



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

Wednesday, 5 August 2020

3.00 pm

**Virtual WEBEX video conference via YouTube -
<https://www.youtube.com/user/cheltenhamborough>**

Membership	
Councillors:	David Willingham (Chair), Mike Collins, Diggory Seacome, Simon Wheeler and Vacancy
Officers:	Louis Krog, Vikki Fennell and Jason Kirkwood

Agenda

1.	APOLOGIES	
2.	DECLARATIONS OF INTEREST	
3.	MINUTES OF THE PREVIOUS MEETING	(Pages 3 - 14)
4.	RENEWAL OF HACKNEY CARRIAGE LICENCE - ROBERT HAWKES Renewal of a Hackney Carriage Licence – Robert Hawkes	(Pages 15 - 18)
5.	APPLICATION FOR PERMISSION TO PLACE TABLE AND CHAIRS ON THE HIGHWAY Aquavitae	(Pages 19 - 38)
6.	BRIEFING NOTES Business and Planning Act 2020 Statutory Taxi and Private Hire Vehicle Standards	(Pages 39 - 46)
7.	ANY OTHER ITEMS THE CHAIRMAN DETERMINES URGENT AND WHICH REQUIRES A DECISION	

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Licensing Sub-Committee - Miscellaneous

Wednesday, 5th February, 2020

6.00 - 8.25 pm

Attendees	
Councillors:	David Willingham (Chair), Dennis Parsons (Vice-Chair), Mike Collins, Diggory Seacome and Angie Boyes (Reserve)
Also in attendance:	Vikki Fennell, One Legal & Louis Krog, Licensing Team Leader

Minutes

1. **APOLOGIES**

Apologies were received from Councillor Wheeler.

Councillor Boyes acted as substitute.

2. **DECLARATIONS OF INTEREST**

The Chair stated that all five Members and the licensing team leader visited Club Covert on Monday lunchtime, and that he personally visited the ford in School Road, Charlton Kings, in connection with Agenda Item 5.

3. **MINUTES OF THE PREVIOUS MEETING**

A councillor asked for it to be made clear that the incidents reported by the police during race week were not related to any form of sexual assault. These amendments have now been made.

The minutes were then signed as a correct record of the meeting.

The Chair wanted to formally congratulate Colin Pilsworth and Licensing for the continuation of the Purple Flag accreditation. Further he wanted to congratulate Sarah Hughes and Licensing for the 4 successful plying for hire prosecutions and the successful street obstruction prosecution.

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

The Chair explained to the applicant how consideration of his application would proceed.

Officer introduction

The Licensing Team Leader introduced the application for grant of a street trading consent, at a previously-used location on the Strand, trading between 8th November to 31st December 2020 at the times and on the days outlined in the application. An image of the trading van is attached at Appendix 2 of the officer's report. Members were advised that they could grant the consent if

they considered it appropriate in this location or refuse the application as it does not comply with street scene policy or for any other reason.

There have been a number of objections, included with the papers, and paragraph 3.2 of the officer report reminds Members to be mindful of the assessment criteria when considering whether to grant or not. Under 'licensing comments', the report sets out CBC's assessment criteria regarding number of locations and type of trading. This is not an approved location, but Members are reminded that policy does not necessarily fetter discretion. It is up to Members to take the needs of the area into consideration and the case's individual merits..

In response to Members' questions, the Licensing Team Leader confirmed:

- the location is the same as that used at Christmas 2019;
- the unit is a scaled-down version of that previously used and this was the version used at Christmas 2019;
- the site is not designated under policy but has been used by this applicant a number of times before and should be considered on its merits; and
- there have been no complaints to CBC about the unit during the Christmas 2019 season.

Applicant's address

The applicant said he has been trading since 1986, and 2020 will be his fourth year at this location. His family has traded for three generations, and last year invested a lot in a new custom-built, smaller unit to comply with what was required. It has been very successful, there have been no complaints, and he would like to continue trading at this location.

In response to Members' questions, the applicant confirmed:

- that the principal product would be pork rolls, turkey rolls, and Gloucester sausage. Coffee is secondary to this;
 - that later opening hours have been applied for on Thursdays, because although late night shopping is not as popular as it used to be, most shops stay open until 8-9pm leading up to Christmas;
- The Chair pointed out that the hours set out on the application are a maximum, not a requirement.

Member debate

Members made the following points:

- looking at the objections, these are the same every year, and Members did not believe it was particularly fair to say this outlet competed with Sainsbury's – as the products were not the same. There are no concerns about the operator, who has traded for a long period without significant problems;
- there are two types of competition – direct and substitute – and as people only eat lunch once, this business represents a substitute. The High Street faces many difficulties, competing with on-line shopping and retail parks, and as a result more food and beverage outlets are opening. Established operators have to pay high business rates – the leader of the council recently wrote an article in the Echo commenting on the way in which business rates are damaging the High Street. The applicant won't have to pay these and this isn't fair, added to which this location is not supported by policy;

- the stall offers something different from the surrounding businesses, and is nice and a diverse part of Cheltenham's festive offer.

Applicant's response

The applicant read out two letters, as follows:

- from a long-term resident of Cambray Place who feels that the stall is something special, a well-run family business which enhances the Christmas street scene;
- from a local sausage producer, who has been trading with the applicant's family for over 10 years. The business employs five local people, and provides hot, high-quality food for people on the move, who may not have time or money to find a seat in a café but don't want junk food.

The Chair asked that references be supplied before the meeting rather than at the meeting going forward.

Vote

1.5.1 Approve the application because Members are satisfied that the location is suitable

4 in support

1 in objection

CARRIED

The Chair informed the applicant that this will be confirmed in writing in due course.

5. REVIEW OF A HACKNEY CARRIAGE DRIVER'S LICENCE

Review of Hackney Carriage Driver's licence

The Chair explained to the applicant how consideration of his application would proceed.

Officer introduction

The Licensing Team Leader explained that the applicant's hackney carriage driver's licence is due for renewal in January 2021, but CBC received a complaint on 9th January 2020, the nature of which is outlined in the background papers of the officer's report. Officers felt that this was serious enough to warrant a review. Options are set out at 1.4.1-1.4.4 in the officer report. Members were reminded that the decision as to whether the applicant is a fit and proper person to hold a hackney carriage drivers licence is based on the civil standard of proof, i.e on the balance of probabilities.

In response to Members' questions, the Licensing Team Leader confirmed:

- the first image in the background papers accompanying the officer's report shows the depth gauge, which the applicant says he did not see, above the windscreen, and was the best picture available on the night;
- two of the photos were taken on the night of the incident, the other two the morning after.

Applicant's address

The applicant stated that the job, to pick up a customer from The Merryfellow on School Road in Charlton Kings, was booked for 10.30pm. He stated that it was raining. After the pick-up, he tried to go a short-cut route and, arriving at the river, didn't see the warning sign or think the water looked dangerous. He has been using the road for 10 years, and had no problems before, and the customer did not complain about him using this shortcut route. He has never noticed the sign not allowing cars down this road, other than for access, before.

In response to Members' questions, the applicant confirmed that:

- he has been driving from 2008, and has had a hackney carriage driver's licence from October 2010;
- he has had no other similar incidents or lapses of concentration;
- he has driven the route regularly, both day and night, and not noticed the no entry sign before; most drivers take this shortcut to avoid traffic;
- he did not drive down School Road to pick up the customer; he came from a previous job in Cirencester Road;
- he knows the route well, and although there had been a lot of rain, has experienced this before and would not have deliberately put himself or his passenger in danger;
- if his passenger had been a wheelchair user, he would not have driven through the river;
- he had not noticed the danger signs, warning of fast flowing water during heavy rain;
- his passenger lives in Battledown;
- when his engine cut out in the river, he called 999; emergency services asked if he was able to get out safely – he was – and advised him therefore to call a breakdown service;
- his passenger walked home.

Member debate

Members raised the following concerns:

- the applicant, a professional driver - deemed a fit and proper person, did not see either of the two signs, and proceeded into the water, putting himself and his passenger at risk. On a dark night, in heavy rain, this is an incredibly poor decision; the right decision would have been to turn back;
- the applicant is approved to take wheelchair passengers, but should not have contemplated driving through the river, even by himself;
- the fact that other taxi drivers use the shortcut is not a defence;
- the driver should have taken the shortest, safest route, but did not do so here;

One Member stated that he would not be happy getting into the applicant's taxi at the moment, but another Member said he would, as this incident was the first mistake the applicant has made in ten years and he accepts that what he did was extremely serious. He has learnt a lesson forcefully and is present tonight as part of the learning curve. The Member would question the probability of him doing anything similar again, and would not want to deprive him of his livelihood because of one mistake. The Chair reminded Members that this is not a material consideration and cannot be taken into account when making a decision.

A Member was concerned by the applicant's comment that other drivers habitually use this route despite it being a route for access only.

Members then considered the four options available to them, as outlined in the officer report. The Chair pointed out that the committee is not here to punish the applicant, but that licensing is concerned with protecting the public. Members said they were struggling to find the most appropriate sanction; the Licensing Team Leader confirmed it is at the Committee's discretion to come up with their own resolution to fit this particular case should they see fit.

After further discussion, a Member proposed that, given the gravity of the situation, a formal written warning should be issued, to remain on the applicant's record. He also suggested the licensing officers write to hire companies and the trade association for hackney carriages to highlight the fact that this is a no-entry road and drivers should not use that route.

The Licensing Team Leader confirmed that a resolution for a written warning would need to be passed, to add this to the list of options; if agreed, it would be taken as a material consideration in any future cases involving the applicant.

Applicant's response

The applicant had no further comments to make.

Vote on resolution 1.4.1 that the applicant remains a fit and proper person to hold a Hackney Carriage Driver's licence and that no further action is required
0 in support
5 in objection
NOT CARRIED

Vote on resolution proposed by a Member, that a formal written warning be issued by the licensing authority and remain on the applicant's record .
5 in support – unanimous
CARRIED

The Chair suggested that the applicant should take this as a warning and be sure to be more careful in future. He asked that licensing officers put a notice in the Trade Times, reminding drivers that this section of School Road should not be used. The Licensing Team Leader confirmed that this will be done, adding that any enforcement action is the responsibility of the county council, not CBC.

6. APPLICATION FOR A PRIVATE HIRE DRIVER'S LICENCE

PHD licence

The Chair explained to the applicant how consideration of his application would proceed. The applicant was accompanied Mr Gordon Milne, present to act as a character witness.

Officer introduction

The Licensing Team Leader introduced the application for a private hire driver's licence. The background papers set out the applicant's convictions and endorsements, and policy requirements regarding the expected time lapse between these and the re-issuing of a licence. Members can grant the licence, if they consider the applicant to be a fit and proper person, or refuse if they do not consider this to be the case. He reminded Members that it is the council's statutory duty to only grant a licence to fit and proper people, and that the applicant still needs to undertake other assessments. He confirmed that the burden of proof, on the balance of probabilities, is on the applicant, to show that he is fit and proper to hold a licence.

Applicant's case

The applicant said that he had not had a licence since 2012. He said that since 2012 his life had fallen apart, and he was struggling to survive and live, dealing with sick parents amongst other things. He said he needs his job as a taxi driver and that he is trying to get his life back on track.

The Licensing Team Leader confirmed that the applicant has submitted a detailed written statement, which is included in the background papers, and that this should be taken into account by Members.

In response to questions from Members, the applicant confirmed that:

- he has no convictions or incidents of violence; under the influence of alcohol, he has made some embarrassing mistakes – but no violent offences and never while at work;
 - he has not sought or received any counselling for his issues; he has tried to explain his situation in four sides of paper, but it is not a simple story;
 - he believed himself to be under the limit in the incident in November 2013, having had one glass of wine; he drove one hour later, was pulled over by the police and was a fraction over the limit; after 1.5 hours at the police station, he was allowed to drive home. He realises now he made a huge mistake in driving after the glass of wine;
 - the incident in 2015 was more complicated and after drinking in a local pub, he exchanged abusive texts with his step-father following being evicted by him, which he now regrets. Rather than carry his shopping home, he decided to drive the three-minute journey, being angry and not thinking clearly. When he arrived home his step-father had reported him to the police and they were waiting to breathalyse him;
 - he understands that policy expects people to be free of drink-driving offences for five years before a licence can be re-issued, except in exceptional circumstances. He said he is still looking after his sick parents, and is permanently on call to help them. He has undertaken various temporary work, and lost a job through looking after his mother; he has no job at the moment, has just acquired a flat, and is trying to get his life back in order and move on, while looking after his parents;
 - he would not say he has a poor relationship with alcohol. The first drink-driving incident was a mistake, the second arose from a volatile relationship. He has a glass of red wine with a meal, but not every day.
- Mr Gordon Milne, former manager of A2B private hire company, used to employ the applicant, and told Members that he was aware of his family problems, but always found him to be honest and of good character, a fit and proper person to hold a licence. He was good with the public, always received good conduct reports, and only used alcohol during recreational time, never when driving

passengers. As someone with 42 years' experience in the taxi trade, would not be at the meeting tonight if he had found otherwise.

Member debate

Members raised the following issues and concerns during the debate:

- the applicant has not one but two convictions for driving under the influence of alcohol. Given the council's public safety duty and policy, which would allow him to be licensed again in May 2023, Members would feel uncomfortable granting a licence now;
- the definition of 'fit and proper' is not defined in law, but a widely-used test would be whether a person would allow a spouse, child etc to get into a vehicle with this person, is he safe and suitable to be allowed a licence?;
- the applicant has had his driving licence back for 18 months, but this is not long enough to prove that he can be trusted to drive loved ones or vulnerable members of the public;
- as the applicant has had no issues since 2015, and nothing else on his DBS regarding non-driving incidents, one Member felt he would not want the applicant to wait until 2023 to comply with policy;
- whilst having sympathy with the applicant's family situation, this is not a material in the decision as to whether or not to grant him a licence;
- Members would be happier if the applicant had sought and was receiving some help for alcohol and abusive behaviour;
- Members felt that the applicant should come back in 12 months;
- as an authority, CBC has to be assured applicants can maintain a high standard of driving and behaviour; driving with excess alcohol and malicious texting is therefore concerning, as is failure to declare a disqualification and caution;
- CBC has a duty to protect the safety of the travelling public in Cheltenham.

Applicant's response

The applicant explained that the caution for malicious communications and driving over the limit all took place on one night. He said his undeclared disqualification was 21 years ago, and he understood from a licensing officer that only more recent ones, since the grant of the first taxi licence, needed to be declared. He has no excuse for the other.

Mr Milne said there are currently several licensed drivers working in Cheltenham with drink-drive and criminal convictions, and asked if there were double standards here. He reiterated the applicant's concern for his parents.

Vote

1.4.1 to grant the applicant's Private Hire driver's licence if Members consider him to be a fit and proper person

0 in support

5 in objection

REFUSE

The Chair confirmed that the licensing committee is not minded to grant the private hire licence due to concern about the short time between convictions, and the fact that this does not comply with policy. He told the applicant that officers will confirm this in writing, and that he, the applicant, has the right to appeal to the magistrate's court, within 21 days

7. APPLICATION FOR A SEXUAL ENTERTAINMENT VENUE LICENCE

Officer introduction

The Licensing Team Leader introduced the application for the grant of a sexual entertainment licence at Club Covert, 12-14 Bath Road. The dates and hours are set out in the report, to coincide with The Festival in March 2020. The application form, site location, and all objections are included in the appendices of the officer's report. He confirmed that there has been no objection from the Chief Officer of Police, and two objections had been received from local residents. Mandatory and discretionary grounds for refusal are set out in the report.

One of the objectors stated that Club Covert is not part of Cheltenham's Night safe scheme, but this is no longer the case, and Eroticats is also an associate member. The conviction of the alcohol licence holder at Club Covert is not relevant to this application, although Members need to understand the relationship between the two, and to what extent he will be involved with the running of the sexual entertainment venue. Members may also want to consider its Public Sector Equality Duty when determining this application – guidance is set out a 7.3.3 in the officer report.

The Licensing Team Leader also reminded Members that while Club Covert currently falls just outside the area in which the council permits the licensing of SEVs, it has previously granted a licence for this location, and they should also note that policy doesn't fetter discretion. Every application must be considered on its individual merits and circumstances, but equally Members must not deviate from CBC's policy without good reason to do so.

Applicant's address

The applicant was represented by his solicitor, Mr Younis, who made the following comments:

- this is a new application from Club Covert, to operate at the times set out in the application form, for the Cheltenham Festival in March;
- the applicant has operated a SEV at The Two Pigs from 2017; he is experienced in the business – an important factor, carrying significant weight;
- Parliament made it lawful to operate SEVs as part of retail and leisure activity in 2009;
- there are two grounds for objection – mandatory and statutory – but not moral. In this case, mandatory grounds can be disregarded. Regarding discretionary grounds, Club Covert is currently just outside Cheltenham's permitted area for SEVs, but two previous clubs have been licensed at this location, and on February 11th 2020, Cheltenham Borough Council's Cabinet will consider a new policy area, which will encompass 12-14 Bath Road;
- previous decisions would suggest that these premises are deemed suitable for a SEV; it is not in a vicinity frequented by under-18s after 8.00pm, near a place of worship, school or college. The location should therefore not be a concern here;
- the fact that the police have not raised any objections or made any comments is of paramount importance, reflecting the view of the suitability of

the applicant and the proposed venue. If the police had any concerns about either, they would have raised them;

- Club Covert is now a member of the Night Safe scheme, which aims to reduce crime and anti-social behaviour; the applicant attends meetings and is actively involved;
- Cheltenham's Purple Flag status recognises its commitment to a safe and vibrant night-time economy, between 5pm and 5am, with transport, pedestrian links, well-lit streets, and an emphasis on safety. The applicant is keen that the town retains its Purple Flag status;
- regarding the question of how the applicant can be in charge of two venues at once, if the licence is granted, he will employ James Elias, an experienced manager to work with him. He has 15 years' relevant experience, has been the Chair of Night Safe, and was DPS Moomoos and Fever, used to have a SEV at Club Covert and is used to running events in Cheltenham, making him very well-qualified for the role. Mr Elias will manage the SEV, and Mr Roe will manage the bar;
- the applicant is hiring the venue for race week only, on a purely commercial basis – the bar and alcohol licence will be managed by Club Covert;
- 13-14 personnel will be employed by the applicant;
- if granted, suitable agreements will be drawn up to ensure that the applicant holds the only SEV licences in Cheltenham;
- Mr Field, mentioned in one of the objections, is not party to this application, and mention of him should be disregarded;
- Members visited the club on Monday, and the applicant has confirmed that he is happy to address any concerns they have, and abide by any conditions which may put their minds at ease;
- the number one priority is safety – anyone under the influence of alcohol or restricted substances will be refused entry;
- the club will use a chip system to pay for dances – no cash will be exchanged;
- the rooms used for dances will be secure, and CCTV will be used;
- Club Covert has its own crowd control policy, and there are rails outside to keep customers from spilling onto the road; they will be encouraged to queue at the side of the building, not to the front;
- Club Covert caters for a high number of people during normal licensing hours, and this is expected to be lower during its use as a SEV;
- anyone of legal age will be welcome, as long as they are responsible and respectful; if staff feel any guests appear likely to cause problems, they will be refused entry and this will be recorded in an appropriate log. The Club's first duty is to the dancers and the guests;
- there have been two objections to an SEV in this location, but these are subjective and prejudicial and should be disregarded; the club will open from 8.00pm, after local shops have closed, and there is no link between SEVs and brothels as suggested in one letter; it was noted that GRASAC was not in attendance;
- licensed premises allow control – inspections and conditions which allow the council and authorities to know where this entertainment is taking place; this avoids exploitation;
- the dancers' right to work will be checked – they are not coerced, and the majority are known to the applicant;
- if granted the applicant would be happy to have an anti-bribery and slavery policy if needed.
- people who are offended or feel their human rights are violated by the club can always walk an alternative route;

- the changing rooms are secure, refreshments are provided free of charge to the dancers, and members of staff will be on hand;
- the smoking area is for the dancers only, as it can only be accessed by walking past the booths. Customers will have to go outside, and there will be a handstamp for re-admission;
- when leaving the club, there will be a sign asking people to be peaceful and respectful of the neighbours;
- door staff will know their duties and keep up with cleaning up any mess, monitoring the situation at the end of the night;
- toilets are going to be reorganised, and female toilets will need to be accessed past the booths; there will be 2-3 security personnel to escort women to the toilets for their own peace of mind;
- a minibus will be provided at the end of the shift, to drive the dancers to their cars or their accommodation; door staff will walk them to their cars if close at hand;
- to sum up, the applicant is an experienced licence holder; the police have no concerns and would be present at the meeting if they did; conditions can be addressed and respected; the objections are not sustainable; the applicant is keen to support Cheltenham's Purple Flag status; the venue is currently outside CBC's policy area but this is changing next week; the venue has been licensed before; there are no establishments frequented by young people in the vicinity, and it will not open before 8.00pm; the licence gives a degree of control; the applicant will make sure all council policies are adhered to; performers are not coerced;
- by licensing these premises, the SEV will not be forced underground or behind closed doors, putting the dancers and members of the club in jeopardy, and the council will be allowed a greater degree of control.

Member debate

In response to questions from Members, the applicant and his solicitor confirmed the following:

- a chip system will be used to pay the dancers, so they will not handle cash during the evening; there will be a cap on how much cash they take away with them at the end of the night; the arrangements for their safety on leaving the club is described above;
- the applicant will not be involved with any 24-hour SEV licences at other premises in Cheltenham save for the one at the Two Pigs;
- when asked whether the applicant would also be looking to open pop-up SEVs elsewhere in Cheltenham, he said it would be difficult to confirm this until the decision re Club Covert has been made tonight; the Licensing Team Leader confirmed that this is not relevant to the application but helps to give Members an understanding;
- the applicant attends every Night Safe meeting, and Club Covert is now a member too; radios will be hired;
- the two venues will be run independently; dancers will not move between the two and will only perform in the venue to which they are assigned;
- there will be no fliers for this venue or the Two Pigs, or for the Eroticas bus;
- when Club Covert closes at 4am (due to its alcohol licence), the intention is to minibus customers who want to carry on to the Two Pigs;
- both the manager of the bar and the manager of the SEV will be on site at all times;

Following the site visit, Members raised the following issues and felt that remedial work would be needed before the SEV opens for business:

- the performers' changing rooms – lights should be in working order, no exposed wiring
- the performers will need water in their area to save them from going up and down the stairs
- the window in the changing rooms is not particularly secure
- directional signage for fire exits is needed from the public areas
- the sliding door to the roof area must be secure; no-one must access the roof area
- there is concern about the smoking area for patrons – a very small space, with a railing a few feet from the front door
- how will the queue be managed, and segregated from people going outside to smoke?
- an alternative fire escape strategy was discussed for the dance areas – how will this be managed?

The applicant and his solicitor confirmed that these concerns can be dealt with quickly before the first date offering SEV. An alternative fire evacuation can be written, but the distance for people passing through the temporary dance area will be no different from usual.

Member debate

The Chair confirmed that the moral objections cannot be considered here, and that concerns about the DPS are not material. The comments about 'recruitment opportunities' are not helpful. The second letter does not provide evidence to back its claims.

If the issues raised on the site visit – lighting, fire exit signage, access to the roof – are dealt with, he is minded to grant the licence, but asked that the regulations are modified to ensure no exchange of details includes electronic communication. He would like to see a limit on the number of people smoking outside to ensure not too many people are there causing a nuisance. On discretionary grounds, is minded to treat the map and red line as an indicative boundary rather than an absolute on given this seems reasonable as the council is proposing a change to the policy and the distance involved is very small.

On the site visit, Members heard about the checks on performers, to ensure they are who they say they are, are of age etc. He is content with this, and subject to conditions sees no reason to object.

A Member expressed concern that the narrow pavement area by the barrier could result in people spilling out onto the road. He felt it important to ensure a steady flow of people in this area, but there will be clusters of people, and it is important that others are not too intimidated and can actually walk past. He cannot support limiting the number of smokers, but if a crowd is waiting to get in and smokers are coming out, he is concerned that people will be pinned to the road.

The applicant stated that congestion outside the night club is dealt with on a regular basis, and the queue is managed round the corner. Smokers returning to the club will be treated as new arrivals and have to wait in line again. There will be a lobby kit to ensure the area is kept clean and tidy. The Licensing

Team Leader suggested that when a two-storey night club operated on the premises, there were always long queues down Vernon Place, but this is not the case – he has never seen long queues outside the Two Pigs. He cannot see any conflict in managing the queue and the smokers, and the local authority has the power to close the club should it become problematic.

A Member thanked the applicant's solicitor for his comprehensive explanation, she noted that there are no objections from the police, and the applicant is an experienced operator. She sympathised with the objectors but did not feel their comments relevant to these establishments. She said the door staff needed to be mindful of residential properties nearby and respect this, but was otherwise supportive of the application.

The Chair confirmed that the issues raised will be addressed. He said the council prefers venues with a robust SEV licence rather than properties operating under the exemption.

Right of Reply of Applicant

The applicant's solicitor confirmed that the applicant wishes to work with the council and will abide by any conditions imposed, having measures in place to adhere to them prior to 10th March to put any doubts in Members' minds to rest.

VOTE (unanimous)

Grant the application as applied for subject to the remedial works being undertaken;

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

None

David Willingham
Chairman

Cheltenham Borough Council

"Miscellaneous" Licensing Sub-committee – 5 August 2020

Renewal of Hackney Carriage Driver's Licence

Mr Robert George Wesley Hawkes - HCD137

Report of the Licensing Team Leader

1. Executive Summary and Recommendation

- 1.1 An application has been received from Mr Robert Hawkes for a renewal of a Hackney Carriage driver's licence.
- 1.2 Mr Hawkes reported a number of DVLA penalty points on his renewal form. The details of these are contained in the enclosed background papers.
- 1.3 Mr Hawkes is being referred to the licensing committee because:
 - 1.3.1 He did not declare these penalty points to the authority's licensing section; and
 - 1.3.2 He has over 7 penalty points on his DVLA driving licence.
- 1.4 **The Committee can:**
 - 1.4.1 **Grant Mr Hawkes' Hackney Carriage driver's licence for a further three year period if the committee is satisfied that he is a fit and proper person; or**
 - 1.4.2 **Grant Mr Hawkes' Hackney Carriage driver's licence for a further three year period if the committee is satisfied that he is a fit and proper person but issue him with a formal written warning as to his future conduct; or**
 - 1.4.3 **Refuse to grant his application for a Hackney Carriage driver's licence because the committee no longer considers him to be a fit and proper person.**

1.5 Implications

- 1.5.1 Legal

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

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

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

Mr Robert George Wesley Hawkes - 20/00893/HCD3YA		Last updated 28 July 2020
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- 3.1 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.
- 3.2 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.
- 3.3 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.
- 3.4 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 behaviour which will be taken into account.
- 3.5 The relevant policy extracts are referenced in the accompanying background papers.
- 3.6 In addition, Part 1 of the licensing policy states:

Convictions / cautions / fixed penalty notices / criminal investigations

Licence holders must notify the council in writing within 7 days if he or she is convicted or cautioned for an offence, receives a fixed penalty notice or is the subject of a criminal investigation.

4. Licensing Comments

- 4.1 The committee is under a statutory duty to ensure that licensed hackney carriage drivers are fit and proper people.
- 4.2 In coming to a determination on whether the licence holder is fit and proper, Members must have regard to the adopted licensing policy and must not arbitrarily deviate from the policy.
- 4.3 Where Members are of the view that, considering the individual circumstances of the case, the circumstances are such that a deviation from the policy is justified, you must provide clear reasons for doing so.
- 4.4 Mr Hawkes has provided a written response giving explanation as to his position on the matters before the committee for consideration. His written response can be found on the accompanying background papers.
- 4.5 Members are to note that Mr Hawkes stated that he was unaware of the requirement to report convictions to the authority. However, in 2016 Mr Hawkes correctly answered the question on his local knowledge test. The question that he answered correctly asked: *"You are a licensed driver and receive a fixed penalty notice with penalty points for an offence of speeding what must you do?"*

This calls into question Mr Hawkes' assertion that he did not know of the need to report points to the authority at the time of the offence(s).

- 4.2 Mr Hawkes 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.

Report Author

Contact officer: Mr Louis Krog

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Cheltenham Borough Council

Miscellaneous Licensing Sub-Committee – 5 August 2020

Highways Act 1980

Local Government (Miscellaneous Provisions) Act 1982

Application for Permission to Place Tables and Chairs on the Highway

Aquavitae 10 Ormond Place Cheltenham

Report of Licensing Team Leader

1. Summary and Recommendation

- 1.1 An application for the variation of a consent to place tables & chairs (“pavement consent”) has been received from Mr Paul Stephens in respect of Aquavitae on 10 Ormond Place, Cheltenham. The application is to place 42 chairs and 21 tables on Ormond Place.

1.2 Proposed days & times;

Monday	09:00 - 04:00
Tuesday	09:00 - 04:00
Wednesday	09:00 - 04:00
Thursday	09:00 - 04:00
Friday	09:00 - 04:00
Saturday	09:00 - 04:00
Sunday	09:00 - 04:00

1.3 Current days & times;

Monday	09:00 - 03:30
Tuesday	09:00 - 03:30
Wednesday	09:00 - 03:30
Thursday	09:00 - 03:30
Friday	09:00 - 03:30
Saturday	09:00 - 03:30
Sunday	09:00 - 03:30

- 1.4 A plan of the proposed layout is attached at **Appendix A**.

- 1.5 An objection has been received in relation to this application with further details at paragraph 4.

1.4 The Committee can:

- 1.4.1 Grant the consent because the application is compatible with the current Street Scene Policy, or

- 1.4.2 Refuse the consent because the application falls outside the provisions of the current Street Scene Policy.

1.5 Summary of implications

Legal No right of appeal.

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E-mail: legalservices@teWKesbury.gov.uk

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2. Background

- 2.1 The current policy for *Town Centre Street Activities: Street Trading & Objects on the Highway* was approved on 1st April 2013. A copy of the whole 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 and Objectives

- 3.1 This section outlines the policies the council will apply when making decisions on applications for consents.
- 3.2 In particular, this part of the policy will aim to promote the following aims and objectives:
- To have a clear & transparent policy governing all decisions relating to objects placed on the highway.
 - To enable the Council to manage all objects placed on the highway in order to provide effective control measures.
 - 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.
- 3.3 Each application is assessed against the outlined conditions included in the application pack and this policy.
- 3.4 No object and its associated activity may generate noise which is likely to cause nuisance or annoyance.
- 3.5 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.
- 3.6 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.
- 3.7 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.
- 3.8 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.

20/00894/TCAX		
	Page 2 of 5	Last updated 28 July 2020

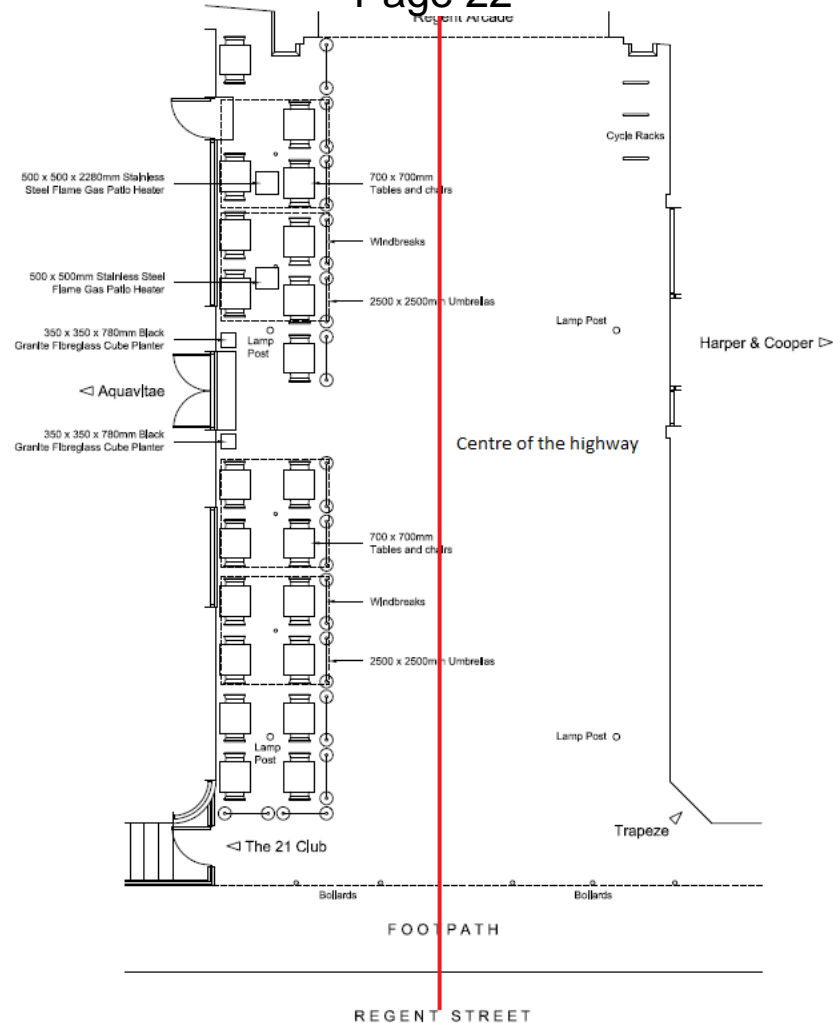
- 3.9 For health and safety reasons, the Council will not permit glass top tables.
- 3.10 Where consent has been issued for tables and chairs to be placed on the highway the Council may permit, within reason, other objects to be placed inside the area that has been cordoned off with barriers.

4. Consultee Comments:

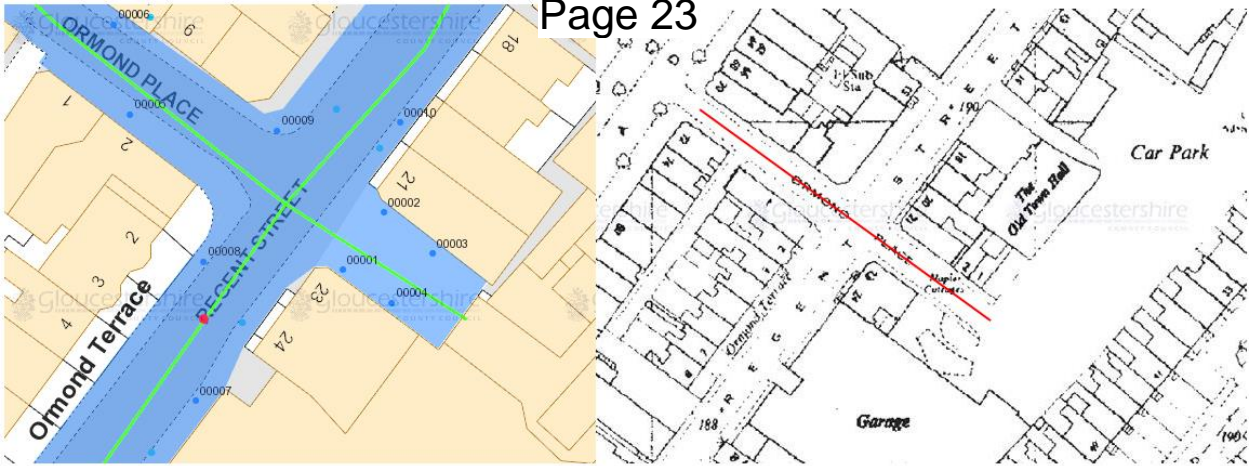
- 4.1 An objection was submitted by Gowling WLG on behalf of the owners of the Regent Arcade.
- 4.2 A copy of the objection is attached at **Appendix B** of this report.

5. Licensing Comments

- 5.1 The Committee must determine the application with a view to promoting the authority's adopted policy and fully consider the representations received and the applicant's response to these.
- 5.2 The objection makes reference to matters under the section 115E(3) Highways Act 1980 and the council's ability to issue this consent. Under the aforementioned section, the council is not able to issue a consent for the obstruction of the highway unless it has "obtained the consent of the frontagers with an interest" affected.
- 5.3 The council's legal position is that the objector's client cannot be viewed as frontager with an interest to this application due to the nature of where the centre of the highways falls (see below line in red) in respect of the area of highway in question.



- 5.4 Section 115A of the Highways Act 1980 states: “In this Part of this Act “frontagers” means the owners and occupiers of any premises adjoining the part of a highway on, in or over which an object or structure would be placed or on which facilities for recreation or refreshment or both have been, are being or would be provided; but *frontagers have an interest under this Part of this Act only in proposals to place objects or structures or provide or operate facilities wholly or partly between their premises and the centre of the highway.*”
- 5.5 Gloucester County Council’s Local Highways Manager for Cheltenham, stated in relation to where the centre of the highway falls outside 10 Ormond Place: “I have had a look at some old mapping showing the street before Regent Arcade was built when Ormond Place led to a car park. No 21 and 23 Regent Arcade do not seem to have changed so if I was looking to identify the centre of the highway I would simply measure the distance between these two building at a couple of points and divide the measurement by two to find the middle.” The plans accompanying the response above are shown below for reference:



- 5.6 Since the council's view is that the arcade cannot be classed as a frontager with an interest, the committee will need to determine the application on its individual merits taking into account the evidence it hears on the day (both verbal and written) and with a view of promoting the council's policies.
- 5.7 In relation to the relevant policies, relevant extracts are outlined above (paragraph 3). Members must also be mindful of the Probity in licensing guidance in general but particularly, "Licensing Committee Members must vote in the best interests of the Borough as a whole and must not vote on the basis of local ward interests that may be contrary to a balanced licensing assessment in the light of the evidence before the members and wider policies and guidance.
- 5.8 The committee must consider the wider implications of the granting this consent, if it is mindful of doing so. The objector has, for example, raised the issue of the opening of the new cinema in the Arcade and the investment to refurbish the public realm area on Ormond Place leading to the arcade's entrance.

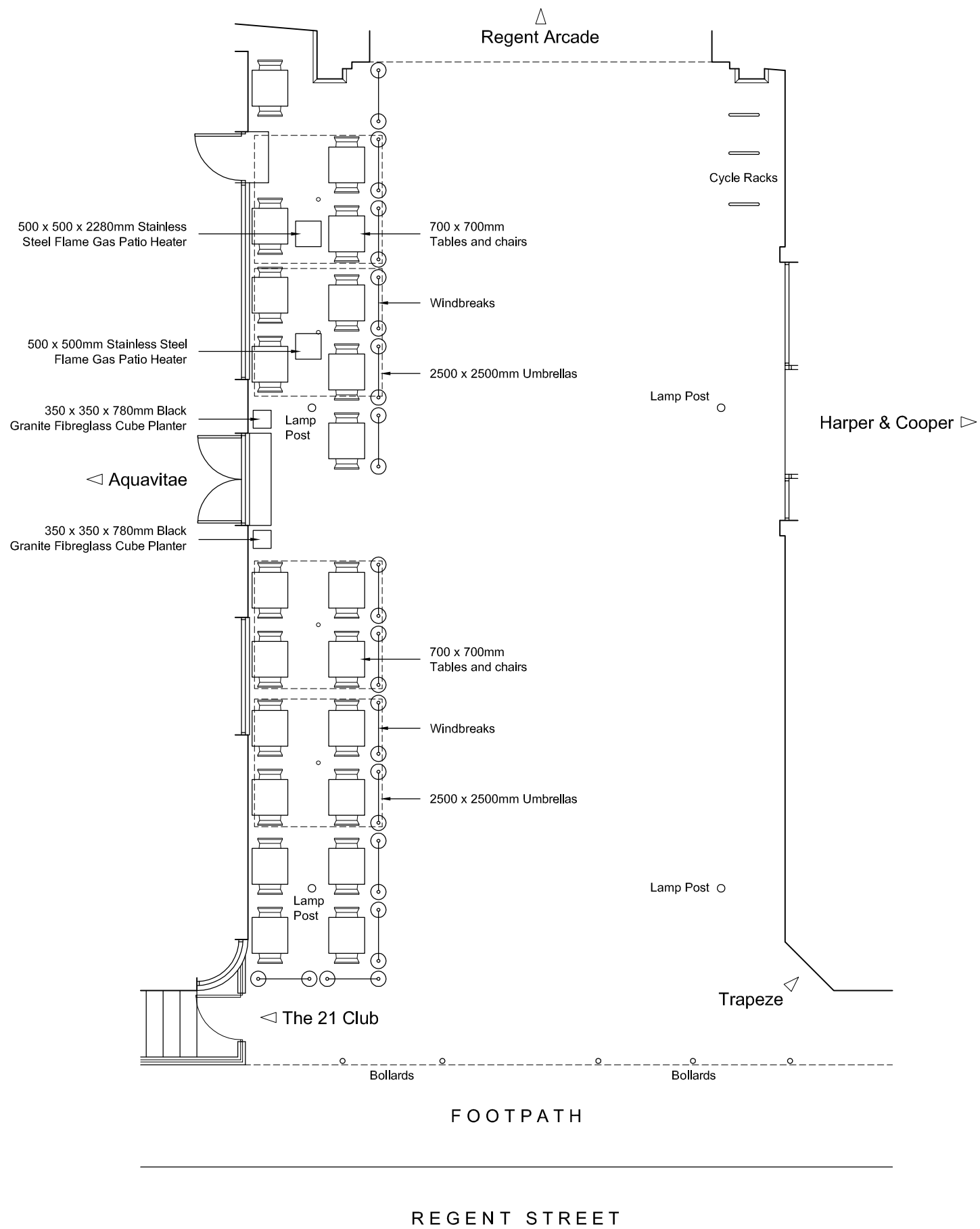
Background Papers

Service Records


Case Officer

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Client The 21 Club Limited						
Project Aquavitae, 10 Ormond Street, Cheltenham						
Drawing Title Day & Evening - Table & Chair Layout						
Date May 2020	Scale 1:100 @ A3	Drawn GMP	Status PA	Job No. AQV18.01	Drg No. 12	Rev. -

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Your Reference
20/00894/TCAX

Our Reference
2651115/NXH03



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FAO Phil Cooper

3 July 2020

Dear Sirs

Aquavitae - Outside Aquavitae on Ormond Place, Cheltenham - Application to place tables and chairs within the public highway - reference 20/00894/TCAX (the "Application")

This representation is submitted on behalf of our clients, Canada Life Limited, which is the proprietor of a long leasehold interest in the Regent Arcade in Cheltenham and The Regent Arcade Trust. Cheltenham Borough Council is the freeholder. Our clients have submitted representations in relation to previous applications, most recently an application under reference 18/01920/TCAX ("**the 2018 Application**").

It is established that the part of Ormond Place which is the subject of the Application forms part of the adopted highway and it will be recalled that the Regent Arcade has the benefit of a pedestrian access directly onto Ormond Place, which is a principal entrance to the shopping centre scheme which provides over 200,000 sqft of retail space with over 50 stores. Footfall through this entrance is presently in the region of 3.5 million people per year. Our client's premises directly adjoin that part of Ormond Place over which Cheltenham Borough Council's consent is being sought via the Application.

Our client has been supplied with some details as regards the application, via an email from Cheltenham Borough Council. Our client wishes to object to the grant of the application, on the following grounds:

1. Our client is a frontager to the highway and as such, under s.115E(3), the local authority is prohibited from issuing its approval without our client's consent.
2. The new cinema is due to open later this year and the customers of Aquavitae will block the entrance to the cinema for patrons;
3. The tables and chairs will block the entrance to the Regent Arcade for shoppers prior to closing; and
4. The current use of the area by Aquavitae has resulted in smashed glass on the highway, in front of the entrance to the Regent Arcade, which has not been cleaned up by Aquavitae;

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We expand on each of these grounds below.

Frontager to the Highway

The provisions of section 115E(3) Highways Act 1980 set out that an authority is prohibited from issuing its approval to a proposed highway obstruction where consent from frontagers has not been obtained. For these purposes our client is a frontager; it has premises directly abutting, and an access onto, Ormond Place.

For the current purposes, a frontager is defined by s.115A(7) of the Act as the owner or occupier "of any premises adjoining the part of a highway on, in or over which an object or structure would be placed or on which facilities for recreation or refreshment or both have been, are being or would be provided, but frontagers have an interest under this Part of this Act only in proposals to place objects or structures or provide or operate facilities wholly or partly between their premises and the centre of the highway".

Our client's property adjoins Ormond Place, in fact the extent of the entrance to the Regent Arcade stretches across the entire width of Ormond Place, being a principle entrance to the shopping centre. It also adjoins Aquavitae, the property to which this application relates. From viewing the plans it can clearly be concluded that our client is a frontager to the area of Ormond Place in question as the proposed tables and chairs layout extends to the face of our clients frontage.

This representation should be taken as a clear statement on behalf of our client that it does not give its consent to the Application. Accordingly the grant of consent in these circumstances would be unlawful and unsound, and would sit contrary to Cheltenham Borough Council's public law obligations.

If the Council disputes our clients' status as frontager, for the purposes of s.115E of the Highways Act, we invite them to set out their legal reasoning. Our client reserves their right to take further legal action against the Council's decision if their status as frontage is ignored.

Access to the new Cinema

In our client's representations we have previously explained the proposed redevelopment of a leisure-led unit at this end of Regent Arcade together with works to upgrade the Ormond Place entrance and streetscape. These works have now completed and a new 22,000 sq ft boutique Tivoli cinema with lounge and dining facilities is due to open in September/October 2020, and it is intended that a new 25,000 sq ft foodhall will shortly follow. To enter the cinema, customers must use the Ormond Place entrance, following the closure of the High Street and House of Fraser entrances in the evenings. The cinema will be busiest in the evenings and will open regularly past midnight and so customers will often move past Aquavitae while the bar patrons are outside. This entrance will also be used by customers who park in Cheltenham Borough Council's car park. This is a new and safer means of access to the car park which the Council and users of the car park do not currently benefit from.

Although the physical limits of the tables and chairs do not extend over the entrance to the Arcade and the cinema, Aquavitae's customers often move across Ormond Place, outside of the authorised area, causing a block to the cinema customers. Earlier this year, during the Cheltenham Gold Cup racing week, Aquavitae erected marquees on Ormond Place which blocked the entrance to the Regent Arcade, during the Arcade's opening times. The owner initially refused to remove the marquees and employees of the Regent Arcade had to step in and demand that the marquees be taken down. These issues have been raised with the owner of Aquavitae previously but his staff have not contained the customers to the authorised area.

We have enclosed photos of the crowd at Aquavitae taking up the entire width of Ormond Place, whereas the licence is restricted to an area at the front of the bar which does not block the entrance to the Regent Arcade. These photos are enclosed at Appendix 1.

Access to The Regent Arcade shops

Additional to the block caused to the cinema, the shopping customers to the Arcade are also affected. During the 2018 Application, the times that the tables and chairs would be placed outside was a contentious point. The owner of Aquavitae assured the Council and our clients that he would only place the tables and chairs outside and open them to customers once the Arcade has closed. However, since obtaining the licence the owner has begun placing the tables and chairs outside as early as 4pm on several occasions. The Regent Arcade closes at 6pm and so this results in two hours of interruption to the shoppers entering and exiting the Arcade from the Ormond Place entrance.

The majority of the customers to the Regent Arcade are local to Cheltenham and the customers of the cinema will overwhelmingly be local to Cheltenham. Our client does not want local residents or visitors to Cheltenham to be discouraged from shopping in the Regent Arcade or visiting the new cinema because of the irresponsible actions of Aquavitae.

Health and Safety

Aquavitae have currently been placing tables and chairs on the highway pursuant to an existing licence. Our client, on numerous occasions, has seen shards of smashed glass and other litter on the paving outside the entrance to the Regent Arcade when opening the Arcade in the morning, which have arisen from the previous night at Aquavitae.

Our clients have spent a lot of money recently on works to the streetscape of Ormond Place, including re-paving the area. These works were funded entirely by Canada Life, with no contributions from adjacent landlords or Cheltenham Borough Council, and benefits neighbouring property owners and occupiers, including Aquavitae. The shards of glass often fall between the cracks of the new paving and make it difficult to remove. This is clearly a health and safety hazard to the many shoppers of the Regent Arcade. Our client does not understand why customers of Aquavitae are allowed to take glass outside the bar. If a licence required drinks to be served in plastic cups, this would go some way to solving the health and safety issue.

This issue has been raised on numerous occasions with the owner of Aquavitae but the owner and his staff have still failed to clean the area properly and the shattered glass still remains present in the mornings. Our clients have also raised this issue with Cheltenham Borough Council previously but no investigation or enforcement action has been taken by the Council. This does nothing to dissuade Aquavitae from complying with the terms of their licence or taking any measures to clean up the mess left by their patrons. Our clients have absolutely no belief that any conditions imposed on a licence would have the effect of preventing the litter and glass unless proper enforcement action is taken by the Council. For this reason, it would be irrational and dangerous for a new licence to be granted to Aquavitae.

Conclusion

Our client has, at all times, acted reasonably and amicably with Aquavitae (including its owner and staff) and Cheltenham Borough Council in order to maintain cordial relationships and ensure that the Arcade and Aquavitae can both operate safely and logistically. Our client has allowed Aquavitae to obtain a licence for seating in this area, despite being well within its legal right as frontage to the highway to insist that there should be no external seating on Ormond Place. However, Aquavitae have not been acting likewise since

the grant of the previous licence and regretfully our client now cannot entertain tables and chairs outside Aquavitae.

Despite representations to them from our clients, Cheltenham Borough Council has failed to take action against Aquavitae for the flagrant breaches of the existing licence and health and safety regulations. We would like to obtain reassurances from the Council that in the future, should any licence be granted, they will police such licence strictly and monitor and manage Aquavitae's use of the licensed area and not hesitate to revoke the licence if Aquavitae do not comply with its terms. Without such monitoring our client believes Aquavitae will revert to breaching the licence and creating further health and safety hazards to the users of the Regent Arcade, the new cinema and the car park.

We kindly request confirmation of receipt of this representation, along with confirmation that its contents shall be brought to the attention of the Licensing Sub-Committee sitting to determine the Application, where we look forwarding to providing our representations and answering any questions the committee members may have. Please can you give us notice of the date of the Licensing Sub-Committee where the Application will be determined.

Yours faithfully

Gowling WLG (UK) LLP

Gowling WLG (UK) LLP

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APPENDIX 1 – PHOTOS TAKEN OUTSIDE ORMOND PLACE ENTRANCE

















Briefing Notes

Miscellaneous Licensing Sub-Committee
5 August 2020

Licensing Team Leader

This note contains information to keep Members informed of matters relating to the work of the Cabinet or a committee but where no decisions from Members are needed.

If Members have questions relating to matters shown, they are asked to contact the Officer indicated.

Business & Planning Act 2020

Pavement Licences

Parliament passed a new bill on 22 July 2020 in response to the impact of COVID-19 on the leisure and entertainment industry: the Business and Planning Act 2020. This legislation introduces a new licensing scheme for pavement licences and it is intended to promote outdoor dining and socialising. This scheme will allow businesses to apply to place tables, chairs, barriers and similar items on the highway adjacent to the premises concerned, for the consumption of food and drink.

This is a streamlined process to allow businesses to secure these licences quickly and easily, and where granted, they will remain in force for a year but not beyond 30 September 2021. The new pavement licence scheme does not replace the existing scheme, where councils may give consent for tables and chairs to be placed on the highway. However, it does provide a cheaper, easier and quicker way for businesses to obtain a pavement licence for the short term.

1. Consultation

Consultation will be undertaken in the normal way including with relevant ward Members.

However, under the new pavement licensing scheme, consultation periods are limited to 5 working days (previously it was 28 days).

2. Conditions

Pavement licences are issued subject to conditions published by the licensing authority and those imposed by the Act. This authority have existing licensing conditions, adopted as part of the Street Scene Policy.

In addition, the Act imposes two further conditions:

a) **No-obstruction condition** ([Taken from national guidance](#))

The no-obstruction condition is a condition that the licence must not have the effects set out in section 3(6) of the 2020 Act. When determining whether furniture constitutes an unacceptable obstruction in light of the no-obstruction condition, the provisions require that local authorities consider the needs of disabled people. In order to do this, authorities should consider the following matters when setting conditions, determining applications (in the absence of local conditions), and when considering whether enforcement action is required:

- Section 3.1 of Inclusive Mobility sets out a range of recommended widths which would be required, depending on the needs of particular pavement users, but is clear that in most circumstances 1500mm clear space should be regarded as the minimum acceptable distance between the obstacle and the edge of the footway,
- any need for a barrier to separate furniture from the rest of the footway so that the visually impaired can navigate around the furniture, such as colour contrast and a tap rail for long cane users. In some cases, it may be appropriate to use one or more rigid, removable objects to demarcate the area to which the licence applies, for example wooden tubs of flowers. However, this will need to be balanced to ensure any barriers do not inhibit other street users, such as the mobility impaired, as such barriers may create a further obstacle in the highway;
- any conflict of street furniture with the principal lines of pedestrian movement particularly for disabled people, older people and those with mobility needs. The positioning of furniture should not discourage pedestrians from using the footway. The available route must be entirely clear and not pass through an area with tables and chairs;
- so that where possible furniture is non-reflective and of reasonable substance such that it cannot easily be pushed or blown over by the wind, and thereby cause obstruction – for example, the local authority could refuse the use of plastic patio furniture, unless measures have been taken to ensure it is kept in place.

b) **Smoke-free seating condition** ([Taken from national guidance](#))

The national smoke-free seating condition seeks to ensure customers have greater choice, so that both smokers and non-smokers are able to sit outside, in order to protect public health by reducing risks of COVID transmission.

It is important that businesses can cater to their customers' preferences. The Business and Planning Act 2020 imposes a smoke-free seating condition in relation to licences where seating used for the purpose of consuming food or drink has been (or is to be) placed on the relevant highway. The condition requires a licence-holder to make reasonable provision for seating where smoking is not permitted. This means that where businesses provide for smokers, customers will also have the option of sitting in a non-smoking area. Ways of meeting this condition could include:

- Clear 'smoking' and 'non-smoking' areas, with 'no smoking' signage displayed in designated 'smoke-free' zones in accordance with Smoke-free (signs) regulations 2012 which can be viewed [here](#).
- No ash trays or similar receptacles to be provided or permitted to be left on furniture where smoke-free seating is identified.
- Licence holders should provide a minimum 2M distance between non-smoking and smoking areas, wherever possible.

Further, business must continue to have regard to smoke-free legislation under The Health Act 2006, and the subsequent Smoke-free (Premises and Enforcement) Regulations 2006.

3. Delegations

Members will be aware that Council resolved to delegate decision making authority to the Director of Environment in consultation with the vice-chair of the Licensing Committee to:

- Determine contentious applications
- Revoke licences

Any person aggrieved by the decision of the Director of Environment in consultation with the vice-chair of the Licensing Committee can apply to the Miscellaneous Licensing Sub-Committee for a review of this decision.

4. Repeal of the Act

Pavement licences under the Business and Planning Act 2020 will have effect until 30 September 2021. Assuming there are no amendments to the Act to amend this date, all licences issued under the 2020 Act will cease when the 2020 Act is repealed.

Businesses who want to continue to place tables and chairs on the highway will need to re-apply for consent under the Highways Act 1980 and each application will be determined afresh and based on its individual merits.

Guidance has been issued by the Government and is available online:

<https://www.gov.uk/government/publications/pavement-licences-draft-guidance/draft-guidance-pavement-licences-outdoor-seating-proposal>

Automatic entitlement to off-sales for all premises licences

The provisions in the Act temporarily modify the Licensing Act 2003 to provide an automatic extension to the terms of most premises licences that only permit the sale of alcohol for consumption on the premises, to allow the sale of alcohol for consumption off the premises. This will make it easier for licensed premises to sell alcohol to customers for consumption off the premises in England and Wales, which will allow businesses to trade and maintain social distancing.

The new off-sales permission will permit off-sales to be made at a time when the licensed premises are open for the purposes of selling alcohol for consumption on the premises, subject to a cut off time of 11pm or the closure time of an existing outside area, whichever is earlier. Measures also temporarily suspend existing licence conditions in so far as they are inconsistent with the new off-sales permission.

Conditions on existing dual premises licences (permitting both on-sales and off-sales) that would prevent one or more of the following are also suspended under the temporary off-sales permission:

- i. off-sales being made at a time when the premises are open for the purposes of selling alcohol for consumption on the premises (subject to a cut off time of 11pm or the closure time of an existing outdoor area, whichever is earlier);
- ii. off-sales being sold in an open container; and,
- iii. deliveries to buildings used for residential or work purposes

The new off-sales permission is authorised under section 172F(2) of the Licensing Act 2003 in respect of on-sales licences and section 172F(5) of the Licensing Act 2003 in respect of dual licences.

Guidance has been issued by the Government and is available online:

<https://www.gov.uk/government/publications/guidance-for-temporary-alcohol-licensing-provisions-in-the-business-and-planning-bill/alcohol-licensing-guidance-on-new-temporary-off-sales-permissions>

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Briefing Notes

Miscellaneous Licensing Sub-Committee
5 August 2020

Licensing Team Leader

This note contains information to keep Members informed of matters relating to the work of the Cabinet or a committee but where no decisions from Members are needed.

If Members have questions relating to matters shown, they are asked to contact the Officer indicated.

Statutory guidance: Taxi and Private Hire Vehicle Standards

On the 21 July 2020, the Department for Transport published its taxi and private hire licensing statutory guidance. This is the first time statutory guidance has been issued for taxi and private hire licensing.

<https://www.gov.uk/government/publications/statutory-taxi-and-private-hire-vehicle-standards>

1. Status of the guidance

The statutory guidance states at 1.3 that:

“The Department therefore expects these recommendations to be implemented unless there is a compelling local reason not to.”

The guidance also states at 2.6 & 2.7 that:

*“The document sets out a framework of policies that, under section 177(4), **licensing authorities “must have regard” to when exercising their functions.** These functions include developing, implementing and reviewing their taxi and private hire vehicle licensing regimes. “Having regard” is more than having a cursory glance at a document before arriving at a preconceived conclusion.*

*“**“Having regard” to these standards requires public authorities, in formulating a policy, to give considerations the weight which is proportionate in the circumstances.** Given that the standards have been set directly to address the safeguarding of the public and the potential impact of failings in this area, the importance of thoroughly considering these standards cannot be overstated. **It is not a question of box ticking; the standards must be considered rigorously and with an open mind.**”*

It is therefore clear from the above that the statutory guidance carries significant weight and the expectation from Government that the guidance be given serious consideration is clearly set out above.

2. A brief overview of measures

- a) **Whistleblowing (3.8)** - Where there are concerns that policies are not being applied correctly, it is vital that these can be raised, investigated and remedial action taken if required. **Licensing authorities should have effective internal procedures in place for staff to raise concerns and for any concerns to be dealt with openly and fairly.**

b) **Criminal records checks:**

- i. Licensing authorities should insist on the **DBS's Update Service** for all licensed drivers. (4.5)
 - ii. **Common Law Police Disclosures** - Licensing authorities should maintain close links with the police to ensure effective and efficient information sharing procedures and protocols are in place and are being used. (4.11)
 - iii. **Licensee self-reporting** - Licence holders should be required to notify the issuing authority within 48 hours of an arrest and release, charge or conviction of any sexual offence, any offence involving dishonesty or violence and any motoring offence. An arrest for any of any of the offences within this scope should result in a review of their licence. (4.12)
 - iv. **Referrals to the DBS** - A decision to refuse or revoke a licence as the individual is thought to present a risk of harm to a child or vulnerable adult, should be referred to the DBS. (4.14)
 - v. **Working with the Police** - action taken by the licensing authority as a result of information received from the police should be fed-back to the police.
 - vi. **Sharing licensing information with other licensing authorities** - Applicants and licensees should be required to disclose if they hold or have previously held a licence with another authority. An applicant should also be required to disclose if they have had an application for a licence refused, or a licence revoked or suspended by any other licensing authority. (4.20)
 - vii. **Overseas convictions** - Licensing authorities should seek or require applicants to provide where possible criminal records information or a 'Certificate of Good Character' from overseas in this circumstance to properly assess risk and support the decision-making process. (4.35)
 - viii. **Vehicle proprietors** - Licensing authorities should require a basic disclosure from the DBS and that a check is undertaken annually. (7.2)
 - ix. **Private hire vehicle operators** – Licensing authorities should request a basic disclosure from the DBS and that a check is undertaken annually. (8.2)
 - x. **Booking and dispatch staff** - Licensing authorities should, as a condition of granting an operator licence, require a register of all staff that will take bookings or dispatch vehicles is kept. (8.8)
- c) **Multi-agency Safeguarding Hub (MASH)** - All licensing authorities should operate or establish a means to facilitate the objectives of a MASH (i.e. the sharing of necessary and relevant information between stakeholders). (4.28)
- d) **Complaints against licensees** - All licensing authorities should have a robust system for recording complaints, including analysing trends across all licensees as well as complaints against individual licensees. (4.29)
- e) **Training decision makers** - All individuals that determine whether a licence is issued should be required to undertake sufficient training. As a minimum, training for a member of a licensing committee should include: licensing procedures, natural justice, understanding the risks of CSAE, disability and equality awareness and the making of difficult and potentially controversial decisions. (5.3)

- f) **Decision making** - all licensing authorities should consider arrangements for dealing with serious matters that may require the immediate revocation of a licence. It is recommended that this role is delegated to a senior officer/manager with responsibility for the licensing service. (5.11)
- g) **Fit and proper test** – Defined in the statutory guidance as: *“Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?”*

If, on the balance of probabilities, the answer to the question is ‘no’, the individual should not hold a licence.
- h) **Criminal convictions and rehabilitation** - Annexed to the statutory guidance document is the Department’s recommendations on the assessment of previous convictions (Annex – Assessment of previous convictions) (5.16)
- i) **Safeguarding awareness** - All licensing authorities should provide safeguarding advice and guidance to the trade and should require taxi and private hire vehicle drivers to undertake safeguarding training. (6.6)
- j) **In-vehicle visual and audio recording (CCTV)** - All licensing authorities should consult to identify if there are local circumstances which indicate that the installation of CCTV in vehicles would have either a positive or an adverse net effect on the safety of taxi and private hire vehicle users, including children or vulnerable adults, and taking into account potential privacy issues.
- k) **Joint authorisation of enforcement officers** - Licensing authorities should, where the need arises, jointly authorise officers from other authorities so that compliance and enforcement action can be taken against licensees from outside their area. (9.2)

3. Next steps

Changing licensing policy and requirements

The statutory guidance states that Hackney Carriage and Private Hire licensing policies and procedures should be reviewed to reflect the measures contained in the new statutory guidance.

A review of the authority’s licensing policy will be undertaken to align the policy with the statutory guidance. Much of what is proposed in the guidance has already been adopted by Cheltenham Borough Council however.

To make the statutory guidance most effective, the Gloucestershire Licensing Officer’s Group (GLOG) is working on adopting a common licensing approach based on the statutory guidance. This will ensure that there is a basic and common approach to safeguarding throughout the county. Individual authorities will retain the discretion to set their own policies to ensure that local standards are not lost.

Clearly a review of the Hackney Carriage and Private Hire licensing policy will require Member input and oversight. Initial work by officers will align the licensing policy with the statutory guidance and Members will be engaged prior to any formal consultation on policy changes.

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