



CHEL TENHAM
BOROUGH COUNCIL

**Notice of a meeting of
Licensing Sub-Committee - Miscellaneous**

**Wednesday, 3 January 2018
6.00 pm
Pittville Room - Municipal Offices**

Membership	
Councillors:	David Willingham (Chair), Dennis Parsons (Vice-Chair), Adam Lillywhite, Diggory Seacome and Pat Thornton

Agenda

1.	APOLOGIES	
2.	DECLARATIONS OF INTEREST	
3.	MINUTES OF THE LAST MEETING To approve the minutes of the last meeting held on 6 th December 2017.	(Pages 3 - 8)
4.	APPLICATION TO REPEAT STREET TRADING CONSENT Mr William Danter	(Pages 9 - 16)
5.	APPLICATION FOR PERMISSION TO PLACE TABLES AND CHAIRS ON THE HIGHWAY - DEFERRED TO FEBRUARY COMMITTEE Aqua Vitae, 10 Ormond Place, Cheltenham	
6.	LOCAL GOVERNMENT ACT 1972- EXEMPT INFORMATION The committee is recommended to approve the following resolution:- That in accordance with Section 100A(4) Local Government Act 1972 the public be excluded from the meeting for the remaining items of business as it is likely that, in view of the nature of the business to be transacted or the nature of the proceedings, if members of the public are present there will be disclosed to them exempt information as defined in paragraph 1, 2 and 7, part 1 Schedule 12A (as amended) Local Government Act 1972, namely: Information relating to any individual,	

		Information which is likely to reveal the identity of an individual, Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.	
7.		EXEMPT MINUTES To approve the exempt minutes of the meeting held on 6 th December 2017.	(Pages 17 - 24)

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

Licensing Sub-Committee - Miscellaneous

**Wednesday, 6th December, 2017
7.00 - 10.30 pm**

Attendees	
Councillors:	David Willingham (Chair), Adam Lillywhite, Dennis Parsons, Diggory Seacome and Pat Thornton

Minutes

1. APOLOGIES

There were no apologies.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. MINUTES OF THE LAST MEETING

The minutes of the last meeting held on 1st November 2017 were approved and signed as a correct record.

4. APPLICATION FOR A STREET TRADING CONSENT

The Licensing Officer, Mr Phil Cooper introduced the report and explained to the Committee that Mr Ursell had made an application for a street trading consent to sell cut flowers, pot plants and seasonal floral goods at the corner of High Street and Church Street. Appendix A and Appendix B showed the proposed location and an image of the trading unit. Mr Ursell had applied for consent to trade from 7th December to 24th December 2017 between the hours of 07:00 and 19:00 hours. The case had been referred to Committee because it was not in an approved location in the street trading policy, however, Mr Cooper informed Members that the location had been used previously for trading, including by Mr Ursell.

Members were advised by the Officer that having regard to the facts, Members should decide whether to:

Approve the application because Members were satisfied that the location, size of unit and type of goods were suitable or;

Refuse the application because it does not comply with the council's adopted policy as the location is not approved for street trading.

The Members began by querying whether there had been any previous complaints regarding trading in this location. The Licensing Officer informed Members that there had been one, he explained that this had been made in 2011 from a nearby shop which complained that Mr Ursell had encroached on the space outside the shop. Mr Ursell claimed that he was unaware of the complaint and Mr Cooper advised that this matter had been resolved and there were no further issues.

The Members proceeded to ask Mr Ursell a series of questions and he was invited to provide a statement in support of his application. His responses were as follows:

- He confirmed it had been a family run business for 114 years and he had been trading up until 2015.
- He informed Members that for the past 4 years he had been suffering from a series of serious health issues and he now felt up to trading again.
- Members raised some concern over the timings he was proposing to trade considering his health issues. Mr Ursell confirmed he would likely to be trading from 9am – 4pm/5pm but wanted the leniency in case trade was going well.
- Members also questioned whether he would be happy to trade within the designated area given the previous complaint and if the picture in Appendix B was a fair representation of what he was proposing. Mr Ursell confirmed he would stick within the designated 2.1m x 1.2m space and was likely to use the floor space rather than a barrow.
- Members also questioned how he proposed to restock as it was a limited sized stall. Mr Ursell confirmed he had permission to park his van in the churchyard and restock from there.

Following a short discussion, Members agreed that no harm would be caused from Mr Ursell trading in the designated area given that it was for such a limited time.

The committee were invited to vote on section 1.4.1.

The committee voted unanimously in favour of granting the application.

RESOLVED THAT

The application be approved because Members were satisfied that the location, size of unit and type of goods were suitable.

5. RENEWAL OF HACKNEY CARRIAGE DRIVER'S LICENCE

The Licensing Officer introduced the report regarding a renewal of Mr Paul Bacon's Hackney Carriage driver's licence HCD 735. He informed Members that Mr Bacon's certificate from the Disclosure and Barring Service (DBS) had shown a caution which Mr Bacon had failed to disclose on his renewal application form as required by Council policy. He drew Members' attention to paragraph 4.6 of the report which notes:

'Members are to note however that in order for the police to issue a formal caution, the offender has to admit an offence and agree to be cautioned. A caution cannot be issued if the offender does not comply with the two conditions above.'

In light of this the Committee were asked to consider whether to:

- *Grant Mr Bacon's application to renew a Hackney Carriage driver's licence with no further action taken because the Committee considers him to be a fit and proper person, or*

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- *Refuse to renew Mr Bacon's Hackney Carriage driver's licence because the Committee considers him to no longer be a fit and proper person.*

On a point of clarification the legal officer informed Members that a caution is the disposal of an offence in an administrative way following an admission. The alternative option would be to go to court.

Mr Bacon was invited to give his account of events. He informed Members that:

- The incident was a genuine mistake and he thought his wife had paid for the shopping.
- He had shamefully gone along with something he had never done before.
- He felt it was unfair that had he been shoplifting then he would have been let go, it was only for the fact that he had admitted to the mistake that the police had been called and he had been cautioned.
- He explained that his wife's father had died 2 days previous to the incident and it was because of this state of grief that she did not pay.
- It was his wife who had written the letter on his behalf explaining the incident.
- Mr Bacon had taken the blame for the incident but the police believed it was his wife's wrong doing.
- He claimed that Tesco had accused him of stealing on several occasions yet he had never been convicted of anything and had never been in trouble with the police before.
- He informed the Committee that he had been a taxi driver for 18 years.
- He wasn't even aware that he had even been cautioned as it was his wife who had to attend a criminal conviction course in Birmingham. This was therefore why he had not disclosed it on his renewal form, it wasn't a case of trying to de-fraud the system, just a genuine mistake which he felt embarrassed about.
- He informed Members that he had character references if they wished to view them.
- He Bacon proceeded to tell Members of a story whereby he helped a drunken lone female to get home and did not charge her when she was sick in his taxi, he then helped to reacquaint her with her lost purse the following day which she had left in his taxi. He felt this highlighted his good nature, and showed he was not a thief.

In response to questions the Licensing Officer informed Members that the Council records went back 15 years and in that time they had no previous complaints against Mr Bacon. He also advised that drivers were still able to drive whilst the renewal of their licence is being determined, and so at present Mr Bacon was still legally able to drive.

Members and the Legal Officer proceeded to ask Mr Bacon a series of questions, his responses were as follows:

- He claimed that they did a duplicate shop every week as his father-in-law who had lived with them previous to his passing gave them money to do his shop and they would buy the exact same items for him.
- Mr Bacon explained that Tesco had gone back and examined the CCTV and could find no evidence of shoplifting on previous occasions.

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- Mr Bacon confirmed that he and his wife had two trolleys both with the same items, he explained that he had gone off with one trolley and left his wife with his card to pay for the other trolley.
- He stated that they did a shop every Monday.
- He explained that they only used one scanner and it was his wife who was doing the scanning.
- He couldn't answer as to why he left his wife with the trolley and didn't wait with her to pay.
- He also couldn't explain why they were still doing two identical shops even though the father in law had passed away; he suggested it was just simply out of habit.
- He explained that he had not challenged the DBS check when it had come back with a caution or flagged it up with the police or licensing team as he believed there was nothing he could do regarding the caution at this point. He felt the only option was to try and prove to the committee that he was a fit and proper person.
- He claimed that they only made one payment for the two trolleys not separate transactions.
- He confirmed he used a Tesco Clubcard and a Visa card to make the transaction.

Members made the following observations with regards to Mr Bacon's responses:

- That if it was the case that Mr Bacon did the same shop every week there would be evidence to prove Mr Bacon's innocence. There would be CCTV of him and his wife in the shop and they would be able to examine what they purchased.
- They felt if it was the case that they merely forgot to pay for one trolley then their balance this week would be exactly half of that of what it was in previous weeks.
- Members discussed the possibility of obtaining information from Tesco regarding Mr Bacon's spending habits. The Licensing Officer informed Members that the committee do not have similar powers to that of the Courts who have court orders. He advised that Tesco would be unlikely to release information to the council as they have to follow data protection regulations.
- The Legal Officer reminded Members that it was important to focus on the information which they had before them rather than the information which they did not and make a decision based on this.
- Some Members felt that the burden should fall on the applicant to prove his innocence and obtain receipts from Tesco himself. As Mr Bacon had suggested he and his wife did a double shop every week Members felt that receipts or bank statements would highlight this. Mr Bacon disputed that a bank statement would only show an amount not the actual items purchased.
- The Chair queried who the burden of obtaining proof is on. The Legal Officer advised that on the first issue of a licence the applicant has to prove they are fit and proper, but to revoke, the Council has to prove (on balance of probability) they are not fit and proper.
- Concerns were raised over the fact Mr Bacon did not query the caution when he received the DBS check back.

- Members did however acknowledge that they had to take into account Mr Bacon's wife's part in the incident and other mitigating factors such as the death of Mr Bacon's father in law 2 days prior to the incident.
- Some Members suggested that it may have been a genuine mistake due to the fact the case had not been brought in front of the courts.

Mr Bacon raised a concern that if this session was to determine whether he was fit and proper nobody had acknowledged the character references. The Licensing Officer circulated the references to Members.

The Chair advised that in light of the information they had before them Members could either grant or refuse to renew Mr Bacon's licence or grant with a written warning. The Licensing Officer advised that if the Committee were to defer until further information was provided then they would need to be clear about what further information they required and by whom. Some felt that they would be inclined to grant with a written warning as they did not feel Mr Bacon posed an immediate risk to the public. They were also reluctant to refuse Mr Bacon's licence without hard evidence.

Mr Bacon was invited to give his final right of reply. He affirmed that:

- He was not a thief and again alerted Members to the story of the drunken lone female, he felt this highlighted his good nature.
- Police had looked at the evidence available and had still not charged Mr Bacon.
- He had 18 years experience as a taxi driver and this action was very out of character for him.

The Chair invited Members to vote on whether the case should be deferred to the next meeting subject to Mr Bacon providing more evidence.

Upon a vote it was (4 for 1 against)

A discussion regarding what evidence needed to be provided ensued. It was agreed that bank statements from the last 12 months should be provided and preferably receipts. The bank statements would reinstate the fact that Mr Bacon shopped every Monday. Mr Bacon advised that he did not keep receipts but it was suggested these could be obtained from Tesco. It was also suggested that information from Mr Bacon's Tesco Clubcard would identify his spending habits.

The Licensing Officer confirmed that evidence would need to be received by the 19th December in order to meet the deadline for the January Committee. It was also agreed that the case would come back to the February Committee irrelevant of what information was received by then.

RESOLVED THAT

The application be deferred subject to the applicant providing additional information and for the matter to then be brought back to this committee for a review in February.

6. REVIEW OF A HACKNEY CARRIAGE DRIVER'S LICENCE

Members were advised that they had the following recommendation to vote on:

- Whether the licence holder's Hackney Carriage driver's licence be reinstated because the Committee is satisfied that he is a fit and proper person to hold such a licence; or
- Whether the licence holder's Hackney Carriage driver's licence be revoked as the Committee considers him not a fit and proper person to hold such a licence.

Upon a vote it was (4 against and 1 Member for)

Resolved That

The Hackney Carriage driver's licence be revoked as the Committee considered him not a fit and proper person to hold such a licence.

David Willingham
Chairman

Cheltenham Borough Council

Licensing Sub-Committee – 3 January 2018

Local Government (Miscellaneous Provisions) Act 1982

Application to repeat street trading consent

Mr William Danter

Report of the Licensing Officer

1. Summary and recommendation

- 1.1 An application has been made by Mr William Danter to repeat his street trading consent. The trading location is on the High Street at the location shown at **Appendix A**.
- 1.2 This location is identified in the council’s current street trading policy as being suitable for street trading, with the appropriate types of trading being confectionery / cakes; buskers selling their merchandise; and traders offering sign-up services.
- 1.3 Mr Danter proposes to trade on the following days and at the following times:

February half term: Sat 10 Feb - Sun 18 Feb 2018
 Easter holidays: Thurs 29 March - Sun 15 April 2018
 Whitsun: Sat 26 May - Sun 3 June 2018
 Summer holidays: Thurs 26 July - Sat 1 September 2018
 October half term: Sat 20 - Sun 28 October 2018
 Christmas trading: Fri 9 November 2017 - Sun 6 January 2019

Monday 09:30 - 18:00
 Tuesday 09:30 - 18:00
 Wednesday 09:30 - 18:00
 Thursday 09:30 - 18:00
 Friday 09:30 - 18:00
 Saturday 09:30 - 18:00
 Sunday 11:00 - 17:00

- 1.4 An image of the trading unit is attached at **Appendix B**. The unit measures 4.2m x 2.72m and trades in doughnuts and other hot and cold food and drinks.
- 1.5 Given that one of the principal products being sold is doughnuts, which falls within the normal definition of confectionery, the application is compliant with the council’s policy.
- 1.6 Comments have been received from local businesses and others, and for this reason the application has been referred to the licensing sub-committee to be determined.

1.7 The sub-committee can:

1.7.1 Approve the application because it is compliant with the council's policy and Members are satisfied that the location, size of unit and type of goods are suitable;

1.7.2 Refuse the application because Members feel that the location, size of unit and / or type of goods are not suitable.

1.7.3 Implications

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

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

Contact officer: One Legal
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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. In the town centre zone of control, several limited locations have been identified as suitable for street trading. No such restriction applies outside the town centre, where each application is determined on its own merits.

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.

3. Consultee Comments

3.1 The following comments were received during the consultation period:

3.2 Gloucestershire Highways

Thank you for your enquiry regarding the Street Trading License.
We have no objection to the street trading license.

3.3 Cheltenham Business Improvement District (BID)

Cheltenham BID opposes the application for the Barrow Little Donut Stall in High Street.

A significant number of businesses in the immediate area sell similar products to the “Hot & Cold Food & Drink” being sold by the stall.

They pay business rates and the BID does not believe they should face competition from a stallholder who does not make the same contribution to the town.

The street trading licensing policy, approved in 2016, rightly identifies which type of stall are appropriate for which locations. It makes it clear that this location - High Street 4 in the policy - allows for the following permitted traders – confectionary/cakes, busking and sign-up services. Hot food/drink is allocated to other sites in the town centre.

This location is also inappropriate because this is an area of High Street that is due for improvement works in 2018. If the stall is given permission, where will it go when the works are on-going?

Also, this is not a short-term application. The request is for entitlement to trade for a total of more than 13 weeks – more than a quarter of the town’s annual shopping days. It covers some of the busiest times of year, including Christmas and the main school holidays. Our businesses trade throughout the year and should not be put at a disadvantage at a time of the year when more customers are in town.

For all the above reasons, the application should be refused.

3.4 Café / restaurant in nearby Pittville Street

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Hi, i am not happy even now everythink efect us .to much compation thanks

4. Licensing Comments

- 4.1 The proposed trading location is within the town centre zone of street trading control and is in one of the locations that has been identified as suitable for street traders, with the appropriate types of trading being confectionery / cakes; buskers selling their merchandise; and traders offering sign-up services. Whilst “confectionery” is not defined within the policy, the stall sells doughnuts as a principal product which would fall within the normal definition of confectionery (a baker’s confection) and so the application is compliant with the policy requirement for this location.
- 4.2 Members are advised that on occasion, when works are being carried out to the highway or shop frontages in the approved location, this trading unit moves a few metres to an alternative location in consultation with officers. If such a move were to be more significant – e.g. to a different street or on a permanent basis – a new application would be required which would involve a new consultation, thereby giving businesses and others the opportunity to comment on the new location.
- 4.3 Members are advised that while the unit does not trade continuously, Mr Danter has held consent for several years in this location. The licensing team does not have any recorded complaints.
- 4.4 The sub-committee must determine the application with a view to promoting the council’s adopted policy and Members should not deviate from the council’s policy unless there are clear and justifiable reasons to do so.
- 4.5 The overarching aims of Cheltenham Borough Council’s street trading policy are to:
 - Prevent the obstruction of the streets by street trading activities;
 - *Sustain established shopkeepers in the town*; [emphasis added]
 - Maintain the quality of the townscape and add value to the town;
 - Encourage inward investment; and
 - Promote quality markets.
- 4.6 Members will note that the objections that have been received make reference to the impact of street trading on established shopkeepers in the town.
- 4.7 All applications should be determined on their individual merits taking into account the policy considerations and the comments made, whilst balancing the needs of the community with the legitimate aspirations of businesses.

Background Papers

Service Records

Adopted Street Trading Policy

Case Officer

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Tel no: 01242 775200

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