



Notice of a meeting of Licensing Sub-Committee - Miscellaneous

**Wednesday, 4 April 2018
6.00 pm
Pittville Room - Municipal Offices**

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

Agenda

1.	APOLOGIES	
2.	DECLARATIONS OF INTEREST	
3.	MINUTES OF THE LAST MEETING To approve the minutes of the meeting held on 7 th February 2018.	(Pages 3 - 8)
4.	APPLICATION FOR STREET TRADING CONSENT Mr Piotr Pawet Kazieczko	(Pages 9 - 18)
5.	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	
6.		EXEMPT MINUTES OF THE LAST MEETING To approve the exempt minutes of the meeting held on 7 th February 2018.	(Pages 19 - 22)

Contact Officer: Sophie McGough, Democracy Officer,

Email: democratic.services@cheltenham.gov.uk

Licensing Sub-Committee - Miscellaneous

Wednesday, 7th February, 2018

6.00 - 7.00 pm

Attendees	
Councillors:	David Willingham (Chair), Dennis Parsons (Vice-Chair), Adam Lillywhite and Diggory Seacome
Also in attendance:	Phil Cooper and Vikki Fennell

Minutes

1. APOLOGIES

Apologies were received from Councillor Thornton.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. MINUTES OF THE LAST MEETING

The minutes of the last meeting held on 3rd January 2018 were signed as a correct record.

4. GENERAL VERBAL UPDATE FROM THE LICENSING OFFICER ON RECENT MEDIA REPORTS AND OTHER MATTERS

The Licensing Officer began by providing a verbal update to the sub-committee on a number of recent media reports.

In the first case he explained that a driver from Bristol has been prosecuted by Cheltenham Borough Council for unlawfully plying for hire. He proceeded to explain that on Friday 17 March 2017 two officers from Gloucester City Council, working in partnership with officers from Cheltenham Borough Council, approached a silver Vauxhall Vivaro. The vehicle was licensed by Bristol City Council as a private hire vehicle.

Both officers approached the car and asked the driver if he was free. The driver asked where they wanted to go and the officers responded that they wished to go to Gloucester. Following a discussion, the driver suggested a price of £42 for the journey which the officers accepted. The driver invited the officers to get into his vehicle to take them to Gloucester without an advance booking and was subsequently stopped and cautioned.

The driver was invited to attend an interview under caution on 20 April 2017 but failed to attend. He instead submitted a written statement.

The driver was reported for the offence of unlawfully plying for hire and was summoned to appear before Cheltenham Magistrates' Court on Monday 15 January 2017. He was subsequently fined a total of £580.00 for the offence.

The Licensing Officer reported that in a second case Cheltenham Borough Council had been awarded £838 in costs following the last-minute withdrawal of an appeal against its licensing committee's decision.

He explained that in January 2017 the licensing committee revoked a private hire driver's licence after the driver accrued 12 penalty points for driving at excess speed on four separate occasions. The driver did not declare any of the penalty points to the Council as required under the terms of his licence and as such the committee felt that the facts showed he was not a fit and proper person to hold a licence. His licence was revoked with immediate effect in the interests of public safety.

The driver subsequently lodged an appeal with Cheltenham Magistrates' Court which the Council contested, but withdrew his appeal on the morning of the hearing. The Council pursued its legal costs in contesting the appeal. On Monday 8 January the court decided that the driver should pay to the Council the full costs of the appeal, amounting to £838.

The Licensing Officer also announced that Cheltenham had successfully retained its Purple Flag status – awarded in recognition of an evening and night-time economy which is appealing, welcoming and safe.

He explained that Purple Flag is a national town and city centre award which aims to raise the standard and broaden the appeal of town and city centres between the hours of 5pm and 5am. Areas awarded the Purple Flag are recognised for providing a vibrant and diverse mix of dining, entertainment and culture while promoting the safety and wellbeing of visitors and local residents.

He reported that feedback from the assessment panel noted the considerable building and refurbishment works in the town centre with likely positive impacts for the evening and night time economy, the influence and support of the Cheltenham Business Improvement District, ongoing work on reducing drunkenness at race meetings and falling levels of crime and disorder in the town during the evening and at night.

On behalf of the sub-committee, the Chairman thanked officers for their hard work which had led to these successful outcomes.

5. APPLICATION FOR A HACKNEY CARRIAGE DRIVER'S LICENCE

The Licensing Officer introduced the report regarding an application for a Hackney Carriage driver's licence. He explained that Mr Hassan had passed all the necessary tests to become a driver, however, he had been brought before the sub-committee due to the fact he had 6 penalty points on his DVLA driver's licence. He informed Members that under the Council's licensing policy a driver's licence must be free of convictions and endorsements for at least one year when the application is made. The offence whereby Mr Hassan had received the 6 penalty points had occurred on 1st May 2017.

The Licensing Officer explained that in light of this, the sub-committee could either:

- Grant Mr Hassan a Hackney carriage driver's licence because the sub-committee considers him to be a fit and proper person to hold such a licence; or
- Refuse the Hackney carriage driver's licence because the sub-committee does not consider him to be a fit and proper person to hold such a licence.

When questioned, the Licensing Officer informed the sub-committee that the Council's Licensing policy had been made on 15th July 2014. One Member noted that at the time the policy was made the punishment for using a mobile phone was 3 penalty points and as such would be considered a minor traffic offence. The Licensing Officer also confirmed that all 6 penalty points had been received at the same time and for the same offence.

Mr Hassan proceeded to give his account of the incident in question. He stated that:

- He had been driving with his grey glasses case to the side of him which the police had mistaken for a mobile phone and subsequently stopped him.
- He had to provide a written statement and was advised he would have to go to court.
- When he spoke with friends they encouraged him to hire a solicitor. However, he explained that if he were to lose the case he would be unable to pay the court fees and so had accepted the offence.
- Mr Hassan stated that he had applied for a private hire licence in Tewkesbury which he had been granted, despite the fact he had declared his points. He confirmed he had obtained the licence from Tewkesbury in July 2017.
- He informed the sub-committee that he had passed the medical and other tests as required.

The Legal Officer confirmed that it was possible for Mr Hassan to be licensed in two different boroughs.

The sub-committee proceeded to ask Mr Hassan a series of questions. The Chair queried whether Mr Hassan had read the Council's licensing policy, he also questioned why they should make an exception for Mr Hassan and vary the policy which clearly states a driver's licence must be free of convictions for at least one year when the application is made. Mr Hassan reiterated that he had filled out all the necessary forms and passed the medical but he was unaware of the Council's policy on convictions. He explained that the Licensing team had not made him aware of the policy and it had only been mentioned to him following the completion of the knowledge test. Following questioning, Mr Hassan confirmed that he only required the glasses when he was watching TV and not whilst driving.

The Chair reminded Members that the onus was on Mr Hassan to prove that he was fit and proper to hold such a licence and if they were minded to vary from the licensing policy then they must have clear reasoning for doing so.

The Members then moved to vote on section 1.4.1 to: *grant Mr Hassan a Hackney Carriage driver's licence because the sub-committee considers him to be a fit and proper person to hold such a licence.*

The sub-committee voted unanimously against section 1.4.1.

Resolved that

The sub-committee refuse Mr Hassan's licence application because the sub-committee does not consider him to be a fit and proper person to hold such a licence.

The Chair reminded Mr Hassan that they were refusing his licence application at present, however, he would be free to reapply in the future. Members questioned whether the case would still come before the licensing sub-committee if it had been 12 months since the date of the offence. The Licensing Officer explained that the case would likely come back before the sub-committee as it is considered a major offence and so careful consideration would need to be given to it. Members were encouraged to be mindful of section 3.4 of the report which states "*an isolated conviction, without disqualification, for an offence such as dangerous driving or driving without due care and attention, will require careful consideration of the facts and will at the very least merit a warning as to future driving and advice on the standard expected of Hackney Carriage and private hire vehicle drivers*".

The Chair advised Mr Hassan to read Cheltenham Borough's Licensing policy and to contact the Licensing Officer should he have any queries. For clarity, he was reminded that he would need to be free from convictions from the day of the offence.

When questioned why he was able to obtain a licence in Tewkesbury but not Cheltenham the Legal Officer explained that each local authority has a different policy and it is Cheltenham's policy that drivers are free of convictions for 12 months. Mr Hassan also questioned whether the licensing documents he had already submitted would need to be re-submitted. The Licensing Officer advised that the practical driving and English tests would stay on file, however, the medical and criminal record check would need to be redone as this only stay valid for 3 months.

6. LOCAL GOVERNMENT ACT 1972 - EXEMPT INFORMATION RESOLVED

"That in accordance with Section 100A(4) Local Government Act 1972 the public be excluded from the meeting for the remaining agenda items 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) Local Government Act 1972, namely:

Paragraph 1; Information relating to any individual.

Paragraph 2; Information which is likely to reveal the identity of an individual.

Paragraph 7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

7. RENEWAL OF HACKNEY CARRIAGE DRIVER'S LICENCE

The sub-committee then moved to vote on section 1.7.1 *to renew the Hackney Carriage driver's licence with no further action taken because the sub-committee considers him to be a fit and proper person.*

The sub-committee voted unanimously against section 1.7.1.

Members were then invited to vote upon section 1.7.2 *to renew the Hackney Carriage driver's licence with a written warning to be issued to him regarding his future conduct.*

3 Members voted for and 1 Member voted against.

Resolved that the sub-committee renew the Hackney Carriage driver's licence with a written warning to be issued to him regarding his future conduct.

David Willingham
Chairman

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Cheltenham Borough Council

Licensing Sub-Committee – 4 April 2018

Local Government (Miscellaneous Provisions) Act 1982

Application for Street Trading Consent

Mr Piotr Pawet Kazieczko

Report of the Licensing Officer

1. Summary and recommendation

- 1.1 An application has been made by Mr Piotr Pawet Kazieczko for street trading consent. The trading location is on Redmarley Road, Cheltenham at the location shown at **Appendix A**.
- 1.2 Mr Kazieczko has applied to sell hot and cold food and drinks from an Iveco vehicle, an image of which is attached at **Appendix B**. The unit measures 4m x 1.5m. The applicant intends to park the vehicle on the road with the serving hatch facing the pavement.
- 1.3 Comments have been received during the consultation process and for this reason the matter is being referred to the licensing sub-committee for determination.

1.4 The sub-committee can:

- 1.4.1 **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;**
- 1.4.2 **Refuse the application because Members feel that the location, size of unit and / or type of goods are not suitable.**

1.5 Implications

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

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

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

2. Policy Principles, Aims & Objectives

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

Each application will be determined on individual merits and in view of promoting the principles and objectives contained in this policy.

In particular the policy aims to promote the following aims and objectives in reference to street trading activities:

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

2.1 Permitted locations for street trading

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

The townscape team recommend the refusal of this application for the following reasons:

- The drawings indicate that the van is to be placed either on the grassed area or the pavement (this discrepancy itself is of real concern). We believe this to be land owned by the adjacent Sainsbury's, and therefore placing the van in this location may create commercial conflict. While placing this on the pavement would also not be acceptable due to the constraint of the space for pedestrian manoeuvrability (would be less than 2 m clearance). Additionally, if the van was to be placed in the road it would become an obstruction on the highway (which narrows at this location), as well as restrict parking for residents. [Refer to paragraph 4 for clarification of where the vehicle will be parked]
- The location is in a residential area, which is inappropriate for this type of application as it would detriment the aesthetics of the surrounding neighbourhood, as well as create disturbance to neighbouring properties in terms of odour emission, noise and engine fumes.

For the reasons mentioned above, the application should not be accepted as it would otherwise set a negative precedent for future applications of this nature.

3.3 Cheltenham Borough Council - Planning Enforcement and Compliance

This application for street trading is far from acceptable. It is at the entrance to a significant and large residential area and will be environmentally intrusive. Moreover, it will be seriously disruptive to the free flow and safety of traffic.

3.4 Other people

The following comments were received from a resident.

I believe that this is a very inappropriate location for any kind of public trading/ food van as this is a residential area and on the following grounds:

- > Public Safety
- > Highway Obstruction
- > Nuisance

In general Redmarley Road already poses a bottleneck issues as it is the only way in and out of a residential estate as well as the only delivery access for Sainsbury's, hence on numerous occasions has caused traffic jams and access issues for residents as wells as emergency services.

In detail:

1. Public Safety

- Redmarley Road is too narrow and is already a bottle neck in and out of a 100% residential estate

- It makes it dangerous for pedestrians to cross the road due to the traffic built up and poor visibility due to parked cars and cars waiting to pass each other
- Will cause increased non residential traffic to get to the food van
- Due to the road being very narrow it does not allow two cars to pass already, and it makes it makes it very difficult for emergency vehicles to enter the estate posing a risk to life and property
- There is a public green space with children playing who will not be easily visible to traffic due to a large food van obstructing the view and an increase in parked cars using the food van

2. Highway Obstruction

- Redmarley Road is very narrow and does not allow for a food van to park there and serve customer either facing the road or facing the pavement
- There is no sufficient parking for customers of the food van and any further non residential vehicles would make access to the estate very difficult especially for larger vehicles like emergency services, rubbish collection and delivery vehicles
- If the food van faces the pavement it would obstruct the pavement and anyone walking around the food van to cross the road would not be easily visible to traffic
- Food van would bring non residential traffic into a residential area and restrict parking even further and obstruct roads and pavement

3. Nuisance

- Redmarley Road is the entrance to a highly built up residential area and a food van would attract non residential traffic creating a nuisance by taking up limited space
- A food van food cause littering issues e.g. there are no public bins
- There are no public toilets in the area potentially resulting in people using the residential areas, and making the operation unhygienic
- A food van will cause increased air and noise pollution as additional non residential cars would come to the food van and park up
- A food van itself will cause increased noise and air pollution as it will have to run a refrigeration and cooking unit
- A food van will cause a nuisance due to the smells it will cause especially as a hot food unit
- Customer of the van will drive into the estate to park up and consume their purchase resulting in littering and obstructing residence

The Battledown estate is a residential area only and its residents have no requirement therefore for a food van therefore would only attract non residents to use the van therefore resulting in a nuisance to residence.

4. Licensing Comments

4.1 The applicant provided the following additional comments in support of his application:

“The van would be placed on the road. I know this area very well, residents have their own designated parking spaces outside their blocks of flats so I wouldn’t restrict residents’ parking. Besides my trading hours would be the hours that most people are at work, I would finish trading by the time they would come back home. I wouldn’t cause any obstructions as I my van wouldn’t be parked in the middle of the road but in a parking bay alongside other vehicles.

There are hundreds of cars parked in this area, one car less or more such as mine would not make any difference. My van would not cause any noise as the engine would be switched off. My van does not have generators, there is a ventilator in the roof so all the smells I would produce would go up in the air.

I have spoken with about 50 people living in this area and in 99% they say it is a good idea for me to run a burger van like this. I have been observing this area and this place I propose to trade from for a long time before I applied and I consider it to be a safe place. I don’t expect to have queues of people there either.”

- 4.2 The proposed trading location is outside the town centre zone of street trading control and therefore there are no specific policy restrictions regarding street trading in this location.
- 4.3 Each application should be dealt with on its own merits based on the overarching aims of the policy, which are to:
- 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.
- 4.4 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

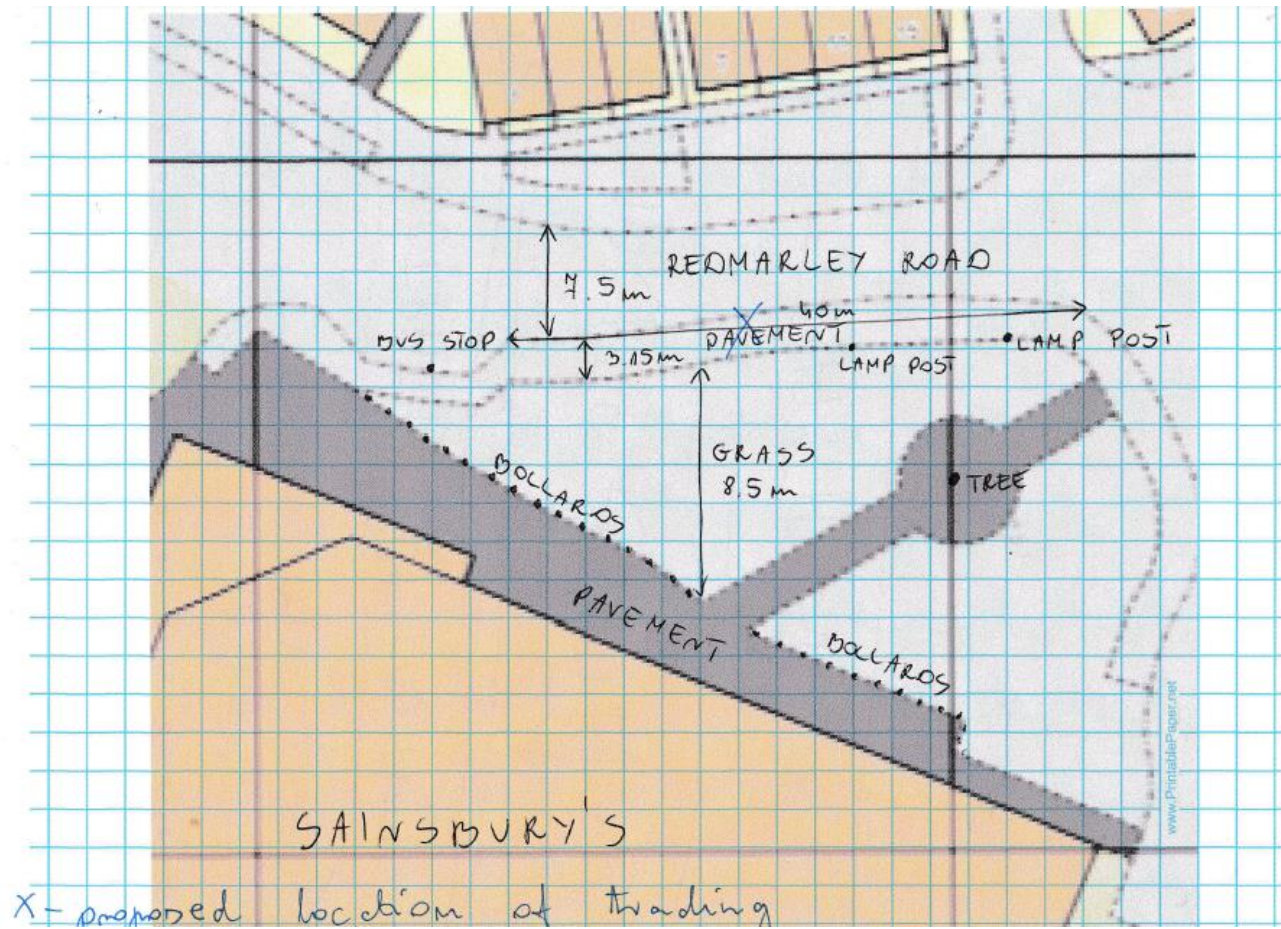
Service Records

Adopted Street Trading Policy

Case Officer

Contact officer: Mr Philip Cooper
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 262626 (internal 4177)

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