



CHELTENHAM

BOROUGH COUNCIL

Notice of a meeting of Licensing Committee

Wednesday, 5 June 2019

6.00 pm

Pittville Room - Municipal Offices, Promenade

Membership	
Councillors:	David Willingham (Chair), Paul McCloskey (Vice-Chair), Tim Harman, Diggory Seacome, Angie Boyes, Mike Collins, Roger Whyborn, Dennis Parsons, Jo Stafford and Simon Wheeler

The Council has a substitution process and any substitutions will be announced at the meeting

Agenda

1.	APOLOGIES	
2.	DECLARATIONS OF INTEREST	
3.	PUBLIC QUESTIONS These must be received no later than 12 noon on the fourth working day before the date of the meeting	
4.	MINUTES OF LAST MEETING To approve the minutes of the last meeting held on 6 th March 2019.	(Pages 3 - 10)
5.	MINUTES OF SUB COMMITTEE MEETING To approve the minutes of the Miscellaneous Licensing Sub Committee held on 8 th May 2019.	(Pages 11 - 16)
6.	POLICY ON LICENSING OBJECTS ON THE HIGHWAY Report of Licensing Team Leader	(Pages 17 - 22)
7.	APPLICATION FOR A STREET TRADING CONSENT Mr Edward Danter	(Pages 23 - 36)
8.	ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION	
9.	REVIEW OF PREVIOUS DECISIONS	
10.	DATE OF NEXT MEETING	

		4 th September 2019.	
11.		<p>LOCAL GOVERNMENT ACT 1972 - EXEMPT INFORMATION 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 defined in paragraph 7, Part (1) Schedule (12A) Local Government Act 1972, namely:</p> <p>Paragraph 7; Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.</p>	
12.		<p>APPROVAL OF EXEMPT MINUTES To approve the exempt minutes of the sub committee meeting on 6th March 2019.</p>	(Pages 37 - 38)

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

Licensing Committee**Wednesday, 6th March, 2019****6.00 - 8.25 pm**

Attendees	
Councillors:	David Willingham (Chair), Paul McCloskey (Vice-Chair), Tim Harman, Diggory Seacome, Angie Boyes, Mike Collins, Roger Whyborn, Dennis Parsons, Jo Stafford and Simon Wheeler
Also in attendance:	Louis Krog and Donna Marks

Minutes**1. APOLOGIES**

There were none.

2. DECLARATIONS OF INTEREST

There were none.

3. PUBLIC QUESTIONS

There were none.

4. MINUTES OF LAST FULL COMMITTEE MEETING

The minutes of the full committee meeting held on 5th December 2018 were approved and signed as a correct record.

5. MINUTES OF SUB COMMITTEE MEETINGS

With regards to the exempt minutes of the miscellaneous licensing sub committee meeting, a discussion was had about whether the applicant whose name had been omitted should be made public. The Chair explained that an applicant can't be named if they are the subject of an ongoing criminal investigation. Some Members felt that in the interest of transparency if, for example, a taxi driver is stripped of their licence then the public should be made aware of this and the exemption lifted once the criminal proceedings have finished. The Chair reminded Members that they have a duty under the human rights act and there were GDPR implications of releasing information relating to an individual.

The Licensing Team Leader suggested taking the matter away for further legal advice and bringing it back to the next meeting once the legal position had been clarified.

Subject to the above points, the minutes from the miscellaneous licencing sub-committee meeting held on the 2nd January 2019 were approved and signed as a correct record.

The minutes of the alcohol and gambling sub-committee held on 4th February 2019 were approved and signed as a correct record.

6. ANNOUNCEMENTS FROM THE CHAIR

The Chair explained that Andy and Phil from the Licensing team had left CBC. He wished to place on record his thanks to them for their work for the Council, and wished them well for the future. He also welcomed a new team member, Freya, to the Licensing team.

He further advised that Colin visited Naas, Dublin to attend the latest Purple Flag awards ceremony where he received the new Purple Flag, on behalf of Cheltenham, following its recent successful renewal. He highlighted that Cheltenham had also been nominated for a new Purple Flag award to find the UK and Ireland's best night-time economy. The Purple Flag accreditation uses five main core agenda themes; wellbeing, movement, appeal, place and policy. Cheltenham had been nominated under the 'appeal' category and we will find out if it has been successful at an awards ceremony later this year in June 2019.

7. APPLICATION FOR PERMISSION TO PLACE AN OBJECT ON THE HIGHWAY

The Chair advised that he conducted a site visit on the 5th March, he had not spoken to anyone on site. Councillor Seacome also advised that he had visited the site.

The Licensing Team Leader introduced the report, he explained that Bakers Fine Jewellery had made an application to place an advertising board outside 15 Montpellier Walk. The timings that Bakers intended to display the 'A' board were outlined at 1.2 of the report and a picture of the proposed structure included at Appendix A. He confirmed that the application does not comply with the council's adopted policy with regards to its size which exceeds the maximum permitted dimensions and the fact the premises is not disadvantaged by its location. He advised that the committee must determine the application with a view to promoting the Council's adopted policy and whilst the policy and officer recommendation should not fetter the committee's discretion, the committee should only depart from the policy where there are clear and defensible reasons for doing so.

The Licensing Team Leader confirmed that the area outside Montpellier Walk is classed as privately maintained public highway. This is reflected in the fact that they do not charge them a licence fee, however, the premises still require permission by virtue of being located on a public highway.

The applicant was invited to speak in support of her application, she explained that:

- They had thought it was acceptable to display an A board as many of the other premises on Montpellier Walk also displayed one. Some businesses also had boards larger than what they had displayed. Other businesses on Montpellier Walk also had roped areas with table and chairs within that exceeded the space taken up with an A board.
- They had understood that they were required to leave a certain width on the pavement for pedestrians and they have taken that in to consideration.
- They had not done it to intentionally cause problems but thought they were

Page 5

within their rights due to the fact other businesses on Montpellier Walk had A boards.

- Bakers was slightly set back and was almost barricaded by the table and chairs of other properties.

With regards to the other businesses on Montpellier Walk, the Licensing Team Leader confirmed that there were a number of pending court cases as several businesses had unlawfully displayed A boards. However, it could take up to 6 months for this to go through the courts. He advised that some businesses were lawfully displaying A boards as they were permitted within areas with table and chairs. He reiterated that the committee should deal with the applications on its individual merits.

Following a question from Members, he confirmed that there were 3 businesses on Montpellier Walk that had displayed A boards without consent and were being dealt with through the courts. He advised that a business located in the basement had consent to display an A board due to the fact their premises was disadvantaged by its location.

In response to a query from a Member about why Bakers required an A board given that they had a large branded awning which was visible from the road, the applicant explained that they wished to highlight the services that they provided which included repairs, particularly as people could often be intimidated by fine jewellers.

In the debate, the Members made the following comments:

- They noted that there were already a number of premises with A boards and table and chairs along Montpellier walk and acknowledged that there was inevitably an issue with the policy given that businesses could display A boards if they also have an area with tables and chairs. They agreed that the policy needed reviewing and a consistent approach to the licensing of A boards needed to be devised. As such, Members felt that the applicant shouldn't be disadvantaged because of CBC's policy and felt it reasonable to deviate from the policy;
- Members agreed that they needed to be mindful of the 3 cases going through the courts and they shouldn't ignore the cumulative effect on the area of allowing such applications. As such, one Member was reluctant to permit the application as it could undermine the 3 other cases that were going through the courts;
- Members highlighted that A boards could cause problems for the blind and partially sighted;
- They empathised with the applicant's point that customers were often nervous about approaching such establishments and understood why they wished to highlight the services they provided. They were also satisfied that the applicant had left enough space on the curb for pedestrians;
- Members believed the applicant acted in good faith and were struggling to see what physical harm the A board caused;
- The A board seemed solid and sturdy and well made. The applicant confirmed that the board would be taken down in high winds and had been designed to be in keeping with the street scene. Members did,

however, acknowledge that it was not consistent with the policy in terms of its size.

One Member suggested deferring the application until after the April meeting when the committee would have had the opportunity to make revisions to the street scene and A board policy. They felt that they needed a clear and consistent policy and the inconsistencies with regards to table and chairs policy was unfair.

The Chair highlighted that the other premises had failed to apply for a licence and that's why they were the subject of court proceedings. He felt that there was a risk to deferring and they had to consider the human rights act. He reasoned that if they were minded to grant it could be revisited in light of the new policy.

The Legal Officer advised that deferring would be inappropriate given that they were unaware of the outcome of the policy review and questioned what the applicant would do in the meantime. She further highlighted that the committee's decision would not materially impact on the 3 other cases going through the courts as the magistrates act on beyond reasonable doubt and so it was for the businesses to prove that they hadn't committed an offence. She advised that they should concentrate on the application before them today.

The Licensing Team Leader confirmed that the committee in 2014 had adopted the street scene policy. However, this was up for review in April and so the committee had the opportunity to make revisions to it. He confirmed that A board licences were renewable each year and so the committee could review their decision once a new policy had been devised. Following a Members question, the Licensing Team Leader confirmed that the committee also had the option to revoke a licence if there is a policy change that affects a previous decision.

One Member questioned when someone commits an offence, whether they are tried on the policies and procedures in place at the time. The Legal officer confirmed that they are judged on the policies that were in place on the day the offence was committed. She advised that the cases going through the court were because the applicant had displayed an A board without consent and because they were causing an obstruction to the highway.

One Member explained that if the committee were minded to permit, they would like to put a condition on the licence regarding the size of the A board, as at present it was not compliant with the council's policy. The applicant confirmed that they would be happy to reduce the size of the A board. Other Members felt that the A board was in keeping with the area and not out of proportion despite the fact it was larger than the policy requirements. It was established that the A board was 170mm too high and 206mm too wide, which the committee reasoned was not a great deal. As such, the Member withdrew their proposed condition.

The committee proceeded to vote on section 1.7.1 of the report to approve the application because Members are satisfied that the location is suitable.

Upon a vote it was unanimous.

RESOLVED THAT

The application be approved because Members are satisfied that the location is suitable.

The Licensing Team Leader confirmed that the policy review was already scheduled for April and within this included a review of street trading, objects on the highway and charitable collections.

8. REVIEW OF PERFORMANCE BRIEFING NOTE

The Licensing Team Leader introduced the briefing note. He advised that the briefing paper sought to provide the Licensing Committee with a performance review of the Licensing Section in 2018. He confirmed that the key performance indicators were outlined at appendix 1, which highlighted the time taken to process applications. He highlighted that the licensing section had been actively contributing to the corporate modernisation and commercialisation transformation work during 2018. He gave an update on the policy reviews and explained that both the taxi and private hire and gambling policy statements had been adopted and implemented in 2018 and the street trading review had been prioritised for this year. Subject to resource availability, the street scene activities and sexual entertainment policy reviews would be initiated in 2019.

Following questions from Members, the licensing team leader confirmed that the figures highlighted at appendix 1 were the time taken to process applications, not the number of applications.

The committee acknowledged that a £93,000 saving had been made as a result of the licensing teams contribution to the corporate modernisation and commercialisation transformation work and wished to thank the licensing team for their hard work

9. DEPARTMENT FOR TRANSPORT CONSULTATION REPORT

The Licensing Team Leader advised that the Department for Transport had launched a consultation on proposed statutory guidance for licensing authorities on taxi and private hire vehicle licensing. He advised that at present there is no statutory guidance on taxi and private hire vehicle licensing. He highlighted that it was important the Committee were given the opportunity to review and respond to the proposed statutory guidance.

Members acknowledged that the issue of taxi and private hire vehicle licensing needed addressing at a national level. Particularly as there had been situations whereby one authority would refuse an application for it to simply be granted in an adjoining authority. Members suggested that there ought to be a core minimum standard for licensing. The Chair advised that there was a national register of refusals and revocations and Cheltenham Borough Council were a member of this register.

One Member drew the committee's attention to section 2.21 of the proposed statutory guidance which states that the Committee/Board model allows for:

Each case to be considered on its own merits. It is rare for the same councillors to be involved in frequent hearings – therefore the councillors involved in the decision making process will have less knowledge of previous decisions and therefore are less likely to be influenced by them.

They noted that it was often considered beneficial to have a committee of Members who have a lot of experience in dealing with similar matters, however, this seemed to imply this was not the case. Another Member disagreed with this and stressed that a consistent approach was necessary and Members should have a sound knowledge of the law when determining applications.

Members agreed that the key was establishing a common core standard so that Cheltenham residents were not disadvantaged by adjoining authorities who did not have as high standards.

Members acknowledged a recent article published by the Local Government Association regarding CCTV in taxis. They noted that there was a balance between offering a level of protection and the privacy of passengers. They questioned what Cheltenham's position on CCTV was as many councils make it mandatory for drivers to have CCTV.

The Licensing Team Leader confirmed that their current policy was that CCTV was at the discretion of the driver and was not mandatory. He advised that they had recently reviewed the taxi policy and so it would not come before the committee again for a few years, although they could make a request to Cabinet for a review. He explained that the issue was that ICO had recently issued guidance which stated that the Council would be the data controller and this carried a great level of responsibility for the authority. He advised that at present they were trying to determine how to take a proactive approach to the monitoring of taxi drivers.

It was also acknowledged that civil warnings issued by the Magistrates Court should be reported to the licensing office and guidance on dealing with them.

10. GOVERNMENT CONSULTATION ON TAXI AND PRIVATE HIRE LICENSING

The Licensing Team Leader advised that the consultation was ongoing and this could be distributed to Members if deemed necessary.

11. MAKE-UP OF LICENSING COMMITTEE

The Licensing Team Leader explained why the report was before the committee. He advised that the full committee had passed a resolution in 2016 for a revised committee structure, this had taken effect in September 2017 and it was requested at committee in December that the committee structure be reviewed. He confirmed that the committee had the option to keep the current structure or resolve as they see fit.

Councillor Parsons explained his reasoning for requesting the review, as below:

- He reasoned that whilst the original structure was not perfect, the present structure was unsatisfactory.
- He noted that there was the miscellaneous committee of 5 that determine almost all applications and despite the fact there are 5 Members on the alcohol and gambling committee only 3 determine the applications.
- The fact that the alcohol and gambling meetings were often held in the day time meant that many were excluded from attending and the same demographic of Members determined the majority of applications.

- He was concerned that Members were not getting the required experience and expertise to determine applications. He also stressed that all of the committees should be politically balanced and that the alcohol and gambling committee should have an assigned Chair, not the current practice whereby the Chair is decided at the meeting.
- He accepted that it was not necessary for 10 people to determine a minor application, however, reasoned that there was normally more than one item on the agenda.
- He questioned whether they needed a full committee of 10 and suggested a compromise between the two structures would be more appropriate.

In the debate that followed, Members made the following comments:

- Members reasoned that they would never be able to achieve a structure that was perfect, however, agreed that the committees should be politically balanced where practically possible as they were not always able to get the required Members. This was particularly important given that there was a statutory deadline to hear applications.
- They suggested that Members should be substituted in and out dependent on when they last served on the committee instead of being picked on a first come first serve basis.
- Some Members felt it important that all Members be given the experience in Chairing a meeting.
- Other suggestions included having a full licensing committee once a year and 11 miscellaneous committees and if there was, for example, a policy which needed determining a miscellaneous committee be promoted to a full committee meeting.
- Members felt that having a full committee to determine an A board was disproportionate and time consuming and also having a full committee of 10 determining all applications could be intimidating to applicants.
- It was suggested that they have a 6/4 split, with 6 on the miscellaneous committee and 4 on the alcohol and alcohol and gambling committee. The Licensing Team Leader highlighted that changing to a 6/4 split would only work on the assumption that all 4 Members were definitely available to attend on the agreed date. The Chair also highlighted that a 5/5 split would be more appropriate as an odd number means the Chair does not always have the deciding vote should this situation arise.
- A Member made a suggestion that the Chair and the vice chair speak with each Member of the committee outside of the meeting to understand any practical implications in order to find the best fit for the majority.
- It was agreed that the Alcohol and Gambling meetings be held in the evening wherever possible and be gender balanced.
- Members agreed that rotating the Members depending on the time since they last served on the committee would be a satisfactory solution which could be trialled for 12 months, but further consultation was necessary.

The Licensing Team Leader confirmed that under the licensing act, the committees are required to establish one or more sub-committees with at least 3 Members on. He also highlighted that there is a requirement for the full committee to have 10 Members on it. He explained that it was often difficult to get the required 3 Members for the ad hoc Alcohol and Gambling committees, even when they are scheduled for the evening. He confirmed that the way the

Council works is that the full committee delegate responsibility to the sub-committees to make the decisions. If there is an issue with the decision made then this is dealt with through the courts.

The committee proceeded to vote on keeping the current committee structure but rotating Members.

Upon a vote it was unanimously passed.

RESOLVED THAT

The current committee structure be kept and revisions made following further consultation.

12. REVIEW OF PREVIOUS DECISIONS

There were no updates.

13. LOCAL GOVERNMENT ACT 1972 - EXEMPT INFORMATION

The committee voted unanimously 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 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 7, Part (1) Schedule (12A) Local Government Act 1972, namely:

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

14. ANY OTHER ITEMS THE CHAIRMAN DETERMINES URGENT AND REQUIRES A DECISION

The Licensing Team Leader provided the committee with a verbal briefing about race week planning.

15. DATE OF NEXT MEETING

5th June 2019.

David Willingham
Chairman

Licensing Sub-Committee - Miscellaneous

Wednesday, 8th May, 2019

6.00 - 7.30 pm

Attendees	
Councillors:	David Willingham (Chair), Dennis Parsons (Vice-Chair), Mike Collins, Diggory Seacome and Simon Wheeler
Also in attendance:	Louis Krog, Vikki Fennell and Sophie McGough

Minutes

1. APOLOGIES

There were no apologies.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. MINUTES OF THE LAST MEETING

Members noted that the minutes from the meeting on 3rd April 2019 had comments attributed to Members which was not standard practice with committee minutes. A grammatical error was also noted. The Democracy Officer agreed to amend the minutes as discussed.

Subject to the agreed changes the minutes of the last meeting on 3rd April 2019 were approved and signed as a correct record.

4. REVIEW OF STREET TRADING CONSENT

Mr Wayne Parker was in attendance as a representative for the applicant, Miss McDonnell.

The Licensing Team Leader introduced the report, he explained that the application was for the review of a street trading consent in respect of Miss Melissa Jane McDonnell who was trading from Bence's car park on Sherborne Place.

He confirmed that the consent was issued on 05.09.2018 and Miss McDonnell had an arrangement with the council to pay her consent fee on a monthly basis. However, Miss McDonnell had failed to pay her consent fee on a number of occasions resulting in her consent being suspended and requiring officer

resource to chase payments. He highlighted that it is a condition of the consent that the monthly fee must be paid on time following receipt of the monthly invoice. In light of the repeated failure by the consent holder to do so, officers had referred the consent to the "Miscellaneous" sub-committee for a review.

He advised the committee that their options were not limited to those outlined at section 1.4.1 of the report.

Following a question from Members he confirmed that the fees for November, December and January had been paid in February and that the fees for March and April had been paid on the 24th April. He advised that the most recent invoice for May was currently 3 days overdue.

Mr Wayne Parker explained that he regularly worked on the van and hoped to take over the business although he had experienced a number of family issues recently which had prevented him from doing so. He explained that they were a small business and trade had been slow recently due to an increase in healthy eating and also the business' location which was situated on a one way street and tucked behind a building. He explained that the business had experienced a number of issues recently that had resulted in cash flow problems as their van had been broken in to and gas bottles stolen and they had been let down by their delivery driver. He explained that since they had started doing deliveries trade had picked up and they wouldn't be able to operate without it. He questioned whether the rates could be decreased as they also had to pay a percentage to Bence's as it was their car park.

The Chair explained that it was not at the Committee's discretion to amend the fee as this was set in law by the Council each year.

In response to Members questions, Mr Parker explained that:

- From a business point of view if they couldn't do deliveries he would have to sell the van and close the business. However, he wished to keep the business in operation because they had an agreement with Bence's.
- He highlighted that the issues would be rectified once they had a delivery driver and they had been exploring the option of paying extra to Just Eat so that they could use their delivery drivers.
- He advised that the van was an extremely clean van and they used good quality produce.
- His family issues were being rectified and he hoped to be in a position to take over the business in the next couple of months.

The Chair advised Mr Parker would need to have further discussions with the licensing officers to transfer the business in to his name.

The Licensing Officer confirmed that:

- When the business' consent had been suspended they had been unable to trade, however, it was not suspended at the moment.

In the debate that followed, Members made the following comments:

- Some Members felt that Miss McDonnell was evidently not capable of running a business in a way that generates enough business to pay the licence fee. They suggested that should Mr Parker wish to run the business he come back and apply for a consent in his name. They felt it wasn't the Council's responsibility to bail out failing businesses.
- Other Members felt that they should give Mr Parker the opportunity to get in contact with the Council to transfer the consent to himself and ensure payments were made on time.
- A Member was concerned that by not revoking the licence they would be condoning non-payment of consent fees and could damage the reputation of the Council.
- Members highlighted that if they were minded to revoke the consent, the business could still do deliveries until a new licence was applied for in a different name.
- Members noted that they were determining whether Miss McDonnell was a fit and proper person to hold a consent and given the number of late payments several Members did not agree she was.
- One Member suggested giving Mr Parker an opportunity to transfer the consent to himself and rectify any late payments and then revoke the licence if this was not adhered to.

The Licensing Team Leader confirmed that if Mr Parker was to apply for a new consent the time to obtain it would depend on if there were any objections to the application and it would be subject to a 2 week consultation period. If Mr Parker wished to transfer the consent it was a relatively straightforward administrative process and would just require him to provide the necessary paperwork so they could conduct the relevant checks.

Some Members did not feel satisfied that Mr Parker would be able to turn the business around and sought reassurance that if they did give him the opportunity to transfer the licence they would not be in the same position in several months' time.

One Member proposed giving Mr Parker until the 31st May 2019 to transfer the consent in to his name and pay any outstanding fees. If he did not comply with these conditions they would then revoke the consent. They felt that this was not a public safety matter and so it was not necessary to revoke the consent immediately.

In his final right of reply, Mr Parker explained that:

- They had not yet been able to pay the fee for May as they had paid several months in one chunk.

- He ran a number of other successful businesses;
- As long as they could continue with the deliveries he could not foresee any issues with paying the fees.

Vote to revoke the consent

2 in favour
3 against

Vote on amending section 1.4.1 of the report to revoke the consent if the licence had not been transferred and outstanding payments made by 31st May.

3 in favour
2 against

Vote on amendment

3 in favour
1 against
1 abstention

RESOLVED THAT

Mr Parker be given until the 31st May 2019 to transfer the consent in to his name and make an outstanding payments, failure to do so would result in the licence being revoked.

The committee agreed to delegate revocation of the consent to officers so that the case would not have to come back before the committee.

5. APPLICATION FOR PERMISSION TO PLACE AN OBJECT ON THE HIGHWAY - 'A' BOARD

The applicant was not present, however, the committee agreed to proceed and determine the application in her absence given she had confirmed that she was aware of the hearing and had stated to officers that she would be in attendance.

The Licensing Team Leader introduced the report, he explained that Miss My Dung Pham based at Cheltenham Nails Ltd, 2A Regent Street, Cheltenham had made an application to place an advertising board outside the address. He advised that the proposed advertising board was 860mm (h) x 575mm (w) and would be displayed at the times as outlined at paragraph 1.2 of the officers report.

He highlighted that the size of the advertising board did not comply with the standard sizes recommended in the Council's policy in that the width exceeds the policy stipulation. He advised that the width of the footpath available is in

excess of 3 meters. He also confirmed that A boards were not permitted on premises with a shopfront at street level. He confirmed that no objections had been received.

He noted that as per the Council's policy, all new applications for 'A' boards/display stands are considered by the Licensing Committee and that the Committee must determine the application with a view to promoting the Council's adopted policy. The officer recommendation is that this application be refused.

Members noted that an A board was already being displayed outside of the premises. The Licensing Team Leader highlighted that the A board displayed was different to what had been applied for. He also confirmed that the nearby premises displaying A boards were subject to enforcement action, although this was not a material consideration to this application.

In the debate Members made the following comments:

- This area was often congested with pedestrians and they saw no real need for the board given the premises location. They acknowledged that the policy states A boards are not permitted on premises with street frontage.
- One Member had concerns about enforcement of A boards across the town and requested that at next month's full licensing committee they look at the councils A board enforcement policy.
- They felt the A board was a hazard for those who were visually impaired.

Vote on section 1.7.1 of the report to approve the application because Members are satisfied that the location is suitable notwithstanding the policy requirements

0 in favour

5 against

RESOLVED THAT

The application be refused because it does not comply with the provision of the Street Scene policy.

6. REVIEW OF SEXUAL ENTERTAINMENT VENUE LICENSING POLICY

The Licensing Team Leader introduced the report, he explained that the Council's Sexual Entertainment Venue (SEV) policy statement was due to be reviewed and that sexual entertainment falls within the remit of the Miscellaneous Licensing Sub-committee. As such, it was within the remit of this committee to take a lead on the review of this policy.

He noted that in order to facilitate the review, and taking into account the sensitivities around the licensing of sexual entertainment venues, the committee had recommended that the review of the policy also include the ability for key stakeholders to provide an insight and view on the licensing and regulation of sexual entertainment in the town. The reports therefore sought endorsement from the Miscellaneous Licensing Sub-committee of this approach.

The Licensing Team Leader confirmed that the key stakeholders they intended to engage with included performers, operators, police and those who had expressed views against such venues in past. The review would also be subject to wider consultation. Following a query from Members, he confirmed that interested religious groups would be consulted as part of the wider consultation to be undertaken on the policy.

Members suggested that female Members of the licencing committee should also sit on the panel. The Chair and Licensing Team Leader confirmed that they intended to have as much diversity as possible on the panel.

The committee endorsed the approach as outlined in the officer's report.

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

The Chair informed the committee that One Legal had looked in to what powers exist for dealing with objects on the highway and had advised that the County Council as the highways authority could delegate powers to the borough so that they could remove objects from the highway. They reasoned that this needed further discussions and for a policy to be developed around this.

David Willingham
Chairman

Page 18

- To ensure that all objects placed on the highway meet the required quality standards, pose no risk to public health, safety & protection and to ensure that these objects do not obstruct the highway.
- To avoid duplication with other statutory provisions and the Council's commitment to work in partnership with other enforcement agencies.

Each application is assessed against the outlined conditions included in the application pack and this policy.

No object and its associated activity may generate noise which is likely to cause nuisance or annoyance.

Any object given consent to be placed on the highway must be sufficiently weighed down or secured to ensure that the object will not cause any harm or damage.

The Council wishes, as far as is compatible with other highway uses, to promote the 'cafe culture' in Cheltenham because of the added life and vitality this brings to the town. To this end, the Council will look favourably on applications by operators in appropriate locations to put tables and chairs on the pavement outside their premises.

Consent to place tables and chairs on the highway will only be granted for the consumption of food and drink, provided they are in association with a business operating from nearby premises.

Consent to place tables and chairs on the highway will be subject to the use of canvas barriers to cordon off the area where the tables and chairs are placed on the highway.

For health and safety reasons, the Council will not permit glass top tables.

Where consent has been issued for tables and chairs to be placed on the highway the Council may permit, within reason, other objects to be placed inside the area that has been cordoned off with barriers.

Background Papers

Service Records

Case Officer

Contact officer: Louis Krog
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 262626

Briefing Notes

Committee name: Licensing Committee

Date: 5 June 2019

Responsible officer: Louis Krog

Objects on the Highway Consent - Briefing Paper for "Miscellaneous" sub-committee

The Licensing Committee has requested a review of the street scene policy be brought to the next full licensing committee meeting. This briefing note seeks to provide Members with some contextual information to facilitate discussion and debate.

Background

It is an offence to obstruct the public highway without consent from the highways authority. Gloucestershire County Council is the relevant highways authority as defined by the Highways Act 1980. However, Cheltenham Borough Council ("CBC") has formally entered into agreement with the county council that delegated certain Highways Act powers and responsibilities to CBC, including:

- Part VIIA Provision of Amenities on Certain Highways
- S. 137 Penalty for wilful obstruction
- S.148 Penalty for depositing things or pitching booths etc. on highway

As a consequence, any person or organisation that obstructs the public highway is required to obtain consent from CBC in so far as it falls within scope of the Highways Act.

The administration and enforcement responsibilities, also in so far as it relates to Part VIIA of the Highways Act, sits with the licensing section and Part 3C (Committee Functions) of CBC's constitution delegates "Objects on the highway" responsibilities to the Licensing Committee which has been sub-delegated to the "Miscellaneous" sub-committee.

Current Policy

CBC's current policy on the regulation of objects on the highway was adopted on 22/02/2013 taking effect on 01/04/2013. The policy principally deals with the regulation of:

1. Advertising boards;
2. Permission to use tables and chairs; and
3. Other goods displayed on the pavement.

Advertising boards

Generally speaking, the current policy approach to consenting advertising boards in the designated conservation area is assessed on need.

Appendix E (Revised Outdoor Advertising Protocol) defines this as:

Page 20

No 'A' board will be approved within Conservation Areas except in the following circumstances; having regard to the position and location of the premises;

a) where those premises are located at basement or first floor level i.e. the premises has no shop-front at street level,

b) the premises are situated along a side alleyway and / or on private land which is not a public thoroughfare / right of way.

Nothing in this protocol overrides requirements set out in the Council's policy on the licensing of 'A' boards so where an 'A' board meets the exemptions in the protocol, it will still be subject to the normal policy on the licensing of 'A' boards set out in the policy.

Consents are subject to a number of conditions as outlined in the adopted policy document.

Permission to use tables and chairs

The council's current policy seeks to encourage the use of tables and chairs "to promote the 'cafe culture' in Cheltenham because of the added life and vitality this brings to the town".

To this end, the council will look favourably on applications by operators in appropriate locations to put tables and chairs on the pavement outside their premises.

Licensing & Enforcement

Anybody who wants to obstruct the public highway must obtain permission from CBC. The permission is issued as a consent under Part VIIA of the Highways Act 1980.

There is a requirement for an application to be submitted to the council which will be subject to consultation with various persons and organisations:

1. Cheltenham BID
2. GCC Highways
3. GCC Street works
4. Gloucestershire Police – Licensing
5. Ubico
6. Planning Enforcement
7. CBC's townscape team
8. Affected businesses

New applications for advertising boards and permission to use tables and chairs are referred to the Licensing Committee irrespective of the policy position.

The enforcement approach is set out in the legislation. At present, any responsible person or organisation that obstructs the highway without consent is sent an initial letter from the council, or notice issued on visit to the premises, requesting an application to be made or for the object to be removed.

If the responsible person or organisation does not proceed to an application, or is refused a consent, and the object continues to obstruct the public highway, they are reported for an offence under the Highways Act and are summoned to appear before the Magistrate's Court. It can take several months for a case to be listed. This often gives the impression that the council does not act in relation to unconsented advertising boards.

Page 21

Between 01/04/2018 and 31/03/2019, 71 enforcement cases in relation objects on the highway were dealt with by the Licensing Enforcement Officer. 54 of these cases were advertising boards unlawfully obstructing the highway.

Issues with the current policy

1. Enforcement

Enforcement of unconsented advertising boards is difficult, costly and in many cases disproportionate because CBC's enforcement powers are restricted to a prosecution, which, generally speaking, the council would normally reserve for the most serious cases and where such a step would be in the public interest.

Since the enforcement options are restricted to prosecutions, it is costly for the council enforcement officers to gather the required evidence and to attend court hearings. Additionally, it can take several months for a hearing to be listed during which time the circumstances of the defendant may change which could be material to the outcome of the case.

It is also the case that businesses ignore a court ruling which requires CBC to seek a further order from the Magistrates' Court to remove the object.

On the whole, the council's enforcement efforts have had limited impact on the number of unconsented advertising boards in the town. This is largely down to the desire of businesses to have advertising boards (consented or otherwise) which creates a situation where the licensing enforcement officer is continuously dealing with advertising boards, taking up a lot of their time and resource.

2. Consistency

The current policy position has resulted in inconsistencies in the way CBC deals with advertising boards, mainly in the conservation area. Notwithstanding the policy position, Members of the Licensing Committee have at times deviated from the policy where the policy position was clear.

It is the case that the Committee has discretion to deviate but this should only be in exceptional circumstances. A number of recent cases the deviation from policy was as a result of matters (i.e. existing clutter, ongoing enforcement matters etc.) which may, under normal circumstances, not be deemed as "exceptional".

3. Licensed tables and chairs areas

The council's current policy permits the use of advertising boards within consented tables and chairs areas. The rationale being that the use of advertising boards in these circumstances would not cause any additional obstruction of the highway.

However, the implications of this approach has led to a situation where it seems irrational for individual advertising boards to be refused where other business with consented tables and chairs areas can have several advertising boards.

Planning

Regulating advertising boards is not exclusively a licensing consideration. Town and Country Planning (Control of Advertisements) Regulations 2007 and the Area of Special Control of Advertisements also apply to the control of advertising in the town.

This is relevant mainly for two reasons:

Page 22

1. Certain forms of advertising do not obstruct the highway but still fall within scope of some concerns raised by the committee such as banners, estate agent signs and advertising displayed on roundabouts.

As these fall under planning legislation, it therefore does not fall within scope of this committee.

2. The planning legislation in relation to the control of advertising boards potentially offers the council alternative means of taking enforcement action.

Benchmarking

- **Bristol City Council** – Appears to operate an automatic entitlement approach where, subject to compliance with restrictions imposed by the council, advertising boards can be used without the need for an application. Bristol City Council use removal powers and recharging.
- **Bath City Council** – Similar to Bristol council.
- **Gloucester City Council** - Application required.
- **Worcestershire County Council** - Appears to operate an automatic entitlement approach also but use FPNs as part of their enforcement procedure under the under the Anti-social Behaviour Act 2003 Section 43, and Town and Country Planning Act 1990 Section 224(3).

Future Policy Options

There is an opportunity for the committee to make recommendations to Cabinet as to the future policy this council can adopt with regards to the control of particularly advertising boards.

1. The council can maintain the current policy but with revised conditions and/or a different enforcement approach. Revised conditions could address some of the current issues with the regulation of advertising boards.
2. The council can adopt a similar approach to other councils that operate an automatic entitlement approach. Whilst this will make enforcement easier, it will result in a proliferation of advertising boards that will adversely affect the town, its conservation area and be problematic for people with certain disabilities.
3. The council can adopt a similar approach to number 2 above but require an application to enable it to recover its costs.
4. The council can adopt an approach whereby it does not allow any advertising boards.

Further Reading/Reference

- [Policy for street scene activities](#)
- [Outdoor advertisements and signs: a guide for advertisers](#)
- [Cheltenham's area of special advertisement control](#)

Cheltenham Borough Council

Licensing Committee – 5 June 2019

Local Government (Miscellaneous Provisions) Act 1982

Application for a Street Trading Consent

Mr Edward Danter

Report of the Licensing Team Leader

1. Summary and recommendation

- 1.1 We have received an application from Mr Edward Danter for a street trading consent to sell hot turkey rolls, pork rolls, German and Gloucester Old Spot sausages, hot and cold drinks from a hot food unit measuring 3.1m (10ft) x 2.1m (6.8ft).
- 1.2 Mr Danter has applied to trade outside 109 - 113 High Street. **Appendix 1** shows the location of the proposed trading pitch.
- 1.3 Mr Danter has applied to trade between 9 November and 31 December 2019 on the following days and times:

Monday	09:00 - 18:00
Tuesday	09:00 - 18:00
Wednesday	09:00 - 18:00
Thursday	09:00 - 21:00
Friday	09:00 - 18:00
Saturday	09:00 - 18:00
Sunday	11:00 - 17:00

- 1.4 An image of the trading unit is shown in **Appendix 2**.
- 1.5 **The Committee can:**
 - 1.5.1 **Approved the application because Members are satisfied that the location is suitable for the trading proposed, or**
 - 1.5.2 **Refuse the application because it does not comply with the provision of the Street Scene policy.**

1.6 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. Background

2.1 The current street trading policy was adopted by Council on 12 February 2016. A copy of the policy has previously been circulated to Members and extracts are included in the application pack that was given to the applicant.

3. Policy Principles, Aims & Objectives

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

3.1 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.

3.2 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 the vicinity. This criterion permits the council to undertake a qualitative assessment of the goods to be sold by each competing applicant against those on sale in the adjacent area. The council does however recognise that the surrounding retail offer is subject to change therefore it will apply this criterion to applications for new or renewal applications.

- **Public Nuisance** – Whether the street trading activity represents, or is likely to represent, a substantial risk of nuisance to the public or properties in the vicinity from noise, misbehaviour, emissions, smells etc.
- **Public Safety** – Whether the street trading activity represents, or is likely to represent, a substantial risk to the public from the point of view of obstruction, fire hazard, unhygienic conditions or danger that may occur when a trader is accessing the site.
- **Appearance of the Stall or Vehicle** – Trading units must enhance the visual appearance of the street rather than detract from it and be constructed in a suitable scale, style and of appropriate materials. It should also be designed to be fully accessible for all customers and advertising material must be limited to the name of the stall, the type of product sold and a simple price list and be professionally designed and printed. The council will generally not permit trading units over 3 meters tall to avoid obstruction of sight.
- **Environmental Credentials** - The impact of the proposed operation on the local environment including street surfaces, tree pits & materials, power supply, carbon footprint, supply chain, packaging, waste minimisation, waste disposal and waste created by customers.

4. Consultee Comments

- 4.1 A number of objections were received in relation to this application. These are attached at **Appendix 3** of this report.

5. Licensing Comments

- 5.1 The Committee must determine the application with a view to promoting the council's adopted policy and Members should not arbitrarily deviate from the council's policy.
- 5.2 The policy takes into account a number of factors when determining the permitted trading types. These are outlined above ("Permitted Locations") and Members should take these into account when determining this application.
- 5.3 Whilst the policy creates a presumption against the grant of an application if the application does not comply with the policy, this position should not fetter the Committee's discretion to take into account the individual merits of the application and any circumstances that may warrant a deviation from the policy.
- 5.4 Members are reminded that clear and thorough reasons should be given for decisions made by the Committee particularly where the decision is contrary to adopted policy.
- 5.5 The Committee will note that the application submitted in relation to Mr Danter's proposed 2019 trading has been altered from previous years in that the location is slightly different and the trading unit has been scaled down in size.
- 5.6 The Committee is to note that the trading location does not comply with the council's trading policy in that the proposed location is not an approved location.
- 5.7 The Committee must also be aware of the fact that the next phase of the High Street East Masterplan work is due to commence in September that will affect the suitability of the location Mr Danter has applied to trade from. The Licensing Section has been advised that the public realm works will run into 2020.

A copy of the plan showing the areas affected by the public realm improvement works is attached at **Appendix 4**.

6. Officer recommendation

6.1 The officer recommendation is that this application be refused.

Reason(s): The proposed trading location is not designated as an approved trading location by virtue of Appendix 1 of the trading policy.

Officers are also concerned that the proposed trading location will be impeded the High Street East Masterplan work.

Background Papers

Service Records

Case Officer

Contact officer: Mr Louis Krog
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 262626



General Notes
 This drawing is to be used for reference only. It is not to be used for construction purposes.
 It is the responsibility of the client to ensure that the information provided is accurate and up to date.
 The client is responsible for any errors or omissions in this drawing.
 The client is responsible for any errors or omissions in this drawing.
 The client is responsible for any errors or omissions in this drawing.

 Proposed trading location

rev. date description by



PROJECT: Street Trading Policy
 TITLE: Sheet 3 High Street
 CLIENT: CBC Licensing

no	status
date	
drawing number	
CBC_E&RS_T_26_P_03	revision

This page is intentionally left blank



This page is intentionally left blank

Rapleys LLP

New Look Retailers Ltd, 103/107 High Street, Cheltenham GL50 1DP

The proposed temporary unit is sited right outside my clients, New Look Retailers Ltd, store each year and due to the size of it, my client's windows are obscured.

This has a detrimental effect on trade, therefore my client would like an objection registered.

Soho Coffee

We would like to strongly object to the application for DanTERS Christmas Hot Food Unit on several grounds.

1. We have only just begun to scratch the surface in recouping lost footfall and sales due to the months of construction work in the High Street for the advent of John Lewis
2. Christmas is a key trading period for us and we depend on the festive season to iron out the seasonal peaks and troughs of sales
3. As a fixed business and bearing the 12 months of overheads as we do, we feel it would be very unfair to allow a competitive temporary trader to benefit from trading only at the busiest time of year
4. The proposed unit will be in direct competition with us, offering hot food (eg. pork rolls) and hot and cold drinks of a remarkably similar nature, and will gain the advantage of being directly on the High Street prior to our customers entering Cambray Place, directly detracting from our sales.

Thank you for giving us the opportunity to comment. For the above reasons, we would ask the Council to, please, reject this application on the firmest grounds.

Wedding Days of Cheltenham

We have been made aware of this new application for a trader to the High Street/Cambray Place area

1. Why is this area constantly being flooded with food applications
2. No business rates being paid
3. We already have a number of festivals planned in yearly for Cambray Place
4. Not enough bins around as outside Costa it is always a mess
5. Enough food outlets without having to add this
6. During Christmas/New Year period we understand but a permanent license does not seem fair.

Cheltenham BID

Cheltenham Business Improvement District (BID) opposes the application for the hot food Xmas unit outside 109-113 High Street.

Our food and drink businesses in particular are concerned that this unit would operate in direct opposition to them at a time when they should be benefitting from the additional footfall that the Christmas season brings. The businesses pay business rates and the BID levy, whereas a temporary operator of this kind would not.

Among the food and drink businesses in the immediate area that would be directly affected if this is allowed again are: Farmhouse Deli, Zi Coffee Shop and Bakery, Costa Coffee, SOHO Coffee, Tailors and Sainsbury's Local.

There is also concern that general littering in the area increases when temporary food stalls are allowed, which is to the detriment of businesses of all kinds.

Businesses were consulted when the council's latest policy for street trading was drawn up. They wanted the policy to clearly state what goods could be sold at particular locations and for a limit to be put on the size of any temporary units. The policy does this.

However, the location in question has been allocated for sign-up services and buskers selling merchandise. It does not permit food and drink sales. The maximum size of unit allowed is 6m.sq, whereas this unit would be 6.51m.sq. This may be smaller than the unit used last year but that does not do anything to answer the other concerns listed above.

With the John Lewis & Partners store now open and the first stage of work to improve High Street East complete, our joint efforts to improve the prosperity of this area can surely best be achieved by adhering to the street trading policy and limiting the number of street traders allowed to operate in this and other areas.

Cheltenham Borough Council – Townscape

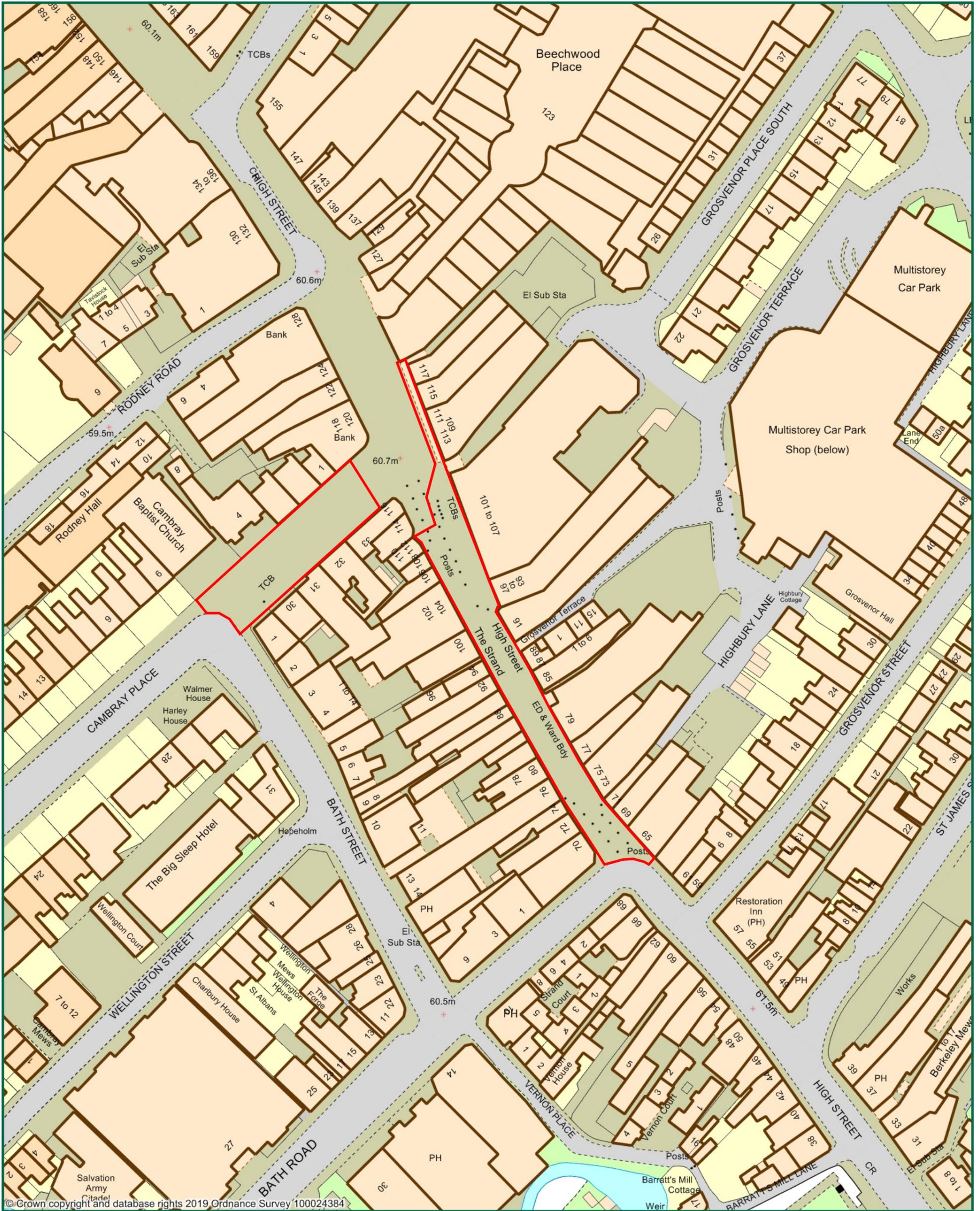
A few issues with this one as you're probably already aware. We are trying to discourage street trading in this particular area due to –

1. public realm works due to commence autumn/winter 2019 (provisionally September and could go on for 5+ months),
2. all details mentioned in the revising of the street licensing policy which does not include this area for street trading, instead it is proposed for events only, - the planned area in particular blocks vistas up and down the High Street
3. We are expecting a new scaffold and hoarding line for the building adjacent to John Lewis to commence at some point this year – this would constrain the given space even more (last year there were issues regarding New Look's visibility)

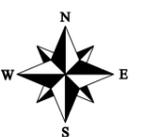
On the whole there are more appropriate, and sustainable, areas for this street trader further down the High Street or along Cambray Place (as indicated in the street licensing policy review). This area will fundamentally change following the public realm works and it would be challenging to recommend the approval of such an application once those works have been completed.

Townscape therefore recommend that the applicant finds a more sustainable location which can be used year on year (seeking support from the street licensing policy review).

This page is intentionally left blank



© Crown copyright and database rights 2019 Ordnance Survey 100024384



This page is intentionally left blank

Document is Restricted

This page is intentionally left blank