeding speed limit on a motorway

Aiding, abetting, counselling or procuring offences as coded above, but with 0 changed to 2 (e.g. CU10 becomes CU12)

Causing or permitting offences as coded above, but with 0 changed to 4 (e.g. CU10 becomes CU14)

Inciting offences as coded above, but with 0 changed to 6 (e.g. CU10 becomes CU16)

4. Licensing Comments

- 4.1 The council is under a statutory obligation to ensure that all its licensed drivers are and remain fit and proper people.
- 4.2 Mr Lewis has a number of driving related convictions totalling 12 penalty points. The details of these convictions are outlined in the accompanying background papers.
- 4.3 Members are to note that Mr Lewis previously appeared before the council's Licensing Committee on two occasions, 6 December 2013 and 8 January 2016. In January 2016 Mr Lewis was issued with a written warning as to his conduct as a licensed driver and the expectation that he is expected to maintain the highest level of safe driving.
- 4.4 Members are further to note that Mr Lewis did not report the latest penalty points to the council.
- 4.5 Members are to note that the pending appeal as referred to in the background papers is not relevant to the Committee's determination of the DVLA penalty points. This is due to the fact that 1) the appeal only relates to the sentence, not the points imposed, and 2) if the Magistrates' Court decision is upheld Mr Lewis' Private Hire drivers licence will automatically lapse or if Mr Lewis is successful in his appeal the Committee's decision will take effect.
- 4.6 Mr 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.

Background Papers

Service Records

Report Author

Contact officer: Mr Louis Krog

E-mail: licensing@cheltenham.gov.uk

Tel no: 01242 264217

Cheltenham Borough Council

Licensing Committee – 12 January 2017

Application for a Sexual Entertainment Venue Licence

Report of the Licensing Officer

1. Executive Summary

- 1.1 Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (“the Act”), as amended by section 27 of the Policing and Crime Act 2009, allows applicants to apply for, renew, vary and/or transfer a Sexual Entertainment Venue (“SEV”) licence where they wish to offer “relevant entertainment” (as defined at paragraph 3.3 of the report) on a frequent basis (as defined at paragraph 3.4 of the report).
- 1.2 In this case, an application for a new SEV licence was received on 4 November 2016 from Red Apple Associates Ltd in respect of the premises known as Two Pigs, located at Church Street, Cheltenham GL50 3HA.
- 1.3 Proposed dates and times for providing relevant entertainment are on specified days coinciding with horse racing at Cheltenham racecourse:
 - The Showcase (October, 2 days, Fri-Sat) – SEV hours 8pm-4am
 - The Open (November, 3 days, Fri-Sun) – SEV hours 8pm-4am
 - The International (December, 2 days, Fri-Sat) – SEV hours 8pm-4am
 - The Festival (March, 4 days, Tues-Fri) – SEV hours 5pm-5am
- 1.4 A copy of the application form is attached at **Appendix A**. A copy of the premises layout is attached at **Appendix B** with a detail plan of the 1st floor at **Appendix C** showing where relevant entertainment is to take place. A location map is at **Appendix D** and a wider plan of the central shopping area is at **Appendix E**.

2. Implications

Legal Any applicant who is refused a licence may, within 21 days of being notified of the refusal, appeal to the local magistrates' court.

However, the right to appeal does not apply where the licence was refused on the grounds that:

- the number of sexual entertainment venues in the area exceeds the number which the authority considers is appropriate
- the grant of the licence would be inappropriate considering the character of the area, the nature of other premises in the area, or the premises themselves

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

3. Background

- 3.1 On 1 October 2010, Council approved the adoption of the amended provision of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to take effect in the borough on 1 December 2010.
- 3.2 Since the adoption, any premises that want to offer “relevant entertainment” on a frequent basis can only do so by obtaining a SEV licence.
- 3.3 Relevant entertainment is defined as any live performance or any live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).
- 3.4 Under the Act premises can provide relevant entertainment on an infrequent basis without the need for a SEV licence. An infrequent basis is defined under the Act as no relevant entertainment has been provided on more than 11 occasions within a 12 month period and no such occasion has begun within a period of one month beginning with the end of the previous occasion, and no such occasion has lasted longer than 24 hours. Any premises wishing to offer relevant entertainment more frequently are required to apply for a SEV licence.

4. Consultation

- 4.1 The applicant has advertised the application in accordance with the statutory requirements set out in Schedule 3 of the Act.

Consultation – Objections

- 4.2 In determining the application, Members must have due regard to any observations made by the Chief Officer of the Police and any other comments made by anybody else.
- 4.3 Members are to note in particular that any objection must relate to both or either of the mandatory or discretionary grounds for refusal set out below.
- 4.4 Objections made on moral grounds or values are not relevant to either the mandatory or discretionary grounds for refusal and should therefore not be considered relevant.

Consultation – Chief Officer of Police

- 4.5 The Police did not object to the application but they made comments and a list of 29 recommended conditions to be attached to the licence, should it be granted. These are included in the background papers.

Consultation – Other Persons

- 4.6 In relation to this application the licensing authority received 58 representations from residents and others. Copies of these are enclosed as background papers.
- 4.7 A summary of the salient issues raised by the objectors is below. Members are to note that the intention of the summary below is to identify the principal issues raised by the objectors. In addition to the summary, Members should read the accompanying background papers to familiarise themselves fully with all the issues raised by the objectors. Members should also refer to paragraph 8 onwards where some of the points raised are discussed further.

- (i) **The character of the relevant locality.** Several objectors have commented that the location of the premises is inappropriate for a SEV due to its proximity to:
- A place of worship and its grounds which are frequented by worshipers, school parties, visitors and families;
 - A library including a children’s library;
 - An art gallery and museum;
 - Shops including retail premises likely to be visited by children and families;
 - Nearby residential properties;
 - A retail/leisure development frequented by children and families;
 - Small housing units for vulnerable adults and care-leavers; and
 - Other businesses which might be adversely affected.
- (ii) **The nature of such entertainment** which some objectors have described as tawdry, offensive, inappropriate, degrading and misogynistic.
- (iii) **Operating times.** Some objectors have commented that a 5pm start-time for sexual entertainment is inappropriate given that nearby shops, businesses and other premises will still be open at that time.
- (iv) **The appropriateness of the premises.** Objectors have referred to the building itself and have questioned whether it has appropriate changing facilities and CCTV.
- (v) **The potential for inappropriate advertising in the vicinity such as flyers.**
- (vi) **The potential for antisocial behaviour in the vicinity.**

5. Policy Considerations

- 5.1 The council’s adopted policy statement in relation to the regulation and control of SEVs was adopted by Council on 13 October 2014 and this policy statement sets out the council’s guidance, application procedure, terms and conditions relating to the regulation of SEVs.
- 5.2 Below (para. 5.3 – 5.16) are relevant extracts from the policy to highlight relevant issues to Members. However, Members should read these in conjunction with the policy document for completeness and contextual understanding.
- 5.3 The Council does not take any moral stand in adopting this policy. The Council recognises that Parliament has made it lawful to operate a sex establishment and that such businesses are a legitimate part of the retail and leisure industries. It is this Council’s role as the Licensing Authority to administer the licensing regime in accordance with the law.

Determination (Section 10)

Mandatory Grounds for Refusal

- 5.4 A licence *cannot* be granted:
- a) to any person under the age of 18 years;
 - b) to any person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the last 12 months;
 - c) to any person, other than a body corporate, who is not resident in an EEA State or was not so resident throughout the period of six months immediately preceding the date when the application made; or

- d) to a body corporate which is not incorporated in an EEA State; or
- e) to any person who has, within a period of 12 months immediately preceding the date when the application was made, been refused that grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

Discretionary Grounds for Refusal

5.5 A licence *may* be refused where:

- a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- b) if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;
- c) the number of SEVs in the relevant locality at the time the application is made is equal to or exceeds the number which the Council consider is appropriate for that locality (nil may be an appropriate number for these purposes);
- d) the grant or renewal of the licence would be inappropriate, having regard:-
 - to the character of the relevant locality; and/or
 - to the use to which any premises in the vicinity are put; and/or
 - to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

Location of Premises (Section 11)

- 5.6 In deciding the appropriate number of premises to be licensed, the Council must consider the character of the relevant locality and what is the appropriate number of SEVs for the relevant locality. The number can be 'nil'.
- 5.7 Cheltenham is a relatively small urban borough that is predominantly residential in nature. The Council has already resolved that it is inappropriate to licence SEVs in or in the vicinity of, amongst others, residential areas. It is the Council's policy therefore that there is no locality outside of the adopted Central Shopping Area in which it would be appropriate to license a SEV. Accordingly the appropriate number of SEVs for outside of the adopted Central Shopping Area is nil.
- 5.8 The Council recognises however that the Central Shopping Area offers a more unique situation in as much as it has a much wider mix on offer, particularly in the night time economy and it may therefore be appropriate to consider applications for SEVs in the area. The Council has therefore resolved that it will not set a limit on the number of permitted SEVs in the adopted Central Shopping Area providing those premises are not near properties with sensitive uses or in sensitive locations.
- 5.9 A copy of the plan showing the Central Shopping Area is attached at **Appendix E**.

Properties with sensitive uses or in sensitive locations

- 5.10 In considering if the grant, renewal or variation of the licence would be inappropriate, having regard to the character of the relevant locality or to the use to which any premises in the vicinity

are put, the Council shall consider, inter alia, whether the grant of the application would be appropriate, having regard to:

- a) The fact that the premises are sited in a residential area;
- b) Whether the premises are sited near shops used by or directed at families or children, or on frontages frequently passed by the same;
- c) Whether the premises are sited near properties which are sensitive for religious purposes e.g. churches, mosques, temples; and/or
- d) Whether the premises are sited near premises or areas which are sensitive because they are frequented by children, young persons or families, including but not limited to educational establishments, leisure facilities such as parks, libraries or swimming pools, markets and covered markets.

Objections (Section 13)

- 5.11 When considering an application for the grant, renewal, variation or transfer of a SEV licence the Council will have regard to any observations submitted to it by the Chief Officer of Police and any objections that have been received from anyone else within the statutory consultation period.
- 5.12 Any person can object to an application provided that the objection is relevant to the discretionary grounds for refusal of a licence.
- 5.13 Objections should not be made on moral grounds or values and the Council will not consider objections that are not relevant to the grounds mentioned above.
- 5.14 Objectors must give notice of their objection in writing, stating the general terms of the objection.
- 5.15 Where the Council receives notice of any objection it will, before considering the application, give notice in writing of the general terms of the objection to the applicant. However, the Council shall not without the consent of the person making the objection reveal their name or address to the applicant.
- 5.16 Objections may only be made within the period of 28 days following the date on which the application was made to the Council.

6. National Guidance (March 2010)

- 6.1 The Government has issued non-statutory guidance to aid local authorities carrying out their functions under Schedule 3, as amended by section 27.
- 6.2 Although it is non-statutory guidance, local authorities are encouraged to have regard to the guidance when exercising their functions (although there is no statutory requirement to do so) in order to promote best practice and consistency across England and Wales.
- 6.3 Below (para. 6.4 – 6.14) are relevant extracts from the policy to highlight relevant issued to Members. However, Members should read these in conjunction with the guidance document for completeness and contextual understanding.

Meaning of Sexual Entertainment Venue

- 6.4 Paragraph 2A of Schedule 3 as inserted by section 27 sets out the meaning of a 'sexual entertainment venue' and 'relevant entertainment' for the purposes of these provisions. A sexual entertainment venue is defined as "any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer." (para 2.1)

- 6.5 The meaning of ‘relevant entertainment’ is “any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means).” An audience can consist of just one person (e.g. where the entertainment takes place in private booths). (para 2.2)

Refusal of a Licence

- 6.6 When considering an application for the grant, renewal or transfer of a licence the appropriate authority should have regard to any observations submitted to it by the chief officer of police and any objections that they have received from anyone else within 28 days of the application. Any person can object to an application but the objection should be relevant to the grounds set out in paragraph 12 for refusing a licence. Objections should not be based on moral grounds/values and local authorities should not consider objections that are not relevant to the grounds set out in paragraph 12. Objectors must give notice of their objection in writing, stating the general terms of the objection. (para. 3.23)
- 6.7 When determining a licence application, the local authority must have regard to any rights the applicant may have under Article 10 (right to freedom of expression) and Article 1, Protocol 1 (protection of property) of the European Convention on Human Rights. (para. 3.30)
- 6.8 The Provision of Services Regulations 2009 amended Schedule 3 to the 1982 Act to state that, if having considered an application for the grant, renewal or transfer of a licence, the appropriate authority decides to refuse it on one or more of the above grounds, it must provide the applicant with reasons for the decision in writing. (para. 3.31)

Relevant Locality

- 6.9 Paragraph 12(3)(c) and 12(3)(d) of Schedule 3 allow appropriate authorities to refuse applications on grounds related to an assessment of the “relevant locality”. A licence can be refused if either, at the time the application is determined, the number of sex establishments, or sex establishments of a particular kind, in the relevant locality is equal to or exceeds the number that the authority considers appropriate for that locality; or that a sex establishment would be inappropriate having regard to the character of the relevant locality, the use to which any premises in the vicinity are put or the layout, character or condition of the premises. Nil may be the appropriate number. (para. 3.32)
- 6.10 Schedule 3 to the 1982 Act does not define “relevant locality” further than to say that:
- a. in relation to premises, it is the locality where they are situated; and
 - b. in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment. (para. 3.33)
- 6.11 Clearly, the decision regarding what constitutes the ‘relevant locality’ is a matter for the appropriate authority. However, such questions must be decided on the facts of the individual application. (para. 3.34)
- 6.12 Therefore, it is reasonable and potentially useful to future applicants, for a local authority to decide in advance of receiving any applications that certain areas are, or are not, appropriate locations for a sex establishment or a particular number of sex establishments. Nevertheless, all applications must be considered on their individual merits. (para. 3.35)

Licence Conditions

- 6.13 Once the appropriate authority has decided to grant a licence they are able to impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual licence under paragraph 8 of Schedule 3 or standard conditions applicable to all sex establishments, or particular types of sex establishments, prescribed by regulations made by the appropriate authority under paragraph 13 of Schedule 3. (para. 3.39)

The Services Directive

- 6.14 Schedule 3 to the 1982 Act constitutes an authorisation scheme under Article 9 of the EU Services Directive 2006/123/EC (“the Directive”) which was implemented in the UK by the Provision of Services Regulations 2009 (“2009 Regulations”), which came into force on 28th December 2009. Local authorities must ensure they comply with the Regulations when applying the licensing provisions in Schedule 3. (para. 3.53)

7. Probity in Licensing (relevant extracts)

- 7.1 Cheltenham Borough Council’s Licensing Committee operates in a quasi-judicial way in determining contentious licensing applications and related matters.
- 7.2 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.
- 7.3 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 proportionate, rational and reasoned
 - Be made in a way that engenders public confidence
- 7.4 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.
- 7.5 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.
- 7.6 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.

8. Officer Comments

8.1 When determining an application for a sexual entertainment venue licence, the committee must have regard to the relevant statutory provisions, the council's adopted policy, the relevant guidance issued by the Home Office and any objections or comments made by the Chief Officer of Police and other persons.

8.2 **Police comments and conditions** – Gloucestershire Constabulary have provided a list of 29 conditions that they recommend should be applied to the licence; these are listed in the background papers. Members are advised that most of those recommended conditions are covered by the Council's standard conditions for sexual entertainment licensing, as contained in the adopted policy, and as such will be applied to the licence as a matter of policy unless the committee decides to disapply or amend them. However the Constabulary have requested the following additional condition which is not covered by standard conditions. Officer comments follow in italics.

Sexual entertainment during Cheltenham Festival does not commence before 1800 hours. *Cheltenham Festival refers to the annual 4 day 'Gold Cup' racing festival in March. The applicants have applied for sexual entertainment to be authorised from 17:00 hours.*

8.3 **Other persons** – In relation to this application, 58 representations were received from local residents and others. A number of issues have been raised by objectors that require clarification:

a) **Moral objections** – Members are to note that moral objections cannot be considered relevant because the council recognises that Parliament has made it lawful to operate a sex establishment and that such businesses are a legitimate part of the retail and leisure industries. It is this council's role as the licensing authority to administer the licensing regime in accordance with the law.

Furthermore moral objections are not relevant to the either the mandatory or discretionary ground for refusal (see para. 5.3 & 5.4) and can therefore not be considered relevant.

b) **Antisocial behaviour and the safety of patrons** – Members will note that some objectors have stated that sexual entertainment can cause or attract antisocial behaviour and have indicated concerns regarding people's safety.

Members are advised that the Chief Officer of Police is a statutory consultee for SEV applications and the police have not objected, although they have requested a number of conditions to be applied to the licence (see para 8.2). No evidence has been provided to show that providing sexual entertainment at this venue will cause or attract antisocial behaviour.

Notwithstanding this application for a SEV, Members are reminded that the venue is licensed under the Licensing Act 2003 for the sale / supply of alcohol and the performance of live and recorded music. As such, whether or not they are granted a SEV licence, the operators of the premises are obligated to promote the 'licensing objectives' under that legislation: (i) the prevention of crime and disorder; (ii) public safety; (iii) the prevention of public nuisance; and (iv) the protection of children from harm.

c) **The character of the relevant locality and the physical condition of the building** – Both of these factors are relevant considerations because they relate to the discretionary grounds for refusal. However in relation to comments made about whether there are appropriate changing facilities and CCTV in the premises, Members will note that the standard conditions make these a requirement for all licensed SEVs.

d) **Flyers, signage and advertising** – In relation to comments concerning the potential distribution of inappropriate flyers, Members are advised that the standard conditions prohibit licensed SEVs from distributing flyers and similar promotional material within the town.

Members are advised that whilst all licensed SEVs in Cheltenham are prohibited from distributing flyers advertising their business, the same restriction does not apply to those premises that provide infrequent sexual entertainment under the statutory exemption without a SEV licence.

In terms of general signage and advertising on the building, Members' attention is drawn to general condition no. 4 of the council's standard conditions, which reads as follows:
There shall not be displayed outside the premises, in the immediate vicinity, or elsewhere within the Town any advertisements, photographs or images that indicate or suggest that striptease-type dancing takes place on the premises.

- e) **Hours of operation** - Members will note that the applicants have applied for certain hours of operation, as listed at para. 1.3, and that the Constabulary have asked for an amendment to those hours. Members are advised that the committee has the discretion to set the hours it deems appropriate based on the individual merits of the application. Therefore if the committee decides that the hours requested by the applicants are inappropriate they can set other hours, but should provide comprehensive reasons for doing so.
- f) **Each application determined on its merits** – Members will note that objectors have made reference to incidents elsewhere in the country and a study carried out in Glasgow, but should bear in mind that this application should be determined on its merits and not on how premises elsewhere have operated.

- 8.4 The council's adopted policy on the licensing of SEVs defines areas that it considers appropriate for the licensing of SEVs and other areas in which it has resolved to adopt a zero limit.
- 8.5 In relation to this application, the premises is located within the designated Central Shopping Area, an area that the council has decided is appropriate for the consideration of applications for SEVs, providing those premises are not near properties with sensitive uses or in sensitive locations (see para. 5.9). The council has not set a limit on the number of SEVs that may be permitted inside the Central Shopping Area. See **Appendix E** for reference.
- 8.6 Members are to note that the policy must not fetter the committee's discretion to consider the individual circumstances and merits of the application but equally the committee must not arbitrarily deviate from its policy without good reason.
- 8.7 The licensing committee, in making its decision, should provide adequate and comprehensive reasons.
- 8.8 Having considered all the relevant matters, the committee must decide whether to:
 - a) Grant the application as applied for;
 - b) Grant the application subject to any additional terms, conditions and/or restrictions that are either specific to the licence or standard conditions; or
 - c) Refuse the application.

Background Papers

Service records

Sexual Entertainment Venues: Guidance for England and Wales (March 2010)

Cheltenham Borough Council Sexual Entertainment Venue Policy Statement adopted October 2014

Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009

Licensing Act 2003 Premises Licence ref 12/00169/PRMMV

Contact Officer

Mr Philip Cooper

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Tel no: 01242 775200



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LICENCE APPLICATION

NOTE Please read the explanatory notes attached before completing this application form

Local Government (Miscellaneous Provisions) Act 1982 Schedule 3
APPLICATION FOR A SEXUAL ENTERTAINMENT VENUE LICENCE

PLEASE NOTE

All applicants must complete Section A.
Section B to be completed if applicant is a company.
All applicants must sign declaration in Section C.

SECTION A

Application type (please tick ✓) New application Renewal of existing licence
 Transfer of licence Variation of licence

If renewal please state existing licence number

Applicant's details:
Surname

Burrows

Forename(s)

Steven John

Address:

Date of birth [dd/mm/yyyy]

National Insurance number

Daytime telephone number

Fax number

Email address

Agent acting on behalf of applicant
(eg solicitor) if applicable:

Solicitor

Name of agent:

Roger H Bishop

Address of agent:

Wall James Chappell

15-23 Hagley Road

Stourbridge

Post code DY8 1QW

Daytime telephone number of agent

01384 371 622

Email address of agent

r.bishop@wjclaw.co.uk

Name under which the business is to
be known and traded as

Red Apple Associates Ltd

Address of premises for which this
application is made

Two Pigs

Church Street

Cheltenham

Gloucestershire

Post code GL50 3HA

For what purpose do you intend to
use this premises?

eg sex shop, sex entertainment venue

Sexual entertainment venue

Do you have planning consent to use
the premises stated above for the
purpose intended?

(please provide details, and forward appropriate
documentation to evidence this)

N/A

If this application relates to a vehicle,
vessel or stall please give description
(including site to be situated on)

Proposed days and hours of
operation

(please tick and specify times for each day
using the 24 hour clock)

eg: 23:00 that day or 02:00 on the
day following

<input type="checkbox"/>	Sunday -	from	until	hours
<input type="checkbox"/>	Monday -	from	until	hours
<input type="checkbox"/>	Tuesday -	from	until	hours
<input type="checkbox"/>	Wednesday -	from	until	hours
<input type="checkbox"/>	Thursday -	from	until	hours
<input type="checkbox"/>	Friday -	from	until	hours

See attached

Saturday - from _____ until _____ hours

Have you ever been convicted by a Court for any offence which is not now spent under the terms of the Rehabilitation of Offenders Act 1974?

Yes
 No
(please tick ✓ as appropriate)

If **Yes**, please give details
 All unspent convictions must be disclosed (if renewal application, since you last applied for a licence)

(please continue on a separate sheet if necessary)

Date of Conviction	Name of Convicting Court	Nature of Offence

Are there any criminal proceedings against you pending?

Yes
 No
(please tick ✓ as appropriate)

If **Yes**, please give full details including date of hearing and name of Court

Have you been a director or company secretary of a company involved in the ownership or operation of a sexual entertainment venue licence previously?

Yes
 No
(please tick ✓ as appropriate)

If **yes**, please give details

Were there any convictions recorded against that company?

Yes
 No
(please tick ✓ as appropriate)

If **yes**, please give details

SECTION B

To be completed if the applicant is a company

Company name Red Apple Associates Ltd

Company address Brunel House
George Street
Gloucester
 Post code GL1 1BZ

Company telephone number 01684 273 875

Company fax number _____

Company email address europeanevents@live.com

Full names and private addresses of all directors or other persons responsible for management of the company:

1	2	3
Name <u>Steven John Burrows</u>	Name:	Name:
Address:	Address:	Address:
	Post Code:	Post Code:
	Date of birth:	Date of birth:
	National Insurance no.	National Insurance no.

Any convictions recorded against that person or those persons

Name and date of conviction	Name of convicting Court	Nature of offence	Sentence (if imposed)

Are there any criminal proceedings against that person or those persons pending?

Yes

No

(please tick ✓ as appropriate)

If **Yes**, please give full details including date of hearing and name of Court

SECTION C

Declaration

All new and variation applications for sexual entertainment venue licences are considered by the Licensing Committee. Opposed applications for renewal and/or transfer will also be considered by the Licensing Committee. The applicant and/or their representative are required to attend the meeting of the Licensing Committee at which their application is due to be considered to speak in support of their application. They should be prepared to answer any questions which the Licensing Committee may wish to ask.

PLEASE NOTE

This application must be signed by the applicant personally or, in the case of a company, by a director or other duly authorised agent of the company.

I/We confirm that the contents of this application are true and correct.

I/We agree that if a licence is granted by Cheltenham Borough Council for a sexual entertainment venue licence, that I/we will comply with all Acts, Byelaws, Regulations and Conditions relating thereto and for the time being in force.

I/We understand that non-compliance with any relevant Acts, Byelaws, Regulations and Conditions will prejudice the continuance of any licence granted.

I/We understand that the council may utilise the information contained herein for internal purposes and may disclose the information to persons or organisations in accordance with the council's registration under the Data Protection Act 1998.

I/We, the undersigned, hereby apply for registration as a sexual entertainment venue licence within the Borough of Cheltenham and I/we declare that to the best of my/our knowledge and belief the foregoing statements are true and correct.

I/We understand that this licence will expire 1 year after it has first been granted or after a period of time decreed by the Licensing Committee, and a newly completed application form will need to be submitted to the local authority **two months before the expire of the existing licence, together with the licence fee current at that time.**

I/We further understand that once the completed application form has been submitted it will be submitted to environmental health, planning, building control and community safety officers of Cheltenham Borough Council together with the local police, fire service, parish councils, ward members or any other interested party for comment.

I/We understand that I/we must submit a copy of this application form to the chief officer of police for the area in which the premises are located and all other Responsible Authorities.

Signature of applicant

Name (s) in BLOCK CAPITALS STEVEN JOHN BURROWS

Capacity in which application is signed Director
(see note above)

Date 27/9/16

How to apply for a sexual entertainment venue licence

This application and the appropriate supporting documentation should be forwarded to the Licensing Team at the address on the front of this form.

Please read the guidance notes that accompany this application form. Failure to comply with the application procedure could result in a licence not being granted.

The following are required in order to proceed with the application:-
please tick the boxes below ✓ to confirm you have sent them

- **Application form** (all sections completed)
- **Copies of plans** delineating the specific rooms or premises to which this application relates, with escape routes (in case of emergency) indicated.
- **Copies of a location plan** showing the vicinity of the proposed premises with the premises themselves clearly marked.
- **Planning consent documentation** as confirmation that you have permission to use the premises for the purpose for which you are making this application.
- Any **additional information** in support of the application.
- **What you need to show to establish your identity**
This will be required from the applicant named in Section A
- **Driving Licence original(s) for inspection (paper and photo card counterpart)** which will be photocopied by an officer from Licensing Team. *If you do not have a valid photo card driving licence then a valid passport must be shown to the Licensing Officer.*
- **If none of the above are available then please supply one of the following original documents-**
 - Original birth certificate (or similar official document if born outside UK)
 - P45 / P60 Statement
 - Marriage certificate, passport

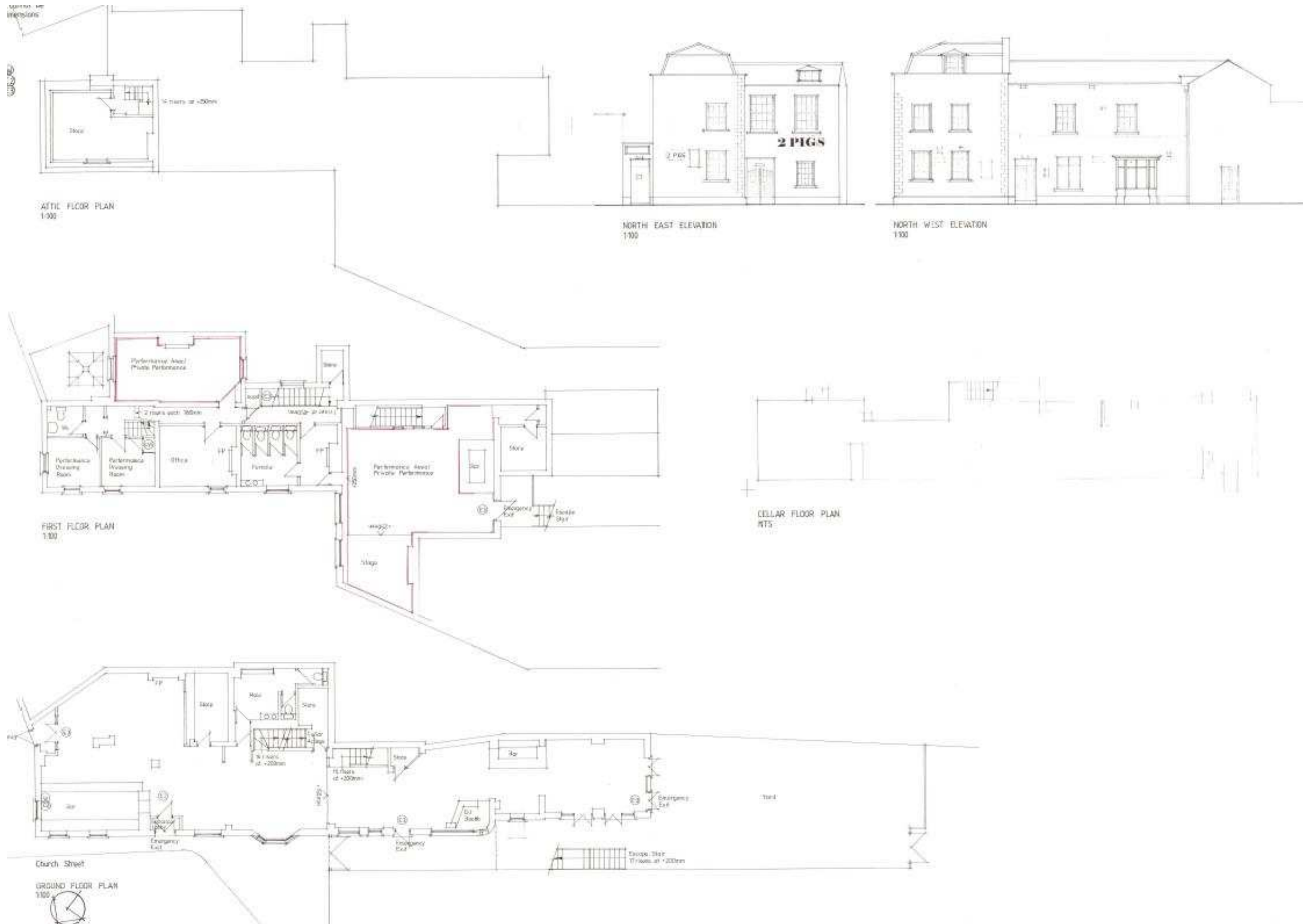
If you have any queries or require assistance in completing the application form, please contact our Licensing Team at the address on the front of this form, or telephone 01242 775200.

Proposed days and hours of operation are to be during Cheltenham Racecourse Festival dates

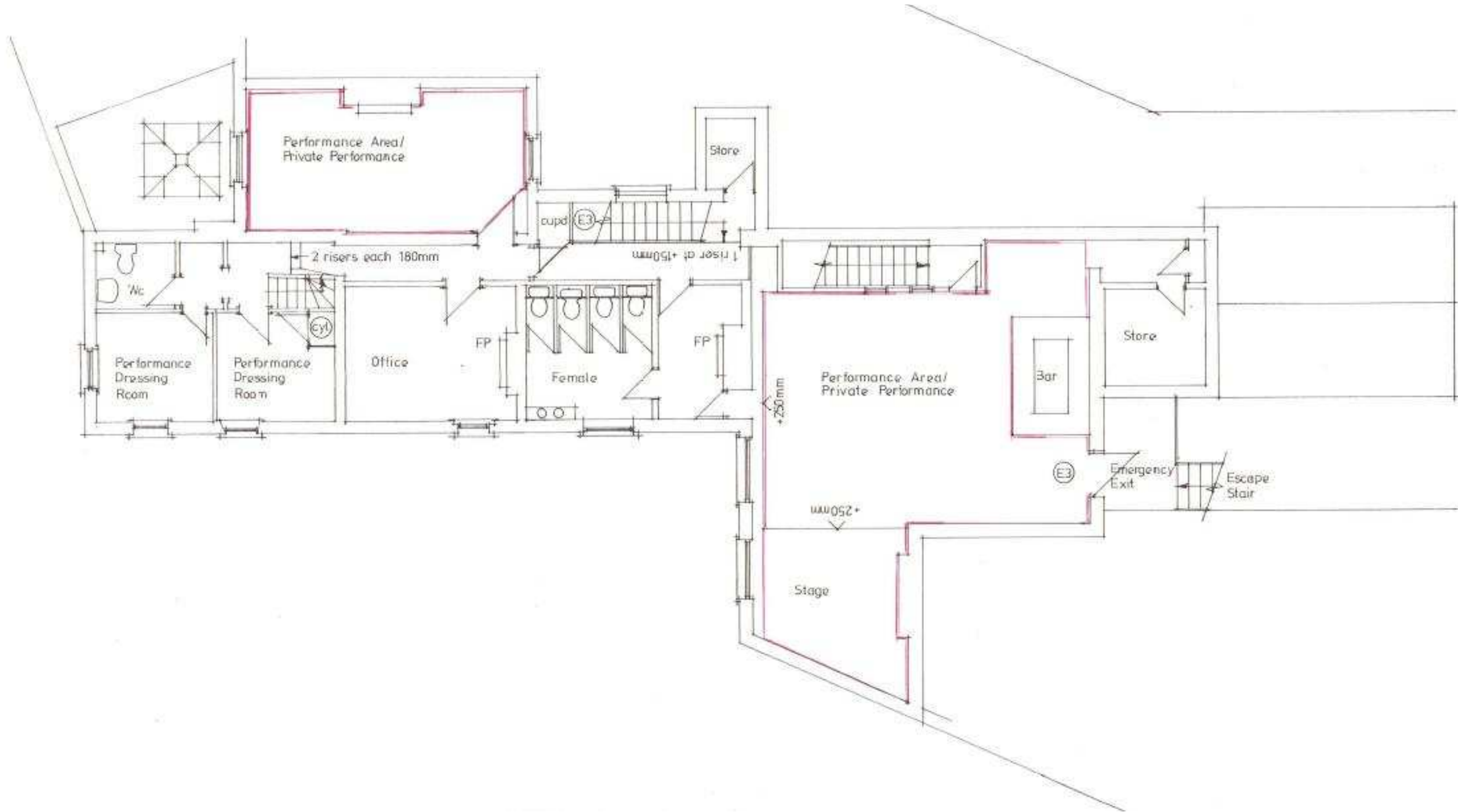
During the Showcase, Open and International, proposed opening hours will be 8pm to 4am.

During the Cheltenham Festival for 13-18 March, proposed opening hours will be 5pm to 5am

Appendix B – Premises layout



Appendix C – First floor plan detail



Appendix D - Plan showing the location of the premises

