



CHELTENHAM

BOROUGH COUNCIL

Notice of a meeting of Licensing Committee

Wednesday, 6 December 2017

6.00 pm

Pittville Room - Municipal Offices, Promenade

Membership	
Councillors:	David Willingham (Vice-Chair), Mike Collins, Tim Harman, Adam Lillywhite, Paul McCloskey, Helena 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.	ELECTION OF CHAIR AND VICE CHAIR	
2.	CONFIRMATION OF MEMBERSHIP OF SUB-COMMITTEES	
3.	APOLOGIES	
4.	DECLARATIONS OF INTEREST	
5.	PUBLIC QUESTIONS These must be received no later than 12 noon on Thursday 30 th November 2017.	
6.	MINUTES OF LAST MEETING To approve the minutes of the last meeting held on 6 th September 2017.	(Pages 3 - 6)
7.	MINUTES OF SUB COMMITTEE MEETINGS - ALCOHOL AND GAMBLING To approve the minutes of the Licensing Sub Committee meetings held on 2 nd October 2017.	(Pages 7 - 18)
8.	RATIFICATION OF MISCELLANEOUS LICENSING SUB-COMMITTEE'S RESPONSE TO TAXI & PRIVATE HIRE POLICY REVIEW Report of the Licensing Officer	(Pages 19 - 30)
9.	ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION	

10.		DATE OF NEXT MEETING 7 March 2018	

Contact Officer: Sophie McGough, Democracy Officer, 01242 264130
Email: democratic.services@cheltenham.gov.uk

Licensing Committee

**Wednesday, 6th September, 2017
6.00 - 6.55 pm**

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

Minutes

- 1. APOLOGIES**
Apologies were received from Councillor Harman.
- 2. DECLARATIONS OF INTEREST**
There were no declarations of interest.
- 3. PUBLIC QUESTIONS**
There were no public questions.
- 4. MINUTES OF LAST MEETING**
The minutes of the last meeting were approved and signed as a correct record.
- 5. SET UP OF LICENSING SUB-COMMITTEES**
The Licensing Officer reminded Members that in April 2017 the Licensing Committee approved a revised committee structure to become effective from September 2017. Under the structure, two sub-committees, each of 5 Members, have been established to discharge the committee's substantive business. Sub-Committee 1 (Miscellaneous) and Sub-Committee 2 (Alcohol, Gambling and Sex Establishments).

Appendix 1 of the report showed that each of the 2 sub-committees would be made up of 5 members, but would be quorate with 3 members. The Licensing Officer advised that there were a number of items coming up for each sub-committee.

Members raised a query in terms of political balance with regard to the sub-committee dealing with Alcohol, Gambling and Sex Establishments and the number of members required to determine the applications. The Licensing Officer clarified that due to statutory requirements, when dealing with individual applications and reviews under the Licensing Act 2003 (alcohol, entertainment and late night refreshment), only 3 of the 5 members would determine the application. However when dealing with Sexual Entertainment Venues all 5 members could determine the application, depending on members' availability, but the sub-committee would be quorate with 3 as shown on the appendix to the report.

Members were advised that the Chair and Vice Chair of the sub-committees would be appointed at the start of their first meetings.

Members also suggested that the timings of sub committee meetings could be considered by each sub-committee when the council was consulting on the calendar of meetings for the next municipal year.

RESOLVED THAT

- 1. The following Members be appointed to the Miscellaneous Sub Committee be as follows :**

**Councillor Lillywhite
Councillor Seacome
Councillor Willingham
Councillor Parsons
Councillor Thornton**

- 2. The following Members be appointed to the Alcohol and Gambling Sub-Committee :**

**Councillor Collins
Councillor Flynn
Councillor Harman
Councillor McCloskey
Councillor Wilkinson**

6. REVIEW OF TAXI AND PRIVATE HIRE LICENSING POLICY

The Licensing Officer introduced the item and explained that on 12 September Cabinet would be asked to consider the proposed amendments to the current Taxi and Private Hire Licensing Policy and approve it for consultation. Subject to this approval there would be a 12 week consultation period. Licensing Committee would also provide a formal response to this consultation.

The Licensing Officer briefed Members on the proposed policy changes as laid down in Appendix 2 of the report. The following points were made/responses were given to queries raised :

- The council now had a policy in place to assess applicants' English comprehension or applicants would have to prove their level of English via proof of an English qualification
- Regulating working hours-this had been included in the proposed changes and now the consultation, by the Cabinet Member Development and Safety subsequent to the meetings of the taxi policy review working group. Some Members regretted that the Cabinet Member Development and Safety was not present at the working group meetings. A Member highlighted that taxi drivers were strongly opposed to the regulation of working hours however some Members supported its inclusion as some drivers were working dangerously long hours unregulated with many undertaking second jobs too. Members recognised the difficulties in the administration and enforcement of any

such measure but welcomed the opportunities to discuss these issues during the consultation period. One Member suggested that advice could be sought from the Vehicle Operator Services Agency (VOSA) and/or other authorities. It was emphasised that this was the consultation phase and all responses to the consultation would be taken into account and Members could respond to the consultation as individuals if they so wished.

- Operators-there was an increasing issue of out of town vehicles working in Cheltenham due to the relaxation of out of district sub-contracting rules. The council could not enforce against vehicles and drivers that it did not license. However operators and others would be consulted on a proposal that where an operator sub-contracts a Cheltenham booking to an “out of town” operator, they endeavour to ensure that the vehicle dispatched is not silver, thereby avoiding confusion with CBC Hackney Carriage licensed taxis that are silver. The Licensing Officer confirmed that if a private hire vehicle or hackney carriage was regulated outside of the town but had a pre-booked journey in Cheltenham it would be legitimate to undertake a fare but such a vehicle could not ply for hire nor sit on a taxi rank. He clarified that private hire vehicles in the town could not be silver in order to prevent the two types of licensed vehicle being mistaken for each other.
- Testing stations-Members welcomed the fact that testing arrangements be opened up to other testing stations that could demonstrate to the council their ability to test to the standard expected by the council.

Members noted the process for the review.

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

None.

8. DATE OF NEXT MEETING

Wednesday 6 December 2017 at 6.00 pm.

9. BRIEFING NOTE

The Licensing Officer briefly outlined the contents of the briefing note which had been circulated.

Wendy Flynn
Chairman

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Licensing Sub Committee-Alcohol and Gambling

Monday, 2nd October, 2017

2.30 - 3.35 pm

Attendees	
Councillors:	David Willingham (Chair) Mike Collins, Tim Harman, Dennis Parsons (Reserve) and Pat Thornton (Reserve)
Also in attendance:	Phil Cooper, Beverly Thomas and Donna Marks
Apologies:	Councillor Paul McCloskey and Councillor Max Wilkinson

Minutes

1. ELECTION OF CHAIR

Councillor Willingham was elected as Chair.

2. APOLOGIES

Apologies were received from Councillor McCloskey and Wilkinson.

3. DECLARATIONS OF INTEREST

There were no declarations of interest.

All Members present declared they had undertaken a site visit either in January 2017 at the time of the first application or during the past week.

4. APPLICATION FOR RENEWAL OF A SEXUAL ENTERTAINMENT VENUE LICENCE

The Licensing Officer, Phil Cooper, introduced the report regarding an application made by Red Apple Associates Limited for a renewal of a sexual entertainment venue (SEV) licence at the premises known as the Two Pigs in Church Street, Cheltenham. He explained that the existing SEV licence will expire on 11 January 2018 and this renewal, if successful, would take effect for 12 months from 12 January 2018. The proposed dates and times for providing the entertainment were outlined in paragraph 1.4 of the report and coincided with the dates of some of the meetings at Cheltenham racecourse, namely:

- New Year's Day
- Festival Trials Day 27 January 2018
- The Festival 13-16 March 2018
- The April meeting 18-19 April 2018
- Hunter Chase Evening 4 May 2018
- New Year's Day 2019

with the licence from 8pm to 5am (with the exception of the festival meeting which proposed a licence from 6pm to 5am)

The Licensing 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 no comments had been received from Gloucestershire Constabulary but there had been one objection from Cheltenham Borough Councillor Flo Clucas as outlined in paragraph 4.6 of the report. The grounds for objections were based on inappropriate location.

The Licensing 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.

In reply to questions from Members, the Licensing Officer replied as follows:-

- The policy with regard to the licensing of Sexual Entertainment Venues was due to be reviewed by the end of the year.
- The application was for the dates listed and did not include October or November 2018. Members should therefore consider the application containing the dates as submitted. The applicant would at a later date be entitled to apply to vary the application to include other dates.
- The Licensing Officer was asked to outline any incidents that had taken place on the premises since the current licence was granted. He explained that there had been 4 reports to the Police alleging pickpocketing or theft of personal items by customers, 2 reports from the management of theft from the premises, 1 report of an assault on a person by doorstaff but once investigated it was determined that proportionate force was used and the person was not assaulted, 1 report of a financial dispute between management and a performer, 1 report of money being stolen but on further investigation there was no evidence of theft, 1 report of prostitution but upon further investigation this was suspected to be a malicious complaint made by someone who had been ejected from the establishment. The Licensing Officer confirmed that the customer complaints had been dealt with by the Police. The incident reported by management was reported as a crime and the suspect had been identified.
- The Licensing Officer explained that such incidences are not unexpected in any busy premises, particularly during raceweek.
- The Licensing Officer confirmed that no reports had been made to the Licensing Department during the year on the operation of the establishment. Environmental Health (EH) had been contacted with regard to the noise from the promotional vehicle but this was not considered to be a statutory breach. EH had also been contacted about the internal condition of a changing room in the premises but no further action was required. He also confirmed that there had been no recorded complaints from local residents.

The Chair invited the Solicitor for the applicant to speak in support of the application. The Solicitor explained that this was an application for the renewal of the licence and the main difference related to the later closing time of 5 am with the exception of 13-16 March 2018 Festival where the proposed hours of operation were 6pm-5am. He explained that the application for renewal had been submitted on 3 August 2017 with the relevant advertisements and notices having been complied with. He emphasised that the Police had not objected to

the application and that the licence had been compliant and reasonable. In terms of the incidences that had occurred, these were of a relatively minor nature and had all been resolved with the Police taking no action. He also confirmed that Environmental Health had reported no breaches in terms of noise and the internal conditions of the premises.

With regard to the objection raised regarding the proximity of the establishment to the church he referred to a letter sent by the Licensing Officer on 18 January and in particular paragraphs 5-11 on why this was granted in relation to this objection. The objection was based on one of the discretionary grounds as outlined in paragraph 6.55. He circulated a copy of this letter to Members and highlighted that nothing had changed since then. He believed the licence was operating in a very satisfactory manner subject to its conditions and considered there to be no need for any alterations.

In reply to questions from Members, the Solicitor replied as follows:-

- Refusal log-it was inevitable that where there was alcohol consumption there would be some aggressive behaviour. The log had been kept up to date and could be sent to the Licensing team within 7 days if necessary for inspection and could be supplied in advance of any further application for renewal.
- No flyers or leaflets advertising the premises had been distributed within the town as per the condition.
- The establishment may not operate during the October race meeting but would be definitely in operation during the November event. In terms of dates not applied for in 2018 this was a business decision and would be reviewed going forward.
- In terms of mitigating any risk of crime and disorder (e.g. increased risk of prostitution on the premises) the Solicitor confirmed that lone females were not allowed on the premises unless they were performers. The security staff were experienced enough to deal with any risk and no problems had been experienced to date. He gave Members the assurance that the business was vigilant and did not discriminate. The Chair highlighted that the application did not specify the gender of the performers or the sexual preference of the audience.
- Performer recruitment followed a rigorous process which could take up to one month.

The following points were made by Members during the debate :

- One Member maintained his view from the initial application made in January 2017 and supported the objection from Cllr Clucas as the church and residents continued to have concerns and the location should be grounds for refusal. He therefore could not support the application.
- Other Members however acknowledged that the application could not be determined on moral grounds. The concern was expressed that in the absence of proper licensing and input from licensing officers and the Police such venues could operate unofficially putting both performers and the public at risk. No harm from the current licensed premise had been identified to date and signage to the premise was discreet.

- Members considered it appropriate for condition 6 to be amended to read “No flyers or similar promotional material for the premises shall be distributed within the Borough”.
- The Chair noted that the application had received no objections from the Police and that the level of crime and disorder was not disproportionate to other activity in the town particularly as these were predominantly incidents recorded during race week. When the application had initially been considered officers had confirmed that venues licensed under an SEV with conditions were easier to manage than those operating under a legal exemption that allows infrequent sexual entertainment at any premises. Even though the policy was due for review the application for renewal was compliant with current policy. The activities within the premises were not visible from the exterior and the operation appeared to be reasonably well managed. There were therefore no reasonable grounds for objection.

Donna Marks, Legal Officer, reminded Members that the committee should be satisfied that the application met the licensing objectives. If not an applicant had the right to appeal to the local magistrates court. The right of appeal did not apply where the licence was refused on the grounds that:

- the number of sexual entertainment venues in the area exceeded the number which the authority considered 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.

And, 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.

Members agreed to amend the conditions to the current licence as follows :

1. Condition 6: No flyers of similar promotional material for the premises shall be distributed within the Borough of Cheltenham.
2. Condition 11: The premises shall maintain a ‘refusals log’ recording any occasion on which a person is refused entry to the premises. The log shall be made available to police and authorised officers of the council on request. A full copy of the log shall be supplied with any future application to renew or vary the licence.

There being no further debate the Chair moved to vote on 8.7 b of the report, being to grant the application.

Upon a vote it was 4 in favour, 1 against, no abstentions, the licence was therefore renewed

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

David Willingham
Chairman

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Licensing Sub Committee-Alcohol and Gambling

Monday, 2nd October, 2017

3.40 - 4.50 pm

Attendees	
Councillors:	David Willingham (Chair), Mike Collins and Tim Harman
Also in attendance:	Phil Cooper and Donna Marks

Minutes

1. APOLOGIES

There were no apologies.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

The Councillors present wished to put on record the fact that they had visited the site.

3. LICENSING ACT 2003: DETERMINATION OF AN APPLICATION TO VARY A PREMISES LICENCE

The Licensing Officer, Phil Cooper, explained that an application to vary a premises licence was received on 8 August 2017 from 131 The Promenade Limited in respect of 131 The Promenade, Promenade, Cheltenham, GL50 1NW. The variation was to amend the permitted times for licensable activities as outlined in paragraph 1.2 of the report. He reported that during the statutory consultation no representations had been made from the responsible authorities and 8 representations were received from other people as summarised in Appendix E. He referred to the model core hours for licensable activities listed in Table 1 at paragraph 5.25 and stated that on the basis that the terminal hour was 3am it complied with the policy and a decision should be taken on the merits of the application and the focus on the promotion of the four statutory licensing objectives of

- Prevention of crime and disorder
- Public safety
- The prevention of public nuisance;and
- The protection of children from harm

In response to a question by a Member the Licensing Officer confirmed that neither the licensing department nor the police had received any complaints about the premises. A Member asked that in view of the fact that the premises was expanding to the adjoining buildings whether those premises would be covered by the licence under consideration. It was confirmed by the Licensing Officer that should the owners wish to include these buildings as part of the licensed premise there would be a requirement for a new licensing application which would be subject to the statutory consultation process.

There were no questions to the applicant and the objectors had no questions to the licensing officer.

Mrs Paulette Faulkener as objector to the application was invited to address the Licensing Committee on behalf of local residents. She referred to the licensing objectives and explained that this was a residential area and the noise from the establishment would be intrusive. The consumption of alcohol outdoors between 2am and 3am would create a disturbance and would be tantamount to a public nuisance. She highlighted that this was a conservation area where residents were not allowed to install double glazing in their properties. She questioned why alcohol consumption outside was necessary and concern was expressed that if the premises were extended to include 129 and 131 the Promenade there would be more space available for customers and as a result the noise levels heard from Imperial Square from music and voices would increase. She requested that the current outside area should not be expanded to include space from 129. The current hours should also not be extended as the increase in the number of people and increase in noise levels could lead to crime and disorder and public nuisance in the area.

She referred to paragraph 5.2.5 of the report and the core hours. Earlier closing would mean less alcohol consumed outdoors and less disturbance to residents. She referred to paragraph 6.11 of the report and requested that a condition be imposed that the doors and windows be kept closed and no persons should be permitted in the garden area after a certain time. This was a local neighbourhood area and residents should have the right to sleep undisturbed and as such she requested that the application be refused.

In response to a question as to whether the existing licensed premises in the area had an effect on the residents who lived nearby and whether this application would exacerbate existing problems Mrs Faulkener (as objector) said she had understood that she was not allowed to refer to any other premises in the area. However, she confirmed that residents had suffered many years of noise from Subtone and had made formal complaints. The Queens Hotel was however regarded as a good neighbour with no problems experienced. She emphasised that noise from groups of people talking outdoors did resound around Imperial Square.

In response to a question, the objector specified that outdoor drinking, raised voices and music were the core problems. She believed that drinking at 2am outside was considered to be unnecessary and that local residents should not be subjected to sleep disturbance in their own homes.

A Member asked what objections had been raised with regard to the other premises in order to seek confidence that the objections were correctly being attributed to this premises. In response the objector said that increased noise from the garden at 131 would affect residents more as it was located nearer to the residents' side of the Broadwalk than Subtone.

The Applicant, represented by Mr Chris Connor, Project Manager (Capital Works & Procurement) for the company, was invited to ask questions of the objector. He explained that he had expected that this application would still contain the conditions on the existing licence, i.e. that the external area of the premises should not be used after 11pm in the evening for any licensable activities. He confirmed that the front terrace would not be used for the sale of alcohol or music. It was a busy hotel and they were developing either side of the

building in order to incorporate more bedrooms and host events. They would not be serving alcohol until 2am outside and emphasised that 131 had its own resident clientele. He intended to mitigate the majority of the residents' concerns and stated that there would be no outdoor drinking after 11 pm and no music.

The Licensing Officer confirmed that for the current licence there was an existing condition limiting licensable activities to 23:00 on the terraced area. However the officer clarified that the condition only referred to *licensable activities*, so it did not prevent people gathering on the terraced area after 23:00 to consume drinks, smoke and talk, as these were not licensable activities.

Cllr Seacome, representing Mr Stennett was invited to address the committee. He explained that there were now more residential properties in this area of the town due to the attempts to repopulate the town centre over the last 15 years or so. He said that 131 the Prom had a responsibility to its neighbours.

He made the following points :

- 1) Only recorded music should be permitted and only designed for indoors. He suggested that a condition be added that windows be shut as well
- 2) If the licence was granted until 3am then there should be sufficient supervision to assist the situation and there should be a notice to patrons to treat residents with consideration
- 3) There should be no use of the outside bar after midnight

He also suggested that there was an emergency phone number residents could use. Finally he added that if property owners had made complaints about a licensed premise these had to be declared to the potential purchaser and as such could potentially devalue the property.

Mr Stennett wished to put on record his support to Mrs Faulkener and supported her in that drinking until 3am was irresponsible and unnecessary, particularly in a conservation area.

In response the Applicant said he understood the frustrations of living near a licensed premises. He highlighted that the objective of 131 The Prom was to run a reputable establishment and as such it was priced above the average for the town. A robust door policy was in operation, compliant with the condition to have 2 SIA door supervisors on a Friday and Saturday evening. He emphasised that 131 The Prom was a hotel and as such had no interest in running an operation which would devalue the business or upset residents. They would be investing £8m in the area in 2018. The request was for an extension to late night hours until 3am Thurs-Sunday. The aim was to continue to trade in a controlled manner and referred to the fact that in terms of the Licensing Team and the Police there had been no issues. The applicant would be happy to continue to liaise with residents and to provide the contact details of the Duty Manager who would be available 24hours a day. He clarified that music was solely for use in the bar area and there was no intention to serve alcohol in the outside area. He informed that the Designated Premises Supervisor already requested patrons to move out from the front of the terraced area from 22:30. Finally he added that there were licensed premises in the area which operated later than they would intend to.

In response to questions, the applicant responded as follows :

- There was no intention to have music until 3am outside

- In terms of access he explained that Clarence house to the left was the main entrance to the hotel and all access to the residential part was through magnetic hard lock. Access to the premises would remain through the existing gate at the front so patrons would still be required to pass the door supervisors and there would be no entrance/exits from the other 2 buildings
- The planning application related to dining space to the rear, nothing to the front.

Due to some confusion with regard to the application and what the committee were being asked to determine the Licensing Officer stated that the conditions could remain as current and could be amended to include a restriction on the use of the outside area.

Donna Marks, Legal Officer, referred to table F in the application and noted it did not refer to serving alcohol to the outside areas. The bar area outside was currently only used as a service area but understood that it could be used as a bar. The applicant had stated that the premises would serve alcohol in later hours for consumption inside and would clear the outside area from 11pm-11.30.

When asked about occupancy levels on a Friday/Saturday the applicant said that in July/August occupancy was at 94 % and stated that the bar was generally used by its own clientele who would be disturbed if the business operated out of control.

In terms of dispersal policy the aim was to avoid causing a disturbance to local residents. Standard signage was in place requiring guests to leave quietly. He emphasised that door supervisors engaged with customers and if noisy were reminded politely they were in a residential area.

The Applicant reiterated that he would be keen to maintain the existing conditions. The Chair reminded Members of the condition that the management and DPS of the premises will ensure that after 23:00 hours, no alcohol will be sold outdoors.

Mrs Faulkener, objector, sought clarification of the condition. In response the applicant confirmed that whilst he could not confirm that there would be no one on the outside terrace after 11 pm at night there would be no music as the music would be inside. He believed they operated a reputable venue in the town and they would be happy to continue to maintain the conditions and continue to invest in that area of the town as well as engaging with local residents.

The Legal Officer asked whether the objectors felt they could withdraw their objections in light of the questions raised and the condition put forward.

The Chair asked whether the committee should consider an extension of the use of doorstaff to Thursdays so that the DPS could undertake all reasonable measures to avoid causing a nuisance to neighbours of activity after 11 pm. It needed to be necessary, reasonable and proportionate but also enforceable.

The applicant did not feel that the use of door staff every Thursday was proportionate unless there was a late premises event or private hire event. He reiterated that neither the licensing team nor the police had received complaints from the current arrangement and adding this as a condition had not been

debated thus far in the meeting. Members considered whether a special condition could be applied to Thursdays when it was intended to be open that late.

The Licensing Officer confirmed that a condition could be added to the effect that when the premises intended to hold a planned event on a Thursday including licensable activities later than normal, then a minimum of 2 SIA staff would need to be engaged.

The Legal Officer asked how the applicant would propose to satisfy councillors and objectors with regard to operating hours on a Thursday.

The applicant considered that this should only be relevant if there was an event planned and he would be satisfied with a condition to that effect.

Having considered all relevant issues, the sub-committee

RESOLVED (unanimously)

To grant the application as applied for subject to the following conditions :

- 1. The management and DPS of the premises will ensure that after 23:00 hours, no alcohol will be sold outdoors and customers will not be permitted to take drinks outdoors.**
- 2. On any Thursday when the premises has a planned event including licensable activities after 00:00 hours, a minimum of 2 SIA door staff will be engaged at the premises between 00:00 and the premises closing.**
- 3. All reasonable steps will be taken to ensure that the activities at the premises do not cause any nuisance to members of the public or residents within the vicinity.**

David Willingham
Chairman

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Cheltenham Borough Council

Licensing Committee – 6 December 2017

Review of Cheltenham Borough Council’s Private Hire and Taxi Licensing Policy

Report of the Licensing Officer

1. Background, summary and recommendation

- 1.1 Cheltenham Borough Council’s current licensing policy for private hire and taxis (“taxi policy”) was approved by Cabinet on 15 July 2014. Whilst there is no statutory requirement to undertake a review of the taxi policy, there is a commitment set out in the policy to do so every three years to ensure the policy remains up to date and relevant.
- 1.2 To facilitate the review and better engage with key stakeholders, a working group was set up by the Licensing Committee in 2017. The working group was made up of Licensing Committee members, representatives of the hackney carriage and private hire trade, and council licensing officers.
- 1.3 Following the meetings of the working group a number of policy changes were proposed and approved by Cabinet for consultation on 12 September 2017.
- 1.4 A statutory 12-week consultation process has been undertaken which is due to end on 21 December 2017.
- 1.5 The Miscellaneous Licensing Sub-Committee, being the sub-committee with responsibility for decision making in taxi and private hire licensing matters, met on Wednesday 22 November 2017 to consider their formal response to the consultation. The sub-committee’s response is attached at **Appendix 1**.
- 1.6 **The licensing committee is recommended to:**
 - 1.6.1 **Note the responses of the miscellaneous licensing sub-committee; and**
 - 1.6.2 **Ratify and approve the sub-committee’s response for submission to Cabinet for consideration.**
- 1.7 **Implications**

Legal Legal advice may be sought on any proposals arising out of the review of the licensing policy.

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

2. Background

- 2.1 The council is responsible for the licensing and regulation of all hackney carriage and private hire drivers, vehicles and operators.
- 2.2 While there is no statutory requirement on the council to have a taxi policy, it is common practice to do so. The taxi policy sets out how the council intends to discharge its functions under the relevant legislation but also acts as a guide to Members, prospective applicants, licence holders and the wider public.

3. Policy review

- 3.1 Whilst there is no requirement in law to review the policy, the council has set out a commitment to do so every three years. This is to ensure that the policy remains relevant, up-to-date, fit for purpose and achieves its objectives.
- 3.2 To facilitate the review and better engage with key stakeholders, a taxi policy review working group was set up by the Licensing Committee. Representatives from the trade, council officers and Councillors sat on the working group, which met on 5 occasions.
- 3.3 Several amendments to the policy were proposed by the members of the working group and others, and these were approved by Cabinet for consultation in September 2017. A statutory 12 week consultation is currently underway which is due to end on 21 December 2017.
- 3.4 The miscellaneous licensing sub-committee, as the group with delegated responsibility for decision-making in applications and reviews for private hire and taxis, met on 22 November 2017 to consider their formal response to the consultation.
- 3.5 The sub-committee's formal response is attached at **Appendix 1**.

Background Papers

Service Records

Adopted Private Hire and Taxi Policy

Case Officer

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



CHELTENHAM
BOROUGH COUNCIL

Review of Cheltenham Borough Council's Taxi & Private Hire Licensing Policy - Consultation Document

Introduction

The Council's current licensing policy was adopted in 2014. In 2016/17 the council in partnership with representatives from the licensed trade undertook a review of the current policy.

This consultation document sets out the council's proposal for amendments to the policy and is seeking feedback from consultees.

How to respond

Responses must be made in writing using this form either electronically or in hard copy. The form can be submitted:

1. By email to licensing@cheltenham.gov.uk
2. By post to Licensing Section, Cheltenham Borough Council, Promenade, Cheltenham, GL50 9SA
3. In person to the Municipal Offices Promenade, Cheltenham, GL50 9SA

If you are unable to respond to the consultation using this form, please contact the licensing section in the first instance.

Consultation responses must be submitted no later than 21 December 2017.

Further information

Any questions relating to this consultation should be referred to the licensing section.

Your consultation response will form part of a public report. It will also be subject to freedom of information legislation.

Please note that we are not able to provide individual feedback on consultation responses including notification of subsequent committee hearings. Please visit the council's democracy pages for information on future committee hearings:
<https://democracy.cheltenham.gov.uk/ieDocHome.aspx?Categories=-12984>

1. About you

Full name: Cheltenham Borough Council’s Licensing Sub-Committee as represented by Councillors Adam Lillywhite, Dennis Parsons, Diggory Seacome and David Willingham

Organisation/group/department: Cheltenham Borough Council

Address: Municipal Offices, Promenade, Cheltenham, GL50 9SA

Please state in which capacity you are responding: Cheltenham Borough Council’s Licensing Sub-Committee

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Policy Proposals

1. Fitness criteria for licensed drivers

The council is proposing a number of changes to its fitness criteria for licensed drivers:

1. Knowledge test

Since the last policy review, a number of factors relevant to the current local knowledge test have changed which has prompted the need for a review of the current assessment:

- a. The council has introduced a higher standard for its practical driving assessment;
- b. Safeguarding training has been introduced for all licensed drivers and new applicants for a driving licence; and
- c. The council has adopted a dedicated English proficiency policy and assessment service.

As a consequence, the council is proposing a number of changes to the current knowledge assessment:

- a. Replacing the written Highway Code section of the test with the higher practical driving assessment;
- b. Introducing a learning day covering safeguarding, equality duty, law and conditions with a written/practical assessment at the end of the session;
- c. Retaining the local geographical knowledge and basic numeracy elements of the test; and
- d. Replacing the basic literacy written element of the test with the English proficiency policy and assessment service.

Q1: Do you agree with the proposed changes to the current knowledge test?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<p>The sub-committee is in agreement with the proposed changes and thinks it is important to retain a geographical knowledge test despite sat navs now being commonplace, as well as a test of the drivers' spoken English.</p> <p>Click here to enter text.</p>	

2. Three strikes policy

The council is proposing the introduction of a "Three Strikes Policy". The proposed policy lists a number of misdemeanours that, should a licensed driver be found to be in breach of one or more of these, it will be recorded against the driver's licence records. If the driver has at least three of these misdemeanours recorded against their licence, a review of their licence will be called in.

A copy of the proposed "Three Strikes Policy" is enclosed at Appendix 1 of this consultation document.

Q2: Do you agree with the introduction and implementation of a three strikes policy?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<p>The sub-committee is in general agreement with a “three strikes” policy as long as there is no automatic sanction once three strikes have been reached, because not all of the infractions listed are of equal severity. The third strike should trigger a review which is then dealt with on a case-by-case basis by the sub-committee by way of review.</p> <p>The following additional comments were made by the sub-committee in relation to the policy at appendix 1.</p> <ul style="list-style-type: none"> - Offences that fall outside the 3 strikes policy (for example serious offences such as drink-driving) are dealt with separately under the existing policy on convictions. The new 3 strikes policy needs to sit alongside and reference the existing policy on convictions, otherwise the new 3 strikes policy implies that other, serious offences are excluded and won't be dealt with. Reference to the existing policy on convictions should be included in the preamble to the 3 strikes policy. - The heading to “Excluded offences” should be amended to make clear that these offences are serious and will cause immediate review. As it stands the heading implies that offences listed as “excluded” will not be dealt with at all. - The following matters should be taken out of the list of “3-strikes infractions” and included instead in the list of more serious matters that will be dealt with immediately, because both are to do with the safety of the passengers and the public and both could result in invalid insurance: (1) Injuring or endangering any person or property through wanton and furious driving or other wilful misconduct; (2) Carrying excessive number of passengers. - A member felt that as the only applicable police station is now Hester's Way, it is an unnecessary burden on drivers to insist that all lost property must be handed to the police. The member suggested that this should be changed so that it only applies to property over a certain value or of a certain type. 	

3. Working hours

There are no national standards or statutory regulations that strictly govern working hours for licensed taxi and private hire drivers.

Through the policy review, it has been identified that there may be a need for the council to be proactive in regulating this in so far as it is able and practical. To this end, the following proposed policy changes are being consulted on:

- Amending licence conditions to set out a reasonable expectation on working hours for licence holders, implementing a mechanism whereby licence holders may need to keep a record of their working hours and to submit these records to the council; and
- Adopting a code of good practice for licensed drivers setting out the council's expectations on safe working practices and the implications for non-compliance with the code.

A copy of the proposed code is attached at Appendix 2 of this consultation document.

Q3: Do you agree with the proposal to regulate working hours for Cheltenham licensed drivers?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<p>The sub-committee recognises that it is appropriate to reduce tiredness caused by over-work and is in broad agreement with a policy designed towards achieving that.</p> <p>However the sub-committee recognises that such a policy will be difficult to enforce, and would therefore be supportive of it only if a satisfactory and preferably lightweight method of enforcement can be found that is not overly burdensome on either drivers or officers. The sub-committee suggested delegating to officers the task of finding such a solution, but suggested the following as examples:</p> <ul style="list-style-type: none">- Drivers should maintain a handwritten log that must be kept in the vehicle at all times, showing the hours they have worked that day or week.- Signage could be displayed in the vehicle advising passengers that if they think their driver appears to be tired, they can ask to see the log.- Members recognise that any such manually-maintained solution is open to fraud and abuse, therefore officers should investigate the possibility of an electronic solution such as using tachographs, smartphone apps, or the vehicle's taximeter (vehicles not fitted with taximeters, i.e. private hire vehicles, can be monitored by way of their operator's records).- A member commented that one reason for drivers working increased hours is the dilution of their trade caused by more drivers becoming licensed and suggested that a solution be found to this underlying issue.	

Q4: Do you agree that the code of good practice referred to above is adequate to ensure safe working hours for Cheltenham licensed drivers?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
See above	

4. Criminal records checks (DBS)

The council is proposing to implement a requirement that all future criminal records checks be undertaken online. The council currently accepts paper copies of Disclosure and Barring Service (DBS) certificates. However, the DBS service now offers an online checking service.

Q5: Do you have any comments to make in relation to this proposal?

The sub-committee is in agreement and has no comments to add.

2. Fitness of licensed vehicles

The council is proposing a number of changes to its fitness assessments for licensed vehicles:

1. Vehicle emissions

It was necessary for the council to review its current emissions policy because the current deadline for phasing out older vehicles expires in 2018.

The purpose of the revised policy is 1) to contribute to the local and national air quality strategy to improve air quality in the town and 2) to have a safe, modern and professional licensed fleet.

To this end, the proposed revised policy is:

New vehicles

- Retain 5 year rule for petrol cars (which will result in an automatic Euro Emissions Standard 5 compliance)
- Apply Euro Emissions Standard 6 for diesel (i.e. vehicles no older than 1/9/2015)
- Any age for Ultra-low emission vehicles - defined as 75g CO₂/km and under

Existing vehicles

Phase out older vehicles so to:

- Get all petrol vehicles to at least Euro 5 standard by 2020
- Get all diesel vehicles to Euro 6 standard by 2020

Given that by 2020 all licensed vehicles will be on the minimum Euro 5 emission standards, the council is not proposing a maximum age limit in vehicles provided that they continue to be in exceptional condition and safe. This will be assessed through the Council's enhanced MOT and fitness test for licensed vehicles, on the proviso that vehicles older than 8 years be subject to 6-monthly testing.

Q6: Do you have any comments to make on the revised vehicle emission policy?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<p>The sub-committee is in agreement with the proposals but is uncomfortable about removing the 5 year rule entirely for ultra-low emission vehicles. Rather than have no limit at all, consideration should be given to changing the 5 year rule for ultra-low emission vehicles to a 10 year rule, so that it reads:</p> <ul style="list-style-type: none">- All new vehicles, other than ultra-low-emission vehicles, must be less than 5 years old when first licensed (using the date of first registration on the registration document);- Ultra-low-emission vehicles must be less than 10 years old when first licensed (using the date of first registration on the registration document).	

2. Vehicle standards and specifications

A review has been undertaken of the council's suitability standards for vehicles to be licensed and the following changes are being proposed:

Changing the vehicle fitness standards for wheelchair accessible vehicles making it a requirement that these types of vehicles be side-loading only.

The current policy permits rear loading wheelchair accessible vehicles.

The rationale for this proposed policy change is that there are difficulties with rear-loading public hire vehicles working off taxi ranks where safe entry is from the side.

There have also been concerns raised about the suitability of rear loading vehicles given that there is no other practical escape route for passengers in wheelchairs should the rear access point becomes unusable.

Q7: Do you agree with the proposed policy change to only permit side loading wheelchair accessible vehicles?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

If the policy change were approved, the council is proposing to phase out licensed rear-loading vehicles as and when these vehicles are replaced for new ones.

Q8: Do you agree with the proposed phasing out process mentioned above?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

3. Testing arrangements

The council currently only has one approved testing station for licensed vehicles which is Ubico. It has operated under this policy for several years but a need to review this has arisen. Due to the expansion of Ubico and the growth of the local trade, Ubico's ability to continue to act as sole testing provider within the agreed service level agreement has become increasingly difficult.

This has facilitated a review of the sole use arrangement with Ubico and it is proposed that testing arrangements be opened up to other testing stations that can demonstrate to the council their ability to test to the standard expected by the council.

Q9: Do you agree with the proposal to nominate additional testing stations for Cheltenham Borough Council licensed vehicles?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

We must be satisfied that each approved testing station is up to the standard we expect and contracted with CBC to provide a service of a specified standard. A set number of approved stations must be identified rather than have an entirely open market.

4. Grandfather rights

Different rules currently exist for Hackney Carriage vehicle licence holders depending on the plate licence number. A number of Hackney Carriage vehicle licence numbers have grandfather rights attached to them which mean that as long as the licence remains valid, these vehicles do not have to be wheelchair-accessible and can be replaced indefinitely with non-wheelchair-accessible vehicles.

This is in contrast to other, newer licensed Hackney Carriage vehicles that do not have retained grandfather rights and which must be wheelchair-accessible and can only be replaced with wheelchair-accessible vehicles.

The council is seeking views on whether it should change the grandfather rules for Hackney Carriage vehicle licence holders to ensure that the same rules apply to all licence holders.

To this end the council is seeking views on a number of approaches in respect of this:

- a. Amend the grandfather rights so that these only apply to the current licensed vehicle and when the proprietor comes to replace that vehicle they are obligated to purchase a wheelchair-accessible vehicle and/or purpose built taxi;
- b. Make no changes to the current system;
- c. Amend the grandfather rights rules so that those who retain it can interchange between saloon cars and wheelchair-accessible vehicles without those rights being affected.

Q10: Please indicate your preferred choice from the list above and provide further explanation for your choice.

When asked for their preference, the majority of the sub-committee selected option C as their preferred option from those listed above, but with the following comments made by individual members.

1. A member felt that it is unnecessary and disproportionate to require all hackney carriage vehicles to be wheelchair accessible. It is sufficient that some are accessible without making it a requirement of the entire trade.
2. Consideration should be given to requiring private hire operators to use wheelchair accessible vehicles (WAVs), such as a condition on their operating licence that at least 50% or a minimum of 5 vehicles dispatched by the operator must be WAVs. The member felt that people requiring a WAV are much more likely to phone a company than use a taxi rank, therefore placing a requirement on the private hire trade would be more effective than having a 100% accessibility requirement on the taxi trade.
3. Another member felt that from an equalities point of view, all licensed vehicles should be WAVs as it is unequal if a person who requires such a vehicle arrives at a taxi rank and cannot find one. This member's preferred option was that 'grandfather rights' be dispensed with on replacement of their vehicles. This would mean that no one would be required to buy a new

vehicle immediately, but when they came naturally to replace their vehicle, the replacement must be wheelchair-accessible. It was recognised by the member that this would mean it would be several years before the entire trade became wheelchair accessible.

4. A member felt that the existing taxi trade are struggling because there are too many taxis and they are having to work longer hours to make a living. This would become worse if new taxis did *not* have to be wheelchair-accessible because WAVs are more expensive than saloon vehicles. Removing this requirement would result in more vehicles and more applications being made, which would further saturate the trade and have a detrimental effect on existing drivers. Another member felt that it is not the council's duty to regulate the numbers of taxis as market forces will determine a natural limit and it is beneficial to the people of Cheltenham to have more vehicles available.

5. Equality Act 2010: Taxi and private hire requirements

The council is seeking to implement the new statutory requirements placed upon it by the newly enacted section 167 of the Equalities Act 2010 as part of this policy review.

Section 167 places a new duty on the council to provide a list of wheelchair accessible hackney carriages and private hire vehicles for publication. It also places certain obligations on drivers of vehicles on this list to carry wheelchair users and not to impose any additional charges for doing so.

The legislation leaves it to the council to decide what type of licensed vehicles should be included on the designated list. The statutory guidance however makes it clear that these must be vehicles capable of carrying wheelchairs.

To this end, the council has taken a view similar to that recommended by the statutory guidance whereby all vehicles licensed by this council to carry, as a minimum requirement, a "reference wheelchair" will be added to the designated list.

This list will be published in order for people who require the services of a wheelchair accessible vehicle to easily find this information.

Q11: Please provide any comments you would like to make in the box below.

The sub-committee is in agreement with the proposal with the comment that the new General Data Protection Regulations need to be taken into consideration when it comes to personal information being published.

3. Licensed Operators

1. Conditions

There is an increasing issue of out of town vehicles working in Cheltenham due to the relaxation of out of district sub-contracting rules.

The council cannot enforce against vehicles and drivers not licensed by it (unless it is a criminal offence committed). It is therefore proposed that the council amend its conditions for licensed private hire operators to introduce a new requirement on them that, when they subcontract a booking to an operator not licensed in Cheltenham, they take all reasonable steps to ensure that the vehicle dispatched is not silver. The rationale behind this is to try to avoid members of the public confusing out of town vehicles with Cheltenham’s predominantly silver hackney carriage fleet.

Q12: Do you agree that this proposed change is necessary? Please explain.

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Click here to enter text.	

4. Other minor changes

The revised policy will reflect a number of minor changes:

1. Changes resulting from the enactment of the Immigration Act 2017 relating to right to work status verification
2. Removal of the requirement for drivers to attain the NVQ.

5. Other comments

Do you have any other comments to make relevant to the taxi and private hire policy review?

A member asked officers to make sure that any case-law that sets a precedent that has occurred since the last review is incorporated into the new policy such as KAIVANPOR V BRIGHTON AND HOVE CITY COUNCIL.

The same member asked for the new policy to include a statement that where there have been allegations against a licence-holder without convictions, those matters may still be taken into account on a case-by-case basis when determining an application, because the evidential limit is the civil standard, i.e. the balance of probability. Therefore where a number of allegations have been made that indicate a pattern of behaviour, but through lack of evidence no criminal charges have been brought, those matters may still be taken into consideration by the licensing committee in its decision making. Another member felt that the council needs to be very careful with this as people’s livelihoods and reputations should not be jeopardised through “trial by media” where no conviction has taken place.