



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

**Wednesday, 6 December 2017
7.00 pm or following the close of the Licensing Committee at
the
Pittville Room - Municipal Offices**

Membership	
Councillors:	Adam Lillywhite, Dennis Parsons (Vice-Chair), Diggory Seacome, Pat Thornton and David Willingham (Chair)
Officers:	Louis Krog, Vikki Fennell and Phil Cooper

Agenda

1.	APOLOGIES	
2.	DECLARATIONS OF INTEREST	
3.	MINUTES OF THE LAST MEETING To approve the minutes of the last meeting held on 1 st November 2017	(Pages 3 - 6)
4.	RENEWAL OF HACKNEY CARRIAGE DRIVER'S LICENCE Mr Paul Bacon - HCD735	(Pages 7 - 12)
5.	APPLICATION FOR A STREET TRADING CONSENT Mr Robert Ursell	(Pages 13 - 20)
	<p>LOCAL GOVERNMENT ACT 1972 - EXEMPT INFORMATION</p> <p>The Committee is recommended to approve the following resolution:-</p> <p>“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 defines in paragraph 1, 2 and 7, part 1 schedule 12A (as amended) Local Government Act 1972, namely:</p>	

		<p>Information relating to any individual,</p> <p>Information which is likely to reveal the identity of an individual,</p> <p>Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.</p>	
6.		<p>REVIEW OF A HACKNEY CARRIAGE DRIVER'S LICENCE</p> <p>Report of the Licencing Team Leader</p>	(Pages 21 - 26)

Contact Officer: Sophie McGough, Democracy Officer,
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Licensing Sub-Committee - Miscellaneous

Wednesday, 1st November, 2017

6.00 - 6.50 pm

Attendees	
Councillors:	David Willingham (Chair), Dennis Parsons (Vice-Chair), Diggory Seacome and Pat Thornton
Also in attendance:	Louis Krog, Vikki Fennell and Beverly Thomas
Apologies:	Councillor Adam Lillywhite and Phil Cooper

Minutes

1. **APOLOGIES**

Councillor Lillywhite

2. **DECLARATIONS OF INTEREST**

Councillor Willingham declared an interest in agenda item 4 in that he had sent a street letter to residents of Arle Avenue and two properties on Arle Road that faced on to it. It was neutral in tone and he had been advised by One Legal that this would not fetter his discretion on the matter.

Councillor Thornton declared an interest in agenda item 4 as ward councillor.

3. **MINUTES OF THE LAST MEETING**

The minutes of the meeting held on 4 October were approved and signed as a correct record.

The Licensing Team Leader confirmed that in response to a query raised in the last minutes Mr Velez had now been in contact with the council with regard to a more suitable location for his street trading operation.

4. **APPLICATION FOR A STREET TRADING CONSENT**

The Licensing Team Leader introduced the report and explained that an application had been made by Mr Okkes Silgi for a street trading consent to sell hot food and cold drinks on Colletts Drive, Cheltenham. In attendance was Mr Silgi's representative, Ayse Yuksel and Mr Silgi. Appendix A showed the location of the proposed trading pitch. Mr Silgi had applied for consent to trade every day between 17.30 and 23.00 hours. An image of the trading unit was attached at Appendix B. The proposed trading location was outside the town centre zone of street trading control, therefore there were no policy restrictions on the location and the application is to be determined on its individual merits. The application had attracted several objections which were reproduced in paragraph 4.1 of the report.

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, approve

the application for a trial period as explained in paragraph 5.6 of the report; or refuse the application because Members consider the location, size of unit or goods being sold to be unsuitable. Members were asked to note the assessment criteria as laid down in paragraph 2.2 and the consultee comments at 4.1. In addition other considerations as laid down in paragraph 5.3 should be taken account of. He explained that given the nature of the comments and the fact that it was a new application the sub-committee did have the option, if Members considered it appropriate, of granting street trading consent on a trial basis.

The following responses were given to questions to the Licensing Officer :

- The applicant would have to fulfil food hygiene requirements
- Environmental health had made no comment on the application
- Highways had made no comment on the application
- The Committee had the discretion to add conditions to the licence
- The trading unit would be accessible by 3 roads with the only legal vehicular access being from Collets Drive

The applicant was given the opportunity to speak. Through his representative, Mr Silgi explained that all hygiene requirements would be complied with and there would be a sink and hot tap within the trading unit. Should he be granted a licence to trade Mr Silgi would apply for a waste bin which would be emptied regularly by the council. He recognised that there were issues with anti-social behaviour in the area but believed his unit could actually act as a deterrent to some of the activities. He would have a CCTV camera in the trading unit.

Members were then given the opportunity to ask questions of the applicant and the following responses were given:

- Mr Silgi was conversant in English, he just required assistance from his representative with technical terms
- Mr Silgi worked for himself
- He had previously traded in Malvern, Worcestershire but he lived in Cheltenham so wished to trade here
- Mr Silgi confirmed he was aware of the law surrounding capturing CCTV images and the need to register with the Information Commissioner
- Mr Silgi was proposing this particular location as the road was quite wide at this point and believed he would be highly visible to those entering Colletts Drive for the purposes of shopping at Tesco

Members raised the following points in the debate:

- One Member felt this was the wrong location for the business with potential trade being poor. She could also not support the application due to the amount of rubbish which would be generated exacerbating an existing problem in the area.
- Other Members highlighted that the choice of location was a commercial decision made by the applicant and was not relevant to the decision of the Committee.
- Members expressed concern about the number of complaints received
- In terms of litter it was acknowledged that rubbish was already often disposed of in the River Chelt. It was proposed that a condition be

added that a large litter bin be installed alongside the trading unit. This could then lead to an overall reduction in litter

- In terms of anti-social behaviour some Members felt that the presence of someone in that area could act as a potential deterrent.
- Members were sympathetic to the objections regarding smell but this did depend on wind direction although there were not many residential properties that close to the proposed location
- Some Members believed that as a town initiative, new ideas and enterprise were to be encouraged so were reluctant to turn the application down. However, the Licensing Committee could reconsider a licence at any point particular if complaints had been received.
- The Licensing Team Leader clarified that in terms of litter the council would expect the applicant to essentially clean up the site under his control. However, once customers had left the site this would be outside of his immediate control.
- A ward member said that the concerns of residents were understood. There were however issues in terms of what was on the plan now and what would be there in future as planning permission had been granted for the redevelopment of the Gas Club therefore there would be residential properties right up to the bridge which would be closer to the current proposed location. Anti social behaviour was rife in the area and he had personally had to get syringes and needles removed and supermarket trolleys removed from the River Chelt. There was evidence also of the use of nitrous oxide canisters. He believed there was underreporting of such behaviour to the Police and the council.
It was believed that part of the customer base could potentially be the street drinkers that gather around the bridge which could cause intimidation although at the same time the fact that the burger van was there could in fact discourage such behaviour.
- Members considered whether a licence could be granted on a trial basis and to that end would only be revoked if there were objections or poor compliance with the rules. Due to the level of concern surrounding the application it was suggested that initially a six month trial should be granted as we were entering the winter months and would need longer to establish if there was a build up of antisocial behaviour as a result of the installation.

In this right of reply the applicant clarified that there would be a waste bin next to the trading unit. He was limited in what he could do with regard to littering. He would welcome the opportunity to operate on a trial basis so that he could prove himself and would come back before the committee if necessary.

A Member noted that a street trading licence had been granted to a trading unit for a different product in a different part of town but he had disappeared after 6 months due to lack of business.

There being no further comments, the Chair moved to vote on 1.6.2 being to approve the application for a trial period.

Upon a vote it was (3 for 1 against)

RESOLVED THAT

The application be approved for a trial period of six months and for the matter to then be brought back to this committee for a review. There was to be the added condition that there must be a suitable waste receptacle installed at the location to dispose of the litter.

5. ESTABLISHMENT OF A WORKING GROUP FOR STREET TRADING LICENSING POLICY REVIEW

The Licensing Team Leader introduced the report and explained that licensing policies were normally reviewed at three yearly intervals but Members have expressed a need to review the street trading policy earlier. To facilitate this review and better engage with key stakeholders, officers were looking to establish a working group. He referred Members to the draft terms of reference for the group which covered the scope, potential attendees and proposed approach. It was envisaged that the group would meet first between November and December at a suitable time and date.

When asked why the proposed draft policy would not go to full Council the Licensing Officer explained that the constitutional requirement was for the draft policy to be considered by Cabinet.

A Member felt that all Members of the Council who represented wards covered by the Street Trading Policy should be invited to participate on the working group.

RESOLVED THAT (unanimously)

- 1. the establishment of a working group as outlined in this report be approved; and**
- 2. nominations be received from members of the miscellaneous licensing sub-committee who would wish to participate in the working group – this can be up to all 5 members; and**
- 3. the working group's terms of reference and the scope of the review, as attached at appendix A be approved.**

David Willingham
Chairman

Cheltenham Borough Council

Licensing Committee – 6 December 2017

Renewal of Hackney Carriage Driver's Licence

Mr Paul Bacon - HCD735

Report of the Licensing Officer

1. Executive Summary and Recommendation

- 1.1 An application has been received from Mr Paul Bacon for a renewal of a Hackney Carriage driver's licence.
- 1.2 Mr Paul Bacon's certificate from the Disclosure and Barring Service (DBS) shows a caution. The details of this are contained in the enclosed background papers.
- 1.3 Mr Bacon did not disclose the caution on his renewal application form.
- 1.4 In light of this the Licensing Manager has taken the view that Members of Committee should be aware of the caution because of the need to ensure that he remains a fit and proper person to hold a licence.
- 1.5 **The Committee can:**
 - 1.5.1 **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**
 - 1.5.2 **Revoke Mr Bacon's Hackney Carriage driver's licence because the Committee considers him to no longer be a fit and proper person.**

1.6 Implications

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|-------|-------|---|
| 1.6.1 | Legal | There is a right of appeal against a refusal to renew a licence which, in the first instance, is to the Magistrates' Court. |
|-------|-------|---|

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2 Background

- 2.1 The Borough Council must be satisfied that the holder of a Hackney Carriage Driver's licence is a fit and proper person to hold that licence (Section 59 Local Government (Miscellaneous Provisions) Act 1976).

3. Policy Considerations

- ### 3.1 Driver Renewal Applications

If details of new convictions, cautions, fixed penalty notices or charges are received during the renewal process, the application will be dealt with on its merits according to the policy on the relevance of convictions (Appendix J).

Failure to disclose or declare any previous convictions, cautions, fixed penalty notices or pending charges maybe construed as an attempt to deceive and appropriate and proportionate action will be taken. It is an offence to knowingly or recklessly make a false statement or to omit information required by the Council by virtue of s.57 Local Government (Miscellaneous Provisions) Act 1976. (Page 11)

Appendix J - Relevance of Convictions, Cautions and Fixed Penalty Notices in Relation to the Licensing of Drivers and Operators

The licensing authority must be satisfied that all those who are licensed to drive hackney carriages and / or private hire vehicles, and those who are licensed to operate under a private hire operator's licence, are fit and proper persons. This general policy relates to the Council's assessment of the suitability of an applicant to be licensed, in terms of their criminal and driving records. Specifically, it is to be applied where an applicant for a driver or operator's licence has received a relevant conviction, caution or fixed penalty.

Additionally, it will be referred to where a relevant conviction, caution or fixed penalty has been received during the period of a driver or operator's licence and used to help inform any decision as to the licence-holder's continuing fitness to hold a licence.

These guidelines shall apply to all new applicants for, and all existing holders of, hackney carriage / private hire drivers licences and private hire operators licences.

General Policy

Each case will be decided on its own merits. Although an applicant may have convictions that would fall under the guidelines in this policy, the Council will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision.

The overriding consideration is the safety of the public. The Council has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit, honest and not persons who would take advantage of their employment.

Hackney carriage and private hire drivers are listed occupations under the Rehabilitation of Offenders Act 1974. This means that an applicant must disclose ALL convictions when applying for the grant of a licence. The Council may take into account anything they consider relevant to the determination of the application.

When the relevant required information has been returned, the application will be considered in the light of the information provided. The information will be used to ascertain whether the information given on the original application form was correctly and truthfully provided. It is therefore necessary to ensure that details of ALL convictions and cautions are provided at the initial stage.

A serious view will be taken of any application which seeks to conceal any caution or conviction in order to obtain a Licence. This is a criminal offence and, as such, may lead, not only to consideration of the applicant as not being a "fit and proper person", but criminal proceedings.

In the event that there are no relevant convictions, cautions or fixed penalties held, the applicant will be considered to be a "fit and proper person" and the matter will be determined by the issue of the

licence [subject to the successful completion of all other assessments].

Applications where convictions, cautions or fixed penalties are held will be considered by a Licensing Officer who, having regard to this policy may refer the application to a Licensing Committee for determination. This will result in either the determination of the applicant as a “fit and proper person”, indicated by the issue of a licence, or the application being refused. In these circumstances, the applicant has the right of appeal to the Magistrates’ Court, such appeal to be lodged within 21 days of the decision being notified.

The Council will only consider spent convictions if it appears to be relevant for deciding whether the applicant is a fit and proper person to hold a licence and that justice cannot be done in the case, except by admitting or requiring evidence relating to that spent conviction.

For the purpose of these guidelines formal cautions and endorsable fixed penalties shall be treated as though they were convictions.

Fit and Proper Person

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

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

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

Offences of Dishonesty

The Council’s policy relating specifically to offences of dishonesty for existing licensed drivers states:

Drivers of hackney carriage and private hire vehicles are expected to be persons of trust. It is

comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare and in other ways.

Passengers may include especially vulnerable people.

Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing. In certain situations drivers will know that a property is empty whilst the occupants are away on holiday for a set period of time after taking them to the airport or railway station.

The widespread practice of delivering unaccompanied property is indicative of the trust that businesses put into drivers.

For these reasons a serious view is taken of any convictions involving dishonesty.

An existing licence holder who is convicted of one or more of the following offences, is likely to have their licence revoked.

- a. Theft
- b. Burglary
- c. Fraud
- d. Benefit fraud
- e. Handling or receiving stolen goods
- f. Forgery
- g. Conspiracy to defraud
- h. Obtaining money or property by deception
- i. Other deception

3.2 Decision making in relation to licensing is an onerous duty, dealing with both the livelihood of the Licensee/Applicant and the risks to the safety and comfort of the public.

3.3 Each case will be decided on its own merits. The Council will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision.

3.4 The overriding consideration is the safety of the public. The Council has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit, honest and not persons who would take advantage of their employment.

3.5 Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behavior which will be taken into account.

3.6 **Part 1 – Driver Licences**

Convictions / cautions / fixed penalty notices

Licence holders must notify the Council in writing within 7 days if he or she is convicted or cautioned for an offence or receives a fixed penalty notice.

4. Licensing Comments

4.1 The Committee is under a statutory obligation to ensure that persons licensed as Hackney Carriage drivers are, and remain, fit and proper people.

- 4.2 It is the Council's policy that all licensed drivers must notify the Council in writing within 7 days if they have, amongst other things, been cautioned for an offence.
- 4.3 Mr Bacon failed to notify the council of the caution.
- 4.4 Mr Bacon failed to disclose to the council on the renewal application form that he received a caution. Question 4 of the application form explicitly asks if the licence holder has, since their last renewal, been cautioned by the police. Mr Bacon indicated that he has not.
- 4.5 Mr Bacon also indicated in his written response that he was surprised to have a caution registered on his DBS and that the police have indicated to him that "there would be no further action" hence why he claims he did not indicate the caution on his application form.
- 4.6 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.
- 4.7 Members are to note that it is an offence to knowingly or recklessly make a false statement or to omit information required by the council by virtue of s.57 Local Government (Miscellaneous Provisions) Act 1976.
- 4.8 The Committee must be satisfied that Mr Bacon is a fit and proper person before agreeing to the grant of a licence.
- 4.9 Mr Paul Bacon has been sent a copy of this report and invited to attend this meeting to speak in support of his application and to answer members' questions or to be represented. In considering the application on its own merits Members should have regard to the adopted Probity Guide.

Background Papers

Service Records

Report Author

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Cheltenham Borough Council

Licensing Sub-Committee – 6 December 2017

Local Government (Miscellaneous Provisions) Act 1982

Application for a Street Trading Consent

Mr Robert Ursell

Report of the Licensing Officer

1. Summary and recommendation

- 1.1 An application has been made by Mr Robert Ursell 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** shows the location of the proposed trading pitch.
- 1.2 Mr Ursell has applied for consent to trade every day from 7th December to 24th December 2017 inclusive, between 07:00 and 19:00 hours.
- 1.3 An image of the trading unit is attached at **Appendix B**. The unit measures 2.1m x 1.2m.
- 1.4 **The committee can:**
 - 1.4.1 **Approve the application because Members are satisfied that the location, size of unit and type of goods are suitable;**
 - 1.4.2 **Refuse the application because it does not comply with the council's adopted policy as the location is not approved for street trading.**

1.7 Implications

Legal

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

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

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2. Policy Principles, Aims & Objectives

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

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

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

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

2.1 Permitted locations for street trading

The council's adopted policy prescribes a number of permitted trading locations and associated permitted trading goods. These locations and permitted goods are outlined in the council's adopted policy that is available on the council's website. 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 No issues in relation to public realm/townscape but this is highway land and there may be access issues (I did see that GCC Highways were also emailed so I would think this has been picked up by them) - **Townscape Team, Cheltenham Borough Council**
- 3.2 Highway have no objection to the Flower Stall this should not interfere with the access from Church Street onto the High Street, Cheltenham. - **Highways, Gloucestershire County Council**
- 3.3 No objection. - **Planning Enforcement, Cheltenham Borough Council**

5. Licensing Comments

- 5.1 The proposed trading location is within the town centre zone of street trading control, but is not in one of the locations that has been identified in the council's street trading policy as approved for street traders. The application therefore does not comply with the policy and will be determined on its individual merits.
- 5.2 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.
- 5.2 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;
 - Maintain the quality of the townscape and add value to the town;
 - Encourage inward investment; and
 - Promote quality markets.
- 5.3 Other considerations when deciding whether street trading is appropriate are:
- The needs of the area;
 - The potential for public nuisance;
 - Public safety;
 - The appearance of the trading unit; and
 - The impact on the environment.
- 5.4 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

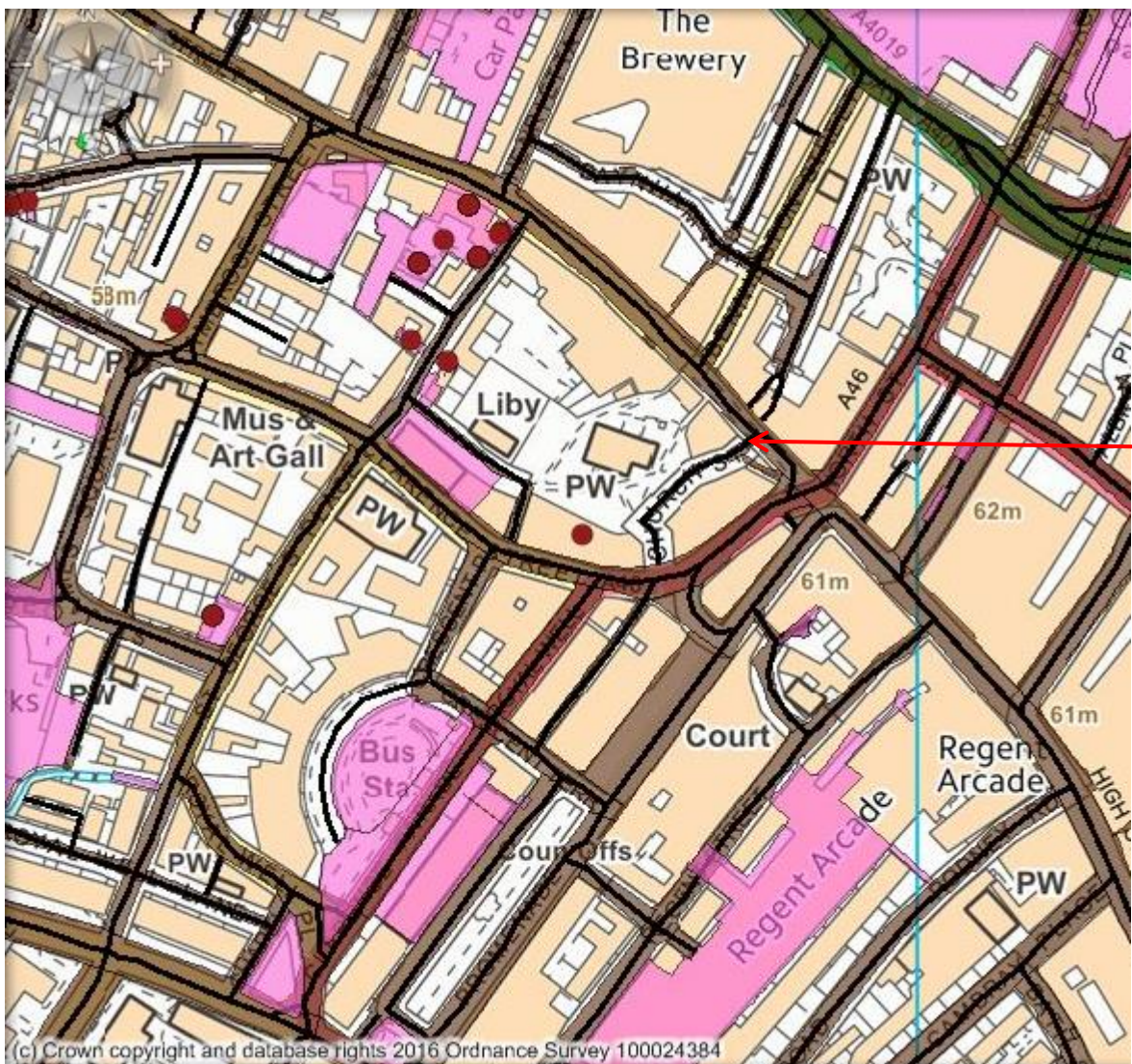
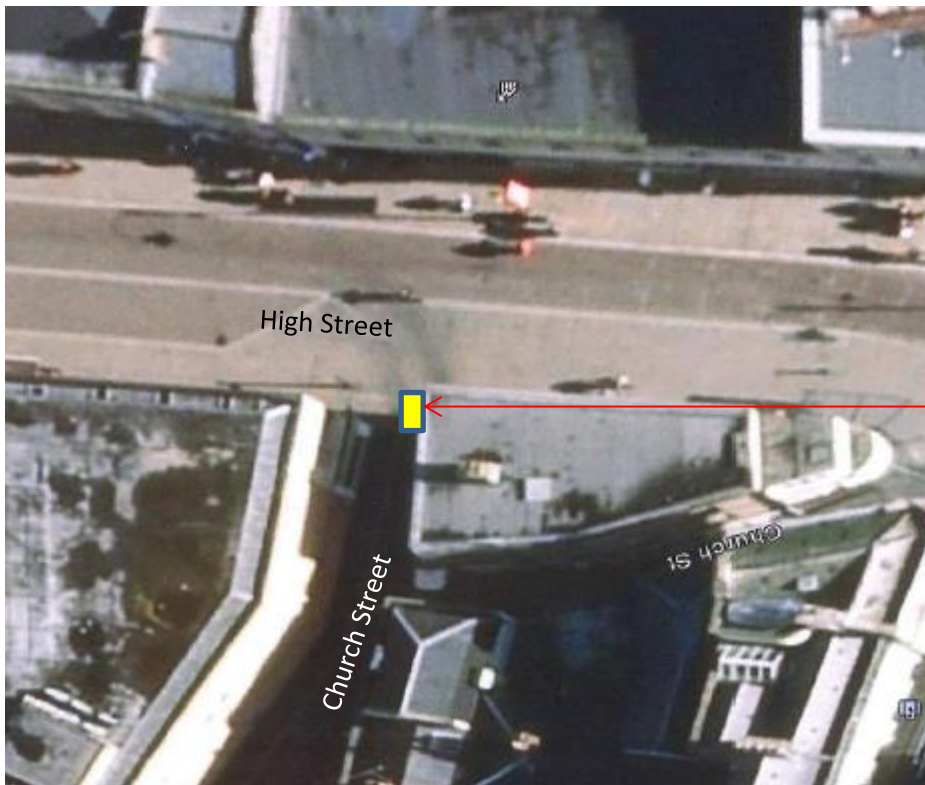
Service Records

Adopted Street Trading Policy

Case Officer

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