



CHEL TENHAM

BOROUGH COUNCIL

Notice of a meeting of Licensing Committee

Wednesday, 12 April 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 12 January 2017.	(Pages 3 - 14)
5.	APPLICATION FOR A STREET TRADING CONSENT Mr Edward Danter	(Pages 15 - 24)
6.	REVIEW OF LICENSING COMMITTEE STRUCTURE AND OPERATION Report of Licensing Team Leader	(Pages 25 - 30)
7.	BRIEFING NOTE Licensing up-date on new legislation as of 6 April 2017	(Pages 31 - 34)
8.	ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION	
9.	DATE OF NEXT MEETING Wednesday 10 May 2017 at 6pm	

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

Thursday, 12th January, 2017

6.00 - 9.20 pm

Attendees	
Councillors:	Wendy Flynn (Chair), David Willingham (Vice-Chair), Mike Collins, Tim Harman, Adam Lillywhite, Dennis Parsons, Diggory Seacome, Max Wilkinson and Pat Thornton
Also in attendance:	Vikki Fennell, Louis Krog and Phil Cooper

Minutes

1. APOLOGIES

Apologies were received from Councillor Paul McCloskey.

2. DECLARATIONS OF INTEREST

Councillor Dennis Parsons declared that he was a close associate of an employee of Woody's (agenda item 5) and thus would not be voting on this item.

3. PUBLIC QUESTIONS

None.

4. MINUTES OF LAST MEETING

The minutes of the last meeting held on 9 November 2016 were approved and signed as a true record.

In reply to a matter arising from the minutes, the Legal Officer informed members that it was still obligatory for a paper copy of the minutes to be signed as it was a regulatory committee.

5. REVIEW OF STREET TRADING CONSENT

The Licensing Team Leader, Louis Krog, introduced the report regarding the review of Mr Adrian Wood's, trading as Woody's Fruit & Veg, street trading consent. Mr Wood has had a street trading consent to sell fruit and vegetables from the High Street entrance to the Henrietta Street car park since April 2016. Appendix 1 showed the location of the trading pitch. The trading location is a mixed used space with a mix of vehicular and pedestrian access. In July 2016 the council undertook a risk assessment of the location to assess its continued suitability for street trading. A copy of the risk assessment was attached at Appendix 2. The risk assessment highlighted risks associated with the mixed use nature of the location and as a consequence, officers considered it appropriate to seek a review of the suitability of this location for the purpose of street trading. In addition, the location had also resulted in noise complaints from local residents, complaints about the use of Mr Wood's van restricting access to the car park, the trading location restricting access to the bicycle racks located near the car park entrance and difficulties associated with

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commercial licences since Mr Wood was occupying Cheltenham Borough Council owned land.

The Officer continued that prior to his current location Mr Wood had two trading pitches, one on Church Street and one on the High Street, which had proved unsuitable for the type of operation and thus Mr Wood had consolidated into one trading location. The Officer informed members that as of today, the day of the meeting, he had been advised that the area to the side of the disused toilet block on the corner of Ambrose Street was available for Mr Wood.

The Officer advised the committee to consider whether to revoke the consent with immediate effect if they felt it no longer a safe place to trade from or to take no further action.

In reply to questions from members the Officer confirmed that members could leave the consent in place and add conditions or they could defer if they so wished. He advised that there had not been any accidents relating to that trading pitch in the last nine months since Mr Wood had been there and that the risk assessment was based on the opinion of a professional Health and Safety Officer.

Mr Richard Knightley was in attendance representing Mr Adrian Wood who was also present. The Chair invited Mr Knightley to speak in support of the review. Mr Knightley informed members that Mr Wood had been running a successful family business for many years, originally based in a retail unit on the Lower High Street prior to the development of the Brewery and subsequently on the High Street near the Beechwood Arcade and at Church Street, until both of these became unavailable. He had been trading near Henrietta Street car park since April 2016 and employed four full time and two part time staff, who would become redundant if Mr Wood had to leave this site with no alternative. Mr Wood sold healthy produce and other retailers in the area supported Woody's being at this location as it brought more footfall to this part of the town and benefitted other retailers. Mr Knightley continued that many letters of support had been received in favour of Woody's remaining at this site from businesses in the area, the St Paul's Residents Association and the local MP. Mr Knightley confirmed that they had been working with the council and were in discussion about the removal of the bike racks, the closure of one entrance to the car park, making it pedestrian access and the provision of planters and said that Mr Wood was happy to pay for this and eradicate any perceived risk, but that he needed assurance from the council that having invested in this he would be allowed to stay.

Mr Knightley added that he felt the risks as set out in the risk assessment were over emphasised and that the fruit and veg stall was no further forward than the bike racks which they had been promised would be removed since Mr Wood first started trading there. He continued that the van was parked in the car park at a cost of £16.50 a day once it had unloaded and did not restrict access to the car park. He further added that all recycling went to Biffa, so nothing was left on site and it was cleared on a daily basis.

Mr Knightley said he hadn't been aware of the Ambrose Street option becoming a possibility. However he felt that the pitch which was alongside the disused toilet block was not physically workable at present as there was a telephone

box, bike racks and even less space for a van to unload. It was also further down the High Street which was not favourable and a lot of money would need to be spent to improve this location, which they felt was worse than the present location. Woody's would rather pay the improvement costs to stay where they were. He stressed they were happy to have ongoing discussions and stay in-situ until something else was sorted if that became necessary.

The Licensing Officer circulated a plan drawn up by the Council's public realm team of the proposed improved scheme for the present location, which included new planters to stop vehicles, the removal of the bike racks and marking of the limit of the pitch.

The Chair proceeded to invite Jon Walklett, councillor for the St Paul's ward to address the committee. Councillor Walklett praised Woody's for being the only sellers of fresh fruit and veg in that part of town enabling low income families to purchase healthy produce and reiterating that Woody's brought trade in to that area. He felt the risk assessment was overblown as all car parks had some element of danger and pointed out that due to the location cars approached this area more slowly in any case. He referred to the complaint by local residents of noise and informed the committee that he had door knocked over 30 local residents and no one had complained about noise. Councillor Walklett expressed his view that to revoke without reconsideration was not acceptable and asked the committee to take no further action.

A member asked Mr Wood if he had been aware of the risk assessment taking place, to which he replied he hadn't been, it had just happened. Mr Wood continued that he thought he was doing okay in this new location. He unloaded between 7-7.30am, by 8am the van was parked in the car park. He knew there had been concern about the stock van and packing up at night, but this hadn't been helped by the non-removal of the bike racks and bollard, which were still there 9 months after he occupied this site. He felt he didn't exceed his pitch size, but would be happy with white lines to mark his pitch and said he paid the increased pitch rental.

Mr Knightley concluded that Woody's would prefer to stay where it was and to work together with the council on the proposed improvement scheme which was a good solution to something that was not really a problem. They would be happy to pay costs and if necessary would be willing to look at alternatives.

Members discussed whether to defer pending ongoing discussions on Ambrose Street or another location for Mr Wood or until the proposed changes to the present site were made and to come back to committee in 3 months' time. Some members felt deferment would create more uncertainty for Mr Wood and stated they were happy for him to remain where he was and to continue trading whilst alterations were going on. One or two members felt that the risk assessment was wrong and that the odds for an incident were low. Others were concerned as the council could be liable as it was their land. One member was concerned about the management of the pitch but was assured by the applicant that this site was better kept. In general members supported the proposals put forward to enhance the safety of the area and thought this was a good solution. It was suggested to recommend that Property Services be asked to make it safe and the Licensing Officer pointed out that the scheme would require planning consent which he didn't know how long it would take for this to be granted. It

was confirmed that Mr Wood's licence was renewed every 12 months and would be due for renewal in April, so the matter would come back to committee then, but meanwhile to ask officers to work with Mr Wood to address some of the issues.

The Chair moved to vote on 1.5.1 of the report, being that no further action be taken in relation to this consent.

Upon a vote it was 5 for, 0 against, 3 abstentions.

RESOLVED THAT, no further action be taken in relation to Mr Adrian Wood t/a Woody's Fruit & Veg street trading consent and that he continue to work with officers to reduce risk.

6. REVIEW OF A PRIVATE HIRE DRIVER'S LICENCE

The Licensing Team Leader, Louis Krog, introduced the report regarding the review of Mr Keith David Lewis' Private Hire Driver's Licence, PHD116. Mr Lewis' licence is due for renewal on 8 December 2019, however he had a number of driving convictions which were set out in the background papers. The Officer informed members that Mr Lewis had been before the committee twice before and had also failed to inform the Licensing team of his convictions on two occasions. Mr Lewis now had 12 points on his licence for speeding and had been disqualified in September 2015 for totting up, however Mr Lewis was appealing the disqualification with the hearing due to be heard on 13 January 2017.

The Officer advised the committee to consider whether in the light of these convictions, they felt that Mr Lewis remained a fit and proper person to hold a private hire driver's licence. If the committee revoked the licence, they could decide to revoke with immediate effect in the interest of public safety.

The Officer informed the committee that Mr Lewis was to have been represented, but that his lawyer had not been able to attend at the last minute and Mr Lewis had requested a deferment. The Chair took in to account the letter received from Mr Lewis' barrister but stated that, in the interests of public safety, the review should be heard at this meeting.

In reply to questions from members, the Officer confirmed that Mr Lewis was still insured to drive and that whatever the outcome was of the Court hearing on Mr Lewis' disqualification, this did not have any impact on the decision made by the committee as to whether Mr Lewis was fit and proper to hold a licence. The Officer referred members to 4.5 of the report stating that the pending appeal was not relevant to the committee's determination of the DVLA penalty points. Mr Lewis was appealing the disqualification, not the penalty points. The Officer also reminded members of the requirement that taxi drivers have to declare any convictions to the council and that Mr Lewis had failed to do this on two separate occasions.

A member questioned the length of time that had passed between the conviction in September 2015 resulting in 12 points and the disqualification for totting-up in September 2016. The Officer did not have this information and the question was directed to Mr Lewis, who replied he had been appealing against the speeding offence and this was the length of time taken by the legal process.

Mr Lewis also confirmed that he had taken the DVSA taxi driving test at this own expense as stipulated by the Licensing Committee when Mr Lewis appeared before them in January 2016.

The Chair invited Mr Lewis to speak and Mr Lewis introduced Mr Victor Witham, the owner of Spa Tax, who accompanied him. Mr Lewis informed the committee that he didn't report the points to the council as he was appealing them and also waiting for the outcome of the case to be heard the following day. He felt it was unfair until he knew the outcome.

In reply to a question as to why Mr Lewis hadn't declared his previous points, Mr Lewis remarked that he didn't know he had to tell the council every time. When asked if he knew about the offence in September 2015, when he came before the committee in January 2016, Mr Lewis replied that he didn't tell the committee as there had been a mix up with the paperwork which he didn't receive until later in January. Mr Lewis further added that he thought he was appealing both the points and the disqualification, although he now knew it was only the disqualification. When asked what speeds he was driving, Mr Lewis replied 33 and 37 in a 30mph zone and that he didn't know the other two.

The Licensing Officer re-confirmed to the committee that the Crown Court appeal on 13 January was against the sentence of disqualification, not the points, but that the committee should consider the number of points in their decision.

Mr Lewis' employer, Mr Witham, stated that the offences had been caught by speed cameras and that when working nights with possible drunk people in the car, you were looking at them and not looking out for speed cameras. He said he had known Mr Lewis for 40 years and that he was not a dangerous driver.

There being no further questions or debate the Chair moved to vote.

Upon a vote on 1.3.1 of the report that Mr Lewis' licence be continued with no further action, it was 0 for, 9 against.

Upon a vote on 1.3.2 of the report to revoke Mr Lewis' licence, it was 9 for, 0 against.

Upon a vote on 1.3.3 of the report to revoke with immediate effect, it was unanimous with 9 for, 0 against.

RESOLVED THAT, Mr Keith David Lewis' private hire driver's licence be revoked with immediate effect in the interest of public safety.

The Legal Officer advised Mr Lewis that he would receive a decision letter and that he could appeal within 21 days of the date of the letter and that he could not drive as a private hire taxi with immediate effect.

7. APPLICATION FOR A SEXUAL ENTERTAINMENT VENUE LICENCE

The Licensing Officer, Phil Cooper, introduced the report regarding an application made by Red Apple Associates Limited for a sexual entertainment venue (SEV) licence at the premises known as the Two Pigs in Church Street,

Cheltenham. The proposed dates and times for providing the entertainment coincided with racing at Cheltenham racecourse on 11 days, these being 2 days at the October meet, 3 days at The Open in November, 2 days at the December meet, with the licence from 8pm to 4 am on these 3 occasions, and for the 4 days at the Festival in March, with the licence from 5pm to 5am.

The Appendices A to D of the report included a copy of the application, plans of the internal layout of the premises and a location map of the premises. Appendix E showed the central shopping area. Copies of the Eroticats' house rules and crime and incident data for the last 12 months relating to the vicinity of the Two Pigs had also been circulated.

The Officer stated that the premises were located within the council's designated area to be suitable for the consideration of sexual entertainment venue licences, provided that the premises were not in sensitive locations or near properties used for sensitive purposes. He continued that during the statutory consultation process comments were received from Gloucestershire Constabulary which were set out in the background papers. These included a number of recommended conditions, one of which was to delay the start time for sexual entertainment during the March Festival to 6pm rather than 5pm. In addition to these, 58 objections were received from other people, which were also contained in the background papers. The grounds for objections included the character of relevant locality and the proximity of properties of a sensitive or religious nature.

The Officer advised members that the application must be decided on its own merits and that the only grounds for a refusal of a sexual entertainment licence were set out in 5.4 and 5.5 of the report. On consideration of all the relevant matters, members needed to decide whether to grant the application as applied for; to grant the application subject to additional terms, conditions or restrictions; or to refuse the application.

A member requested that the statutory legal exemption for sexual entertainment be explained. The Officer confirmed that since 2010 under new legislation, any licensed premises can provide sexual entertainment up to 11 occasions a year, for up to 24 hours on each occasion and with a calendar month in between each occasion, without a sexual entertainment venue licence or having to inform or get permission from the council. The Officer confirmed that the Two Pigs had done this in the past on a number of occasions and had always informed the council, although not obliged to, and no complaints had been received. To further clarify in response to another question, a Temporary Events Notice (TENs) covered the sale of alcohol and provision of relevant entertainment such as the performance of dance as in a nightclub for one day only with timing restrictions based on the alcohol licence provision.

Members were also reminded that as mentioned in the report, the Government has made it lawful to operate sex establishments and they were a legitimate part of the retail and leisure industries and that moral objections were not grounds for refusal. In reply to a question, members were informed that nearby retail shops closed at 6pm, the children's library was open until 7 pm on alternate days and 5.30pm on other days, The Wilson closed at 5.15 or 7.45 on Thursdays and in The Brewery pubs and restaurants could be open until midnight.

It was confirmed the premises fell within the central shopping area of the town where no limit was set on the number of SEVs and which allowed SEVs in this area to be considered providing those premises were not near properties with sensitive uses or in sensitive locations. As these premises were situated near a church, shops and restaurants used by families and a children's library, members were advised to consider the relevant locality and everything around it as a whole.

In reply to a question about the previous sexual entertainment premises, Fantasy, and whether it would be using its licence for the racing festival in March, the Officer stated that its SEV licence was due to be renewed before the Festival and as yet no application had been received, although there was still time. It was however pointed out that Fantasy was no longer operating and its alcohol licence had also been suspended.

The Officer confirmed to members that it was easier to monitor and control premises with a SEV licence, rather than under the statutory exemption whereby sexual entertainment could move from one venue to another each night. A SEV can have conditions imposed on it and be more robust and regulated, whereas in the other scenario there are no conditions only a code of conduct. However the Officer pointed out that if the SEV licence was granted for this venue, other establishments could still apply for exemption, but the Two Pigs could not.

The Chair invited Mr Roger Bishop, Solicitor for the applicant to speak in support of the applicant. Also present was Mr Steven Burrows of Red Apple Associates, which traded as Eroticats, Mr Nicholas Binding, the Licensed Premises holder of the Two Pigs and Ruby Stephens, the 'house mother' who would look after the performers.

Mr Bishop reiterated to members that a licence for only 11 days was being asked for and stressed that the Police had no objections, subject to some conditions which they were happy to accept including the change of time. He pointed out Eroticats had regularly used the Two Pigs under temporary notices / exemptions and there had been no problems or complaints. He stated that Mr Burrows had managed premises successfully for 14 years, he had held a personal licence since 2004, was a Designated Premises Supervisor and was SIA security registered and would be at the venue on the days concerned and Mr Binding had been the licence holder for 10 years. Mr Bishop accepted that although the premises were within the designated shopping area that there were sensitive locations nearby, but stressed it was only 11 days and that the church would be closed during the hours requested. He informed members of an application that was granted by Swansea council for a full licence for a strip club that was also next to a church. Mr Bishop re-emphasised to members the mandatory or discretionary grounds for refusal and reported that the rules of the club had been enhanced, especially in respect to the house mother. Mr Bishop advised that Fantasy was being offered for a new lease and the chances of it re-applying for a SEV licence were virtually nil, so there would be no other sexual entertainment venue in town. He purported to how many people racing attracted to the town and that a well-run establishment of this nature with stringent conditions would assist the authorities. He said that the report was balanced and well written.

In reply to questions from members, the Solicitor or applicant replied as follows:-

- Mr Burrows was not the Designated Premises Supervisor for the Two Pigs, but had been involved with the Two Pigs for just over 5 years in connection with Red Apple Associates.
- In the day time the Two Pigs was a pub and table top gaming centre. On Fridays and Saturdays only it was a night club, open from 8 or 10pm until 6am. The Two Pigs had a good reputation and zero tolerance to under-age drinking.
- Standard identification of intoxication of any sort was carried out and if any workers were found to be intoxicated they would be stopped from working.
- No cash was allowed to exchange between performers and clients, only tokens were used.
- There was an enclosed outside courtyard where the performers could smoke or vape, which was not visible from the street and performers were not scantily clad outside, this was in the rules.
- The changing / rest rooms for the performers would be cleared out, seating provided and lockers installed, with no public access. The applicant would be happy for Officers to re-visit and inspect the area.
 - The Officer advised that the Council, Police and Fire services would inspect whilst the premises was operating as a SEV and not necessarily beforehand.
- With regard to wheelchair access, the Two Pigs was restricted in what it could do as it was a Grade 2 listed building. However they often had disabled customers and staff assisted them.

Many members were concerned and asked about the welfare of the performers with assurance that they weren't being coerced into taking part or used for prostitution. The applicant stated a number of measures that would be in place:-

- Performers were employed directly and recruitment checks carried out.
- The pre-registration process for the performers required submitting their name, phone number, email and residing addresses, drivers licence and passport.
- Performers could only leave with the consent of the House Mother, stating where they were going and what for – rule 25 of the House Rules. If they exceeded their break, ultimately they could be dismissed from working.
- Performers were not to liaise with customers or exchange addresses or telephone numbers (Rule 14). Any breach of contract would result in dismissal.
- No physical contact was allowed between performer and customer.
- Booth walkers were employed to control and monitor both inside and outside the premises.
- At the end of the shift, a minibus was provided to take the girls home or to hotels where they were staying. However Mr Burrows stated it was beyond their remit, that if after the girls finished work, they chose to go elsewhere.
- In reply to a question about the demographics of a performer, the applicant stated that they were from all walks of life, some had degrees,

were professionals or parents and the main motivation was to earn money.

Members were also concerned about publicity and advertising and that if, as stated, the windows would be blacked out so no one could see in, how would customers be attracted and know it was a SEV. The applicant replied that at present an advertising banner did not exist, but that he would be happy to work within prescribed guidelines and have guidance on signage. The Officer stated that it was a standard condition not to have images suggesting that dancing took place. The applicant was happy with just the word Eroticats as he felt the brand name was strong enough to attract customers. He continued that the signage would only be up when trading and not during the day. A member questioned the distribution of leaflets and was informed that with a SEV licence this was not permissible, whereas under the exemption it was. It was also confirmed that advertising on the Eroticats' van could be controlled under a SEV.

In reply to a final question from a member, the Applicant confirmed that the Two Pigs had operated under the statutory exemption for the last 5 years and that if the SEV licence was not granted, they would do so again this year.

The Chair invited the Reverend Canon Dr Tudor Griffiths, Rector of Cheltenham Minster, to speak. He commenced by confirming that he was aware that objections based on moral issues were not valid and that his objection was on the grounds of relevant location. He stated that the Minster was the oldest building in the town and only a few paces away from the Two Pigs. The church was a highly religious building which attracted many visitors, had a good congregation on Sundays and ministered weddings, funerals, carol singing services, evening prayers and outdoor activities all at various times of the day, which involved families and children. The church was also open in the evenings. He said that they were working together with the developers of Cheltenham House and the West End Partnership to enhance the area around the church and the alleyways to improve the image of the area and to make it more welcoming. He said the application should be refused as it was inappropriate to have a sexual entertainment venue in such close proximity to a church and sacred grounds and that the SEV was in a sensitive location and complied with the reasons for a refusal as set out in 5.10 of the report, sections c, b and d.

In reply to questions from members, Rev Griffiths appreciated the dilemma the committee faced of either granting a SEV with conditions or refusing, with the risk of lap dancing taking place across the town at various venues, but he felt granting the SEV concentrated all the activity in one area over a set period of time. The applicant's Solicitor felt his whole objection was based on moral grounds, but Rev Griffiths questioned what was or was not perceived as moral. Rev Griffiths reiterated that the application was inappropriate for this locality and a ground for refusal was the proximity of the premises to a significant religious building in the town frequented by families and children.

The Chair invited Councillor Chris Mason, ward member for Lansdown the ward in which the Two Pigs is situated, to address the committee. Councillor Mason spoke against the application citing that the venue was a stone's throw from an iconic building and that the church was not just used on Sundays or during the daytime, resulting in incompatibility of usage; that the premises was close to

McDonalds restaurant and the Brewery complex all frequented by young people and families and that the children's library was nearby and would be open. He stated that the church grounds were used for recreational purposes and that various groups were working together to improve the area, make it more attractive, to dispel the stigma of antisocial behaviour in this area and to try and make the area safer after dark which conflicted with a nearby SEV. Cllr Mason stated his was mindful of residents' objections, the main one being proximity to a place of worship and felt that if the committee granted the licence it would contravene what the community wanted to do to this area.

Again in reply to the question would Cllr Mason prefer the Two Pigs to have this kind of entertainment under the 24 hour exemption which was much less regulated and could move from place to place around the town, or to have a licence that could be regulated, he replied that a SEV licence should not be granted so it was not concentrated in a definite area. With regard to antisocial behaviour in this area, Mr Bishop pointed out that the Police had not objected and that there was no evidence to show that a SEV in this area would increase antisocial behaviour.

In summing up, the Applicant's Solicitor, reminded members that the application should be determined on its own merits and felt that the main objections were of a moral issue. He stated that these were professional people running a well regulated venue and that the Police would be better able to monitor it if all at one venue. He referred to the 29 conditions that the police had put forward and confirmed that they were happy to accept these conditions. He felt that with the conditions it would help improve the locality and stressed that they were only talking about 11 days out of 365. He referred members to points 8.4, 8.5 and 8.6 of the report and trusted they would grant the licence with the conditions and that they were happy to accept these.

The Chair opened up the application for debate at which point Cllr Wilkinson left the meeting room for a comfort break and on return was informed he would no longer be allowed to vote.

The following comments were made by Members:

- One member felt it was very clear that the location near to a church was inappropriate and felt it did not enhance Cheltenham and thus would not be supporting the application.
- It was noted that the safety of the girls appeared reasonable with registered performers, the presence of a house mother and 10-12 security men.
- It was noted that even if the licence was not granted this would not prevent sexual entertainment taking place in the town;
- It was in a central area, all in one place and thus easier for enforcement.
- It was recognised that unsavoury behaviour was inevitable during race week but if the licence was granted the council had the opportunity to introduce tougher conditions to further mitigate any harm which could be caused by the activity.
- Reference was made to paragraph 10 of Appendix 1 to the SEV Policy which stated that no person under the age of 18 should be permitted on

the premises and anyone appearing to be under 21 should be asked for identification. The Member proposed that the Challenge 25 protocol be a condition to the licence. This would mitigate harm to those under age accessing the premises.

- Reference was also made to paragraph 21 of the Appendix and it was proposed that this should also include no exchange of other electronic forms of communication e.g. email addresses, social media details.
- Members acknowledged the proximity of the proposed venue to the Minster and that the timings for sexual entertainment should be considered. It was suggested that consideration be given to modifying the SEV licensing hours to 8pm-4am for all the race meeting. Another member felt 9pm would be more suitable and another 10pm. In any case a later start time would be better in order to prevent harm to children and families who used the area and this would not be possible to impose under the standard exemption. A member felt it important that the night time and daytime economy should be kept separate. Others were in agreement with the police suggestion of 6pm for the March race meeting.
- Members acknowledged that an SEV licence would better control the activities and minimise harm than under an exemption; in any case the activities would take place behind closed doors and windows which were blacked out. Having one entrance to the premises did enable better control.
- A member recognised that if the hours were too restrictive the venue would gain more from operating under the exemption.
- A member suggested that a barrier could be erected along the alleyway between the venue and the church to prevent seeing from one area to another. It was suggested the church could do this if so wished.
- It was acknowledged that there would in any case be visitors to the pub in the alleyway who had been drinking, so a later start time of the licence would not make any difference. However one member pointed out that those wishing to visit the venue should not be kept waiting. In any case people under the influence of alcohol after a day at the races could cause equal concern.

There being no further debate the Chair moved to vote on 8.8 c of the report, being to refuse the application.

Upon a vote it was 1 for, 7 against

Having agreed to grant the application, various conditions were put to the vote:

- To amend the SEV hours for the Festival in March from 5pm to 6pm as recommended by the Police.

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

- To amend licensing condition 10, from under the age of 21, to under the age of 25
Upon a vote it was 3 for, 4 against, 1 abstention
- To add to condition 21, that performers do not exchange any electronic form of communication e.g. email addresses or social media details, with customers
Upon a vote it was 6 for, 1 against, 1 abstention
- That the Applicant to agree with officers details of signage
Upon a vote it was 7 for, 0 against, 1 abstention
- To agree the 29 conditions as specified by Gloucestershire Constabulary
Upon a vote it was 7 for, 0 against, 1 abstention

RESOLVED THAT a Sexual Entertainment Venue Licence for the premises known as The Two Pigs be granted subject to the conditions as outlined above.

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

None

9. DATE OF NEXT MEETING

Wednesday 8 February 2017 at 6pm.

Wendy Flynn
Chairman

Cheltenham Borough Council

Licensing Committee – 12 April 2017

Local Government (Miscellaneous Provisions) Act 1982

Application for a Street Trading Consent

Mr Edward Danter

Report of the Licensing Officer

1. Summary and recommendation

- 1.1 An application has been made by Mr Edward Danter for a street trading consent to sell pork rolls, turkey rolls, German & Gloucestershire Old Spot sausages and hot and cold drinks from a trading unit measuring 4.8m x 2.4m.
- 1.2 Mr Danter has applied to trade on the High Street near to the junction with Cambray Place, in the location referred to as 'High Street 6' in the council's street trading policy. **Appendix 1** shows the location of the proposed trading pitch.
- 1.3 Mr Danter has applied for consent to trade from 10 November 2017 to 7 January 2018, 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 at **Appendix 2**.
- 1.5 The proposed trading location is one that is approved for street trading in the council's adopted policy, however the type of goods being sold is not compliant with the policy and nor is the size of the trading unit.
- 1.6 The Committee can:**
- 1.6.1 Approve the application because Members are satisfied that the location, size of unit and type of goods are suitable, or**
- 1.6.2 Refuse the application because it does not comply with the provision of the street trading policy.**

1.7 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.

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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 During the consultation process the following comments were received:

Senior Environmental Health Officer, Cheltenham Borough Council

With regard to this application I see that the proposed location is identical to Christmas 2016. Last year this department received a number of complaints about this stall, one regarding odours going into a nearby clothing store and allegedly making their stock smell of cooked food, and a complaint about noise from a generator affecting another trader on the opposite side of the road from the first.

For that reason I would object to the granting of the licence on the above grounds.

Operations Manager, Cheltenham Business Improvement District (BID)

Having spoken to some of the businesses on the High Street beyond Cambray Place, towards Bath Road, about the Cotswold Carvery at Christmas, these are some views:

New Look – they are strongly opposed to the Cotswold Carvery coming back at any time. It makes their clothes smell of fried onions and they had customers complaining last year. They feel it puts people off making purchases if they think the clothes will smell.

STA Travel – they don't mind one way or the other as they keep their doors closed anyway. It neither enhances nor detracts from their operations.

Farmhouse Deli – they are opposed to it returning at any time and made an objection in 2015, which they feel was ignored. It decreases the number of customers they get because people get there, buy some food and then turn around. It takes business away from both their counter sales and food take-away sales.

Argos – they like it being there, it's convenient for them to go and buy their lunch. (Reinforcing the point about it taking business away from the other businesses selling food).

Zi Coffee Shop and Bakery – they are opposed to it being there, they lose business.

The Butcher's Block – opposed to it being there. It's unfair on other businesses in the food trade who pay rates, levy and are there all the time.

Farmhouse Deli, High Street

As registered Traders supporting the Cheltenham Bid initiative, we wish to object to any Application for a Street Trading Licence to site a mobile "Hot Roast Van" on the pedestrian thoroughfare at the junction of Cambray Place and the Strand.

Such a facility would adversely impact the whole Strand/High Street area, and present both a physical obstruction as well as an unsightly and highly smelly environment. In addition, as a mobile operation, it would breach Health & Safety and environmental Health considerations in that it cannot offer toilet facilities and there are no nearby public conveniences.

The essence of the Cheltenham Bid initiative is to present the Town Center in as advantageous a light as possible and to allow a mobile Hot Food and drink facility to be sited in such a prominent position cannot be seen as advantageous

Finally as a resident Business, we object to Traders being able to bypass the regulations and financial commitments (Business Rates/Cheltenham Bid Levy) that we are subject to and, with the number of existing food outlets in the area do not feel that another outlet is necessary or will add to the attraction of the Town Centre

We trust this objection will be recorded and upheld in the event of an Application

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 for the following reasons:
 - (i) Although the proposed location is an approved location for trading (referred to as High Street 6 in the policy), the location is not approved for the sale of hot food and drink (see 5.4 below);
 - (ii) The trading unit exceeds the permitted size for trading units in that location. The policy approves trading units up to 6m² in that location, whereas this unit, being 4.8m x 2.4m, is 11.52m².
- 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. The reason that the policy restricts certain types of trading in particular locations is that it takes into account the needs of the area and the presence of other businesses. In this location there are several established food outlets and the policy seeks to limit oversupply and thereby protect the interests of established retail businesses.
- 5.5 Whilst none of the emergency services have objected to the application, Members are advised that comments were made by a fire safety officer when the trading unit was in place last year, to the effect that having a trading unit adjacent to retail units can cause an obstruction or bottleneck if people are leaving the retail unit in the event of an emergency.
- 5.6 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.

5.7 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 and has attracted a number of objections both from relevant authorities (environmental health) and from local businesses.

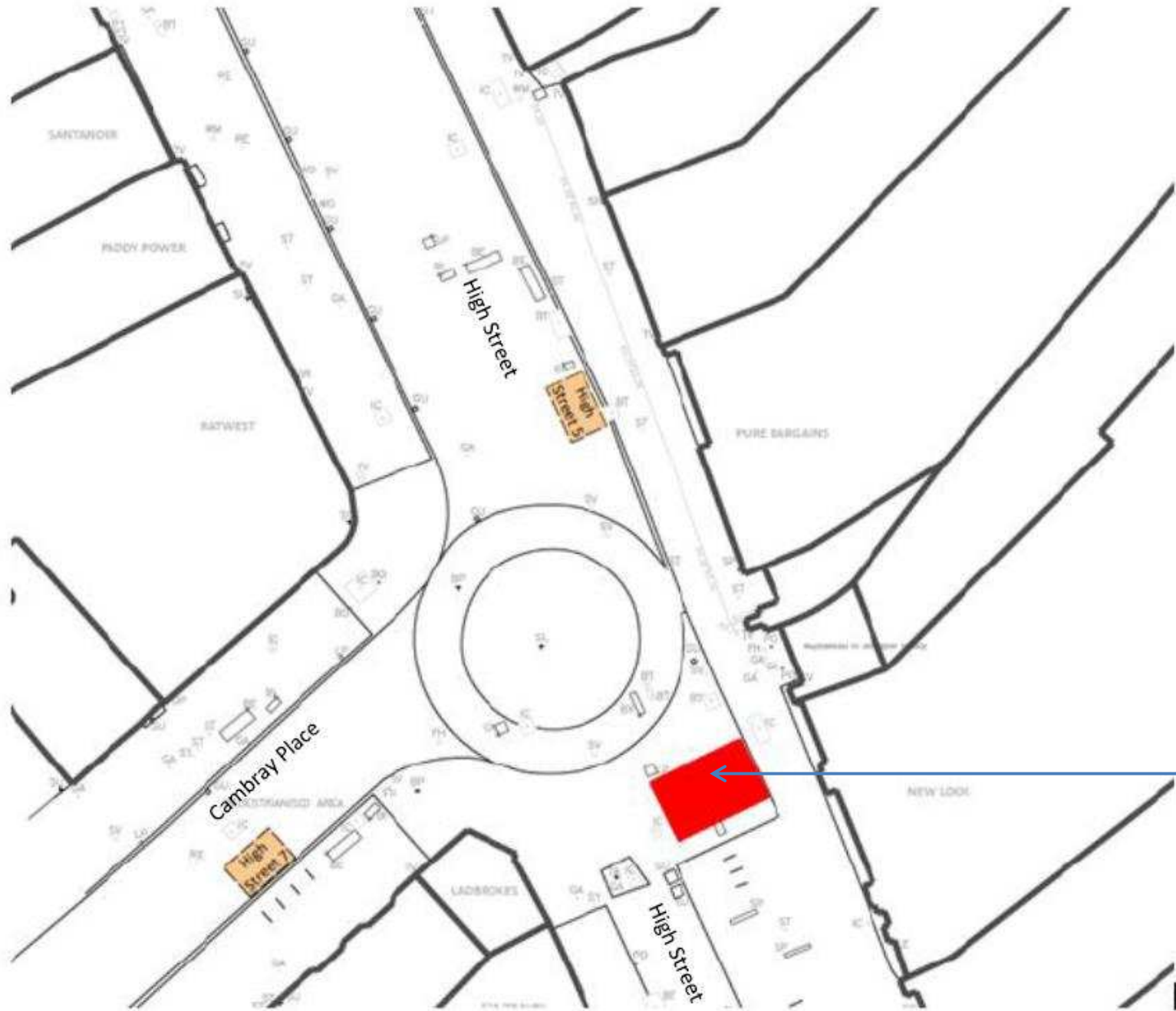
Background Papers

Service Records

Adopted Street Trading Policy

Case Officer

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Tel no: 01242 775200



Proposed trading location



Cheltenham Borough Council

Licensing Committee – 12 April 2017

Review of Licensing Committee Structure and Operation

Report of the Licensing Team Leader

1. Background

- 1.1 On 18 July 2016 Council passed the following resolution: *“This Council recognises that it is important that the makeup and operation of each of its committees is as representative of the Council as possible.*

This Council believes that in order to achieve this objective, the structure and meeting arrangements for committees needs to be kept under review.

This Council notes that, whilst the Corporate Diary was agreed earlier in the year, a new Council was elected in May 2016.

This Council further notes that its Licensing Committee has historically met on a Friday afternoon but that this arrangement is not now best suited to the requirements of many Councillors who wish to be part of the Committee.

This Council therefore determines that the start time for the Licensing Committee will be changed from 2:15pm on a Friday to 6:00pm on a weekday evening, to be arranged by the Democratic Services Department in consultation with the Chair and Vice-Chair of the Licensing Committee, commencing in September 2016.

This Council further determines that a review of the Committee’s structure and meeting arrangements be undertaken by officers in consultation with the Licensing Committee and that the outcome of this review be reported back to Council in December 2016.”

- 1.2 In accordance with the final paragraph of this resolution, a review of the Licensing Committee has now been undertaken. This report sets out the outcome of this review for the Committee’s approval.

1.3 **The Committee is recommended to:**

- 1. Approve the proposed revised structure of the licensing committee as set out in Appendix 1;**
- 2. Delegate authority to the Democratic Services Manager to implement the resolution including delegated powers to:**
 - a. Make the necessary arrangements to implement any constitutional changes;**
 - b. Make the necessary arrangements, in consultation with the chair and vice-chair of the Committee, to implement the new Licensing Committee structure; and**
 - c. Ensure the special responsibility allowances for the Licensing Committee are reviewed by the Independent Remuneration Panel and reported back to Council at the appropriate time.**

Summary of implications

Legal As outlined in the report.

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2. Licensing Committee

- 2.1 The Licensing Committee is one of two regulatory committees with a broad range of responsibilities and delegated powers. Its primary role is to determine contentious licensing applications, deal with all licence holder disciplinary issues, to suspend and/or revoke licences, to act as lead consultee to the Cabinet on all licensing matters and to establish licensing sub-committees. An exhaustive list of the committee's delegated functions is set out in part 3C of the Council's constitution.
- 2.2 The committee is made up of 10 cross-party Members with a further 5 additional reserve Members.
- 2.3 The full Committee meets once a month but licensing sub-committees – that are responsible for determining all contentious applications relating to alcohol and entertainment licensing - are scheduled as and when required when applications are received.

3. Rationale for review

- 3.1 The Licensing Committee has operated in its current form for at least the last 10 years. During this time there have not been any substantial reviews undertaken. Whilst change is not necessary merely for the sake of it, there have been a number of factors that have driven the need to review the Committee's structure and meeting arrangements.

3.1.1 Proportionality – The proposed new structure seeks to balance, in a more proportionate way, the work priorities of the licensing committee.

3.1.2 Member development & resilience – The current structure and means of operation has resulted in gaps in Members' skills and knowledge. Some Members have gained more experience in specific areas of licensing and chairing committees as a result of the current meeting arrangements.

This in turn has, at times, caused difficulties with finding suitable experienced Members to sit on and/or chair committees.

Through the new proposed structure there will be more opportunity for Members to gain knowledge and experience in various roles.

3.1.3 Accountability and transparency – Beyond reactively determining applications, the committee does not at present operate in a proactive way. This is primarily because the committee's current setup and reactive workload leaves it very little scope to be proactive in terms of, for example, policy development, strategic and operational scrutiny and quality training.

Through dividing the workload and responsibility each committee will have more scope and opportunity to be more focussed and proactive but always under the oversight of the full committee.

3.1.4 Place shaping – The Licensing Committee has a recognised role to play in place shaping and economic development in the town particularly through its influence and implementation of local policy. The role will become increasingly important and significant as it supports the Place and Economic Development's commercial transformation work and the emerging place strategy.

The committee review and subsequent proposal will also assist the Licensing Committee to

operate more effectively in this capacity because the current issues identified above (3.1.3) could be overcome under the proposed new structure.

4. Proposed new structure and meeting arrangements

- 4.1 A copy of the proposed revised Committee structure is attached at **Appendix 1**.
- 4.2 Under the proposed new structure the full Committee will be scheduled to meet a minimum of four times a year. The full Committee will be responsible for higher level business such as reviews of local and national policy and policy consultations, training, local and national licensing updates and briefings and establishing sub-committees.
- 4.3 It is proposed that the substantive business of the Committee be discharged by two sub-committees.

5. Member allowances

- 5.1 The chair of the Licensing Committee gets an annual special responsibility allowance in addition to their normal basic allowance. There is no special responsibility allowance for the vice-chair of the Licensing Committee.
- 5.2 The proposed restructure of the committee will place additional work and responsibility on the vice-chair. Accordingly and by mutual consent, the chair's annual special responsibility allowance will be split equally between the committee's chair and vice-chair.
- 5.3 A review of the committee's permitted special responsibility allowance will be undertaken by the Independent Remuneration Panel and reported back to Council later this year.

6. Implementation

- 6.1 Subject to the committee's approval, the new structure and meeting arrangements will be implemented in accordance with the corporate meetings cycle therefore the new structure will take effect in September 2017.
- 6.2 In practice the proposed revised structure will not result in a need for many more additional meetings in the council diary because the majority of the meetings can be scheduled for the same evening. For example, the four full licensing committee meetings can be planned to take place prior to sub-committee meetings or replace a scheduled meeting that is no longer going ahead due to, for example, lack of business.

7. Reasons for recommendations

- 7.1 As set out in body of report.

8. Alternative options considered

- 8.1 An alternative to the Committee's resolution would be to make no changes to the current structure.

9. Consultation and feedback

- 9.1 Informal consultation has been undertaken with the Committee. In December 2016 the Committee unanimously approved the proposed structure.
- 9.2 Informal consultation has also been undertaken with Democratic Services, the Licensing Section and One Legal.

10. Performance management – monitoring and review

10.1 The effectiveness of the new meeting arrangements and Committee structure will be measured against its success in addressing the issues identified under the review’s rationale.

Background Papers

Service Records

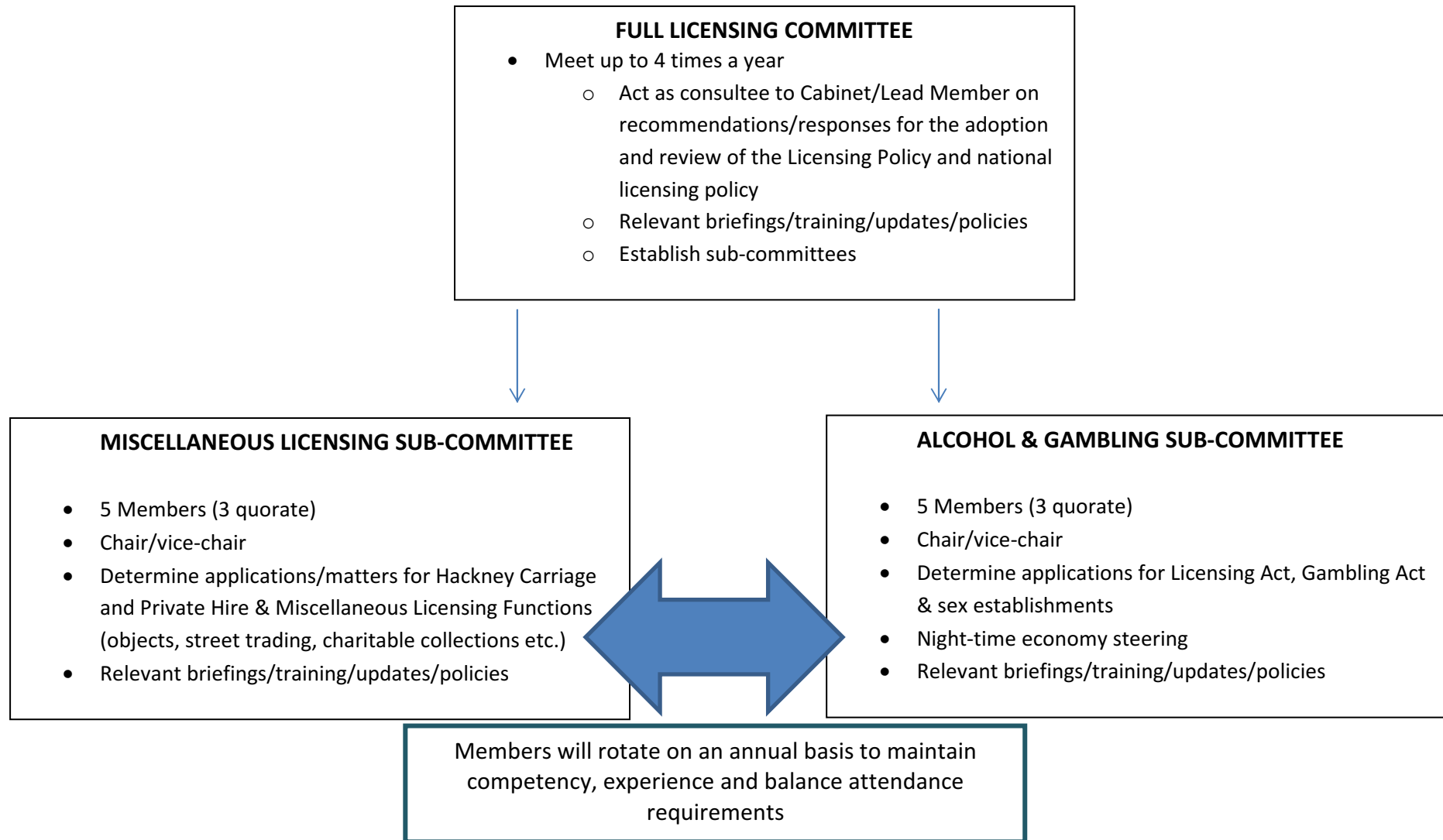
Case Officer

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Tel no: 01242 264217

Proposed Licensing Committee Restructure



Briefing Notes

Committee name: Licensing Committee

Date: 12 April

Responsible officer: Licensing Team Leader

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

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

This briefing note sets out details of new licensing legislation coming into force on 6 April 2017.

Equality Act 2010

On 6 April 2017, sections 165 and 167 of the Equality Act 2010 will be enacted.

Section 167 of the Act provides Local Authorities with the powers to make lists of wheelchair accessible vehicles (i.e. “designated vehicles”), and section 165 of the Act requires the drivers of those vehicles to carry passengers in wheelchairs, to provide assistance to those passengers and prohibits drivers from charging extra.

The requirements of section 165 will not apply to drivers who have a valid exemption certificate. An exemption certificate can be issued under section 166 of the Act, which is already in force. This allows Local Authorities to exempt drivers from the duties under section 165 where it is appropriate to do so, on medical grounds or because the driver’s physical condition makes it impossible or unreasonably difficult for them to comply with those duties.

Vehicles that can be designated

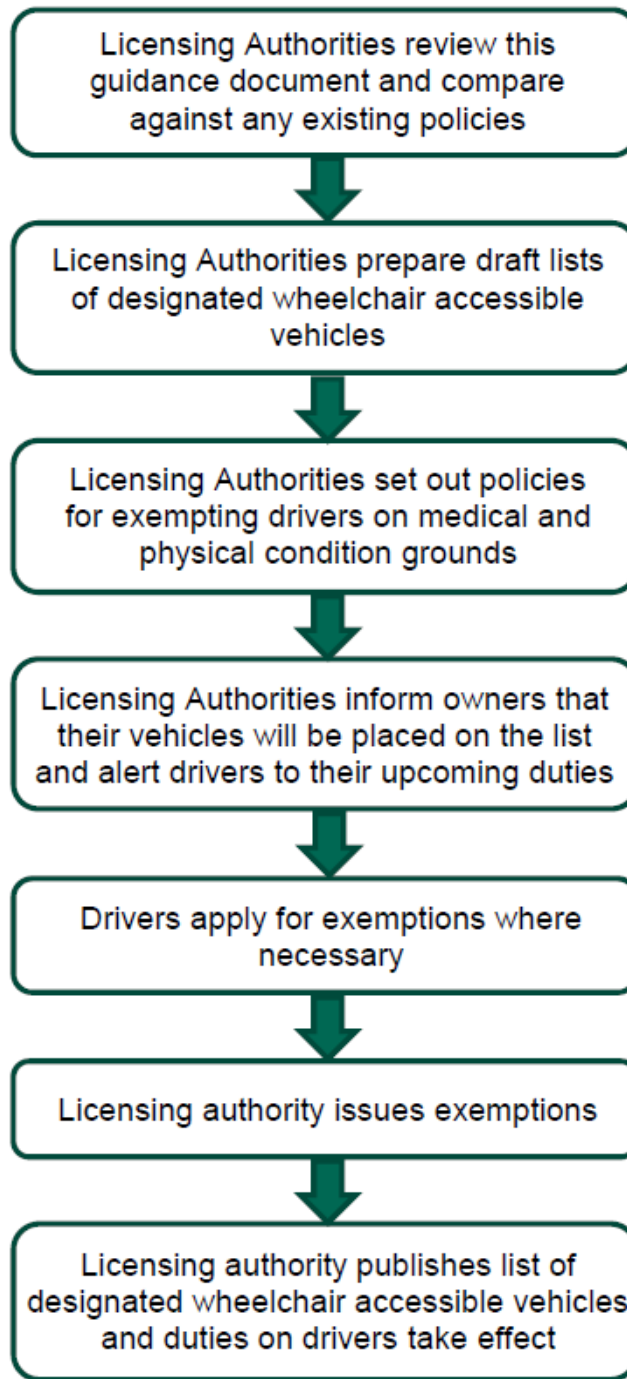
The Act states that a vehicle can be included on the designated vehicle list if it conforms to such accessibility requirements *as the licensing authority thinks fit*. However, it also goes on to explain that vehicles placed on the designated list should be able to carry passengers in their wheelchairs should they prefer.

This means that to be placed on the designated vehicle list, a vehicle must be capable of carrying some – but not necessarily all – types of occupied wheelchairs. The Government has recommended that a vehicle should only be included in the authority’s list if it would be possible for the user of a “reference wheelchair” to enter, leave and travel in the passenger compartment in safety and reasonable comfort whilst seated in their wheelchair.

Designating vehicles

Drawing up and maintaining a list of “designated vehicles” under section 167 is discretionary. In Cheltenham we have for a number of years “informally” maintained a list of wheelchair accessible vehicles.

The statutory guidance recommends the following procedure for drawing up a designated list:



It is recommended that the destination of vehicles be included in the scope of the policy review currently being undertaken with a view of adopting such a list when the revised policy is adopted later in 2017.

The statutory guidance published by the Department for Transport is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/593350/access-for-wheelchair-users-taxis-and-private-hire-vehicles.pdf

Immigration Act 2016

Taxi & PHV licensing

The Immigration Act 2016 amended existing licensing regimes in the UK to seek to prevent illegal working in the private hire vehicle (PHV) and taxi sector.

From 1 December 2016, the provisions in the 2016 Act prohibit all licensing authorities across the UK from issuing a licence to anyone who is disqualified by reason of their immigration status.

From the above date, the Council is under a statutory obligation to undertake specific immigration checks on all applicants for a taxi or PHV licence.

The Government has issued guidance that is available here

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/574059/Guidance-for-licensing-authorities-to-prevent-illegal-working-in-the-taxi-and-private-hire-sector-in-England-and-Wales.pdf

Alcohol Licensing

On 6 April 2017 schedule 4 of the Immigration Act comes in to force. Schedule 4 amends the Licensing Act 2003 so to:

1. Impose entitlement to work in the United Kingdom requirements on all licensed premises (i.e. those licensed to sell/supply alcohol, entertainment and provision of late night refreshment).
2. Makes the Secretary of State a responsible authority.
3. Adds a new licence eligibility criteria so that only persons eligible to work in the UK can apply for a licence.
4. Adds a new statutory provision to ensure that licences automatically lapse where a licence holder becomes ineligible to work or remain in the UK.
5. Gives the Secretary of State a new power to object to a licence application where it is necessary "for the prevention of illegal working in licensed premises".
6. The list of relevant offences for personal licence holders have been updated to include immigration offences.

Policing and Crime Act 2017

On 6 April 2017, the following provisions of the Policing & Crime Act 2017 will be enacted:

1. Section 135

Amends the meaning of "alcohol" to include alcohol in any state (i.e. powered or vapour)

2. Section 136

Limits the number of opportunities a licence holder can make representations to the licensing authority after it has made its determination on the interim steps. This section states that a licence holder can only make representation to the licensing authority where there has been a "material change in circumstances since the authority made its determination."

3. Section 137

Formalises the process where a licensing authority imposes interim steps as part of a summary review but where there has not been a full review hearing.

4. Section 138

Empowers the council to review a personal licence in the event of a licence holder being convicted of a relevant offence. Previously, this power only existed for HMCS.

5. Section 139

Amends the Licensing Act 2003 to add further relevant offences for personal licence holders.

6. Section 140

This section simplifies the process of making and publishing new statutory guidance for licensing authorities.

There are two other sections of the Policing & Crime Act 2017 that the Government has not yet announced a commencement date for.

These relate to putting cumulative impact areas on a statutory footing and simplifying the late night levy.

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