



CHELTENHAM

BOROUGH COUNCIL

Notice of a meeting of Full Licensing Committee

Wednesday, 3 March 2021

4.00 pm

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

Membership	
Councillors:	David Willingham (Chair), Paul McCloskey (Vice-Chair), Angie Boyes, Mike Collins, Wendy Flynn, Tim Harman, Diggory Seacome, Jo Stafford, Roger Whyborn and Simon Wheeler
Officers:	Vikki Fennell (One Legal) Jason Kirkwood, Freya Gill and Alastair Henry

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

Agenda

1.		APOLOGIES	
2.		DECLARATIONS OF INTEREST	
3.		MINUTES OF THE PREVIOUS MEETING To approve the minutes of the last meeting held 2 nd December 2020.	(Pages 3 - 8)
4.		MINUTES OF SUB-COMMITTEE MEETINGS To approve the meeting of the Licensing Sub Committee held on 25 th January 2021.	(Pages 9 - 18)
5.		APPLICATION FOR A STREET TRADING CONSENT Application for Street Trading Consent.	(Pages 19 - 28)
6.		AUTHORITY'S RESPONSE TO REVIEW OF THE GAMBLING ACT - CALL FOR EVIDENCE Authority's Response to Review of the Gambling Act - Call for Evidence	(Pages 29 - 36)
7.		CHAIRS BRIEFING 1) Documents referring to the night time economy 2) A copy of the presentation "Cheltenham's approach to supporting licensed premises through the	(Pages 37 - 50)

		pandemic” 3) A briefing note regarding 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.	
8.		ANY OTHER ITEMS THE CHAIRMAN DETERMINES URGENT AND REQUIRES A DECISION	
9.		DATE OF NEXT MEETING The next Full Licensing Committee will be 9 th June 2021.	

Contact Officer: Claire Morris, Democratic Services, 01242 264130
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Full Licensing Committee

**Wednesday, 2nd December, 2020
4.00 - 5.40 pm**

Attendees	
Councillors:	David Willingham (Chair), Paul McCloskey (Vice-Chair), Angie Boyes, Mike Collins, Wendy Flynn, Tim Harman, Diggory Seacome, Jo Stafford and Roger Whyborn
Also in attendance:	

Minutes

1. **APOLOGIES**
Apologies were received from Councillor Wheeler.

2. **DECLARATIONS OF INTEREST**
Councillors Willingham and Boyes declared they had visited the site.

3. **MINUTES OF THE PREVIOUS MEETING**
The minutes of the Full Licensing Committee meeting held on 2 September 2020 were approved and signed.

4. **MINUTES OF SUB-COMMITTEE MEETINGS**
The minutes of the meeting of the Licensing Sub-Committee (Miscellaneous) held on 4 November 2020 were approved and signed.

The minutes of the meetings of the Licensing Sub-Committee (Alcohol and Gambling) held on 11 August 2020, 24 September 2020 and 4 November 2020 were approved and signed.

5. **APPLICATION FOR PERMISSION TO PLACE AN OBJECT ON THE HIGHWAY – ‘A’ BOARD**
The Senior Licensing Officer introduced the report. An application had been received from The Urban Meadow Café, 24 Rodney Road, to place an advertising board on the High Street at the junction with Rodney Road. The size of the A Board was compliant with policy and a picture of proposed A Board was attached with the report. A location plan of the proposed location was also attached to the report, however the Officer stated that the location did not comply with policy requirements, in that an ‘A’ Board should be placed directly outside or immediately adjacent to the premises entrance. Whilst no objections had been received, the Officer’s recommendation was to refuse the application based on non-compliance with the council’s policy on location.

The Officer reminded members of the aims and objectives of the council’s policy and stated that if members granted the application reasons must be stated for deviating from policy.

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In response to questions from members, the Officer;

- Shared his screen to show an image of the frontage of the premise and its location within Rodney Road, as well as the size of the footway.
- Confirmed that he was not aware of any similar businesses who had permissions for A boards in that location. However further along the High Street he confirmed there was a mixture of A boards, some with and some without permission and that action was being taken to deal with those without permission.
- Confirmed that the Government had introduced new legislation in the light of Covid to allow more widespread use of tables and chairs on the pavement on a temporary basis and a member questioned whether this could be considered in relation to A boards as well. However the Officer was unaware of similar legislation with regard to objects on the highway.

The Chair invited the applicant's representative, Jo Baker, to address members. Ms Baker stated she owned the lease on the property at 24 Rodney Road, having taken a 12 year lease in January of this year and had started trading as a café on the ground floor and a yoga studio on the first floor. After just 3 months of trading, the business was closed down due to the corona virus pandemic and on re-opening after lockdown she rebranded the business to give it a boost. Ms Baker explained that on seeing a number of A boards on the high street, she thought that would be an excellent way of increasing footfall down to the café from the High Street.

She reported that she had had a promising August and attributed an increase in income to the A board advertising. However in September she was asked to remove the A board by the Licensing team as she did not have a proper consent. This she did immediately and proceeded to submit an application and the appropriate fee on 1st October. However, the 28 day consultation period was delayed as a record of payment could not be found and Ms Baker had to submit proof of payment.

In the meantime Ms Baker had written to Barclays Bank to ask them to confirm in writing that they had no objection to the A board being placed outside their building. Ms Baker also stated that she was aware the Council's Street Scene Policy was under review, which included the location of A Boards and she confirmed that the A Board would provide at least 1.8m unobstructed thoroughfare. Ms Baker referred to the image of the premises shown earlier and stated that this was an old picture and the property definitely looked like a café now. Finally she informed members that since the removal of the A board, she had noticed a steep decline in footfall and passing trade. She hoped the committee would consider the application favourably for the survival of her business and would be grateful if it was possible for a grant even on a temporary basis.

In response to questions from members, Ms Baker confirmed that:

- The café was on the ground floor and that the pavement was too narrow for the A board to go outside the premises.
- There were 2 hanging vertical signs hanging from the building.

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- The yoga studio had re-opened that day and was limited to a reduced number of participants and that whilst it was closed yoga classes were run online.
- There were four full time members of staff and one part time weekend helper, all local people who had been furloughed and had remained very supportive.

In response to a question to the Licensing Officer, he confirmed that consent for an A board can be given for a specified period.

Before going to debate the Chair reminded members that if they were to deviate from policy they needed to give clear reasons for doing so and that licensing decisions had to be reasonable, proportionate and rationale. The Chair summarised his reasoning; firstly the A board was not outside the premises and thus did not comply with policy, it was very close to a busy junction and additional street objects added to potential hazards, the sign could not be directly overseen by the applicant as she was not near it. However, a reason for varying the policy, albeit temporarily, could be the Covid crisis and the precedence set by the government in response to temporary changes to assist businesses that are struggling. The Chair was minded to consider a temporary consent and if members agreed with this, a decision would be needed on the length of time.

During the ensuing debate members mentioned the following:

- In order to support local independent businesses in these challenging times, consideration of a temporary consent was an option that could be supported.
- A temporary grant for a period of time in line with the expiry date of the temporary tables and chairs legislation was felt acceptable and defensible. One member suggested the expiry date was the end of September.
- Many businesses were struggling in this current situation and if everyone had an A board it would be impossible to navigate the high street safely, which is why the council has a policy. Also the premises has 2 hanging signs outside the building and is located on the ground floor, so not necessary to deviate from policy.
- The diagram in the report was far too small to follow exactly where the A board would be placed. The applicant clarified its position and confirmed it would be outside the vehicle access area.
- With diminished footfall in the high street and with more people working from home which impacts Rodney Road which has many offices in it, the committee should be doing what it can to support local businesses.
- The A board is tastefully designed and the council wants to encourage local businesses and people into the town. The applicant has followed all the rules and done as asked, think it fair, reasonable, and pragmatic to deviate from policy and should consider a permanent grant of consent.
- Must consider each application on its own merits and difficult when other parts of the town seem to have many objects on the street. It doesn't comply with the policy, but the applicant has received business support grants from the council during this period, so seems contradictory,

however concerned about the precedent this could set and the number of other businesses who could apply.

- It is impossible to implement policy of having an A board outside the premises as the pavement is not wide enough. The applicant has done everything asked of her and a temporary consent should be considered and with a review of the situation at the end of September.
- Committee need to do all they can to attract people into the town centre.
- One member was not happy to deviate from policy permanently, but would consider a temporary consent.
- Rodney Road is mainly residential or commercial, so this is an isolated business in this road, and by saying it is an isolated business could justify a consent and not set a precedent.

There was some discussion on whether to consider a permanent consent or temporary consent and the precedent this could set. Several examples of past deviations from policy were cited, as well the granting of a permanent consent for one A board advertising several businesses down one alley way which led to a tweaking of the policy.

The Licensing Officer confirmed that an email had been received from the Manager at Barclays Bank saying that they would be quite happy with the A board to be outside their premises. He also drew members attention to the A boards policy, whereby it states that the council seeks to strike a balance between promoting the councils priorities in particular strengthening the boroughs economy by assisting and promoting local businesses but at the same ensuring the free passage along the foot paths and maintaining the visual street environment by the controlled use of boards and he confirmed there had been no objections to the application on the basis of public safety.

The Chair went through the options available to members in their decision making and suggested an additional option should the approval of the application on a permanent basis be refused.

The Chair invited the applicant to her final right of reply in which she thanked members for an interesting debate and stated that in view of the members concerns about a plethora of A boards arriving on the High Street, Ms Baker said she didn't think this would be the case as the cost of an A board put some off and many colleagues within the hospitality association didn't want them and they were happy with the support they had received with regard to the new temporary legislation on tables and chairs.

The Chair moved to vote on:

1.8.1 of the report, to approve the application because members were satisfied that the location was suitable - Against 5, For 3 - Refused

To approve the application temporarily until 30/9/21 or until such other time as the government revoked the Covid emergency legislation in relation to the tables and chairs policy, with the reason that the location is suitable because of trying to regenerate businesses in the town centre impacted by Covid 19 – Against 1, For 7 – **CARRIED**

The Chair confirmed that the application had been granted on a temporary basis and that the exact wording of the decision would be determined by the Legal Officer and Licensing Officer and forwarded to the applicant.

6. RESPONSE TO CONSULTATION TO REVISED STREET SCENE POLICY

The Senior Licensing Officer presented the response to the consultation on the revised Street Scene Policy. He stated that the public consultation period was open until 14 January and that members of the committee had the opportunity now to feedback their comments to the Cabinet Member for Cyber and Safety, for consideration by Cabinet. Members were asked to note the revisions to the revised policy as outlined in Appendix 2 to the report. It was subsequently pointed out that members had a copy of the revised report but without the amendments being highlighted.

Apart from some minor grammatical changes, the principal proposed changes related to strengthening the authority's position on determining applications that do not comply with policy; lengthening the consultation period; formalising the requirement to maintain minimum 1.8m unobstructed thoroughfare; updating the council's approach to enforcement; and permissions around advertising structures such as A boards.

The Chair thanked the Licensing team for the work they had done on this policy.

One member raised the point of the raised piece of land between Montpellier wine bar and the Courtyard, which was privately owned land and where there had been issues about tables and chairs and signage on this private land and who was responsible for them. He felt this should be regularised.

The Chair felt a discussion with Highways to get a better understanding of the rules regarding private land could be beneficial.

A member pointed out that there were several references to Cheltenham Borough Council's Local Plan adopted in 2006, however he pointed out that a new one was adopted in 2019. This needed to be altered and to double check that the core commercial area was still the same in the new policy. The Licensing Officer would verify this.

Concern was also expressed about the interpretation of the default position and presumption of refusal, as many applications came to committee because they did not comply with policy. The Chair pointed out that it was the committee's role to state the reasons for reaching any decision.

In response to a member's concern about the 1.8m ruling and whether this distance should be the same for passing both tables and chairs in the highway as well as A boards, and whether the latter should be 1.2m, the Licensing Officers were asked to review this measurement as a sensible consideration. Another member however felt that the distance should not be changed.

The Chair asked Officers to ensure there was a robust equalities impact assessment on this and to consider sending the consultation to the likes of the National Institute for the Blind and other disability charities to be able to comment on the policy to ensure accessibility for those who struggle.

The Chair also wished to look at alternative signage provision, whereby businesses in lower footfall areas could purchase a modular sign that could be attached to something, enabling a single piece of street furniture as opposed to several.

Members were asked to:

- Note the revisions to the revised policy as outlined in the report; and
- Acting as lead consultee to the Cabinet Member for Cyber and Safety, submit any comments or response this committee wished to make for consideration by Cabinet.

All the comments made by members had been noted by the Officers and would be forwarded to cabinet.

Upon a vote it was carried.

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

There were no urgent items to be discussed.

The Chair however wished to record his thanks to the Licensing Team, One Legal and the Democratic Services team for their hard work in manging these meetings and wished everyone a merry Christmas and a Happy New Year.

8. DATE OF NEXT MEETING

3 March 2021.

David Willingham
Chairman

Licensing Sub Committee-Alcohol and Gambling

**Monday, 25th January, 2021
2.05 - 5.45 pm**

Attendees	
Councillors:	David Willingham (Chair), Tim Harman and Wendy Flynn
Also in attendance:	Sarah Farooqi, Louis Krog and Jason Kirkwood

Minutes

1. ELECTION OF CHAIR

Councillor Willingham was elected Chair of the meeting.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. DETERMINATION OF APPLICATION FOR A PREMISES LICENCE

The Chair informed the meeting that on 22 January Cllr Harman, the Licensing Team Leader and himself had undertaken a socially distanced site visit to the Lucky Onion.

Cllr Mason, attending on behalf of residents in the area, was allowed to address the meeting on an initial procedural issue. He raised the issue of the late publication of the acoustic report and asked whether, due to the timing of this, it could legitimately be given consideration at the meeting. He urged the sub-committee to adjourn the hearing in order to allow time for this report to be fully reflected upon by all parties concerned.

The Head of Law was requested to provide advice to the sub-committee in this respect. She clarified that there was nothing within the regulations which would prohibit the submission of a report prior to the hearing. However, if either the objectors, Cllr Mason, or any other party wished to make representations on the submission, the sub-committee should reflect as to whether additional time should be granted to allow consideration of the report.

Cllr Mason explained that he, and some of the objectors, had not had sufficient time to reflect fully on the report following its late submission and therefore had not had the opportunity to make representations on this additional information.

Speaking on behalf of one of the Interested Parties, the Queens Hotel, Mr Charalambides raised a further procedural point. He questioned whether there was a protocol for site visits and asked whether the acoustic report had been discussed at the site visit declared by the Chair. He also asked whether his client or any of the other objectors were also given the opportunity for the sub-committee to visit their premises which were in the vicinity of the site.

On behalf of the sub-committee, the Chair clarified that site visits were common as Members were not always familiar with the premises. He confirmed that the

acoustic report had not been discussed, as it was not available to the sub-committee at that stage.

The Licensing Team Leader added that site visits were carried out in accordance with the authority's Probity in Licensing guide. He confirmed that Mr Connor had accompanied the party on site and the focus was on the premises in question, rather than adjacent premises. The acoustic report had only been received at 5pm on Friday afternoon via email. The council's current policy was not to undertake planning or licensing site visits due to current circumstances but, on this occasion, Members felt it was important to gain an understanding of the lie of the land.

Mr Charalambides requested a short adjournment for him to take instruction from his client on the site visit, which he deemed to be 'special treatment' due to not having had sight of the Probity in Licensing guide. The Chair stated that site visits were a regular occurrence and were not special treatment. The adjournment was granted by the Chair.

Upon resumption, speaking for the Queens Hotel, Mr Charalambides supported the request from Cllr Mason for the sub-committee to consider an adjournment of the hearing. He felt it was important for civil society to express their view through their councillor and also to give the sub-committee the opportunity to consider a site visit to the Queens Hotel location vis a vis the premises under consideration. Additionally, the opportunity to consult the aforementioned Probity in Licensing guide would be welcomed.

On behalf of the applicant, Mr Coppell QC, resisted a further adjournment to the hearing and stated that the acoustic report was not a late submission as the Licensing Act did not preclude its introduction in advance of the hearing. He requested the sub-committee to judge for itself as to whether they had been capable of absorbing it within the timeframe. The application for a variation of a premises licence did not require the sub-committee to look at every other premises in the area itself.

In response to a query from Councillor Mason, the Licensing Team Leader clarified that this had been circulated to all objectors with email addresses on the Saturday morning.

The Head of Law reiterated to the sub-committee that, having heard the representations from the applicant and the objectors with regard to this, the regulations did not preclude the submission of representations from the objectors or the applicant in advance of the sub-committee. The consent point would only be at issue if a report had been presented at the meeting itself.

It was for the sub-committee to consider whether they had time to absorb the information within the time permitted and to take on board, in the interests of fairness, whether the objectors had time to properly consider the points raised, given the length of the document and its content. In terms of the site visit, she confirmed that this had been carried out in accordance with the probity guide, available on the website. In the interest of fairness, it was for the sub-committee to consider if it was necessary to visit any other premises, prior to the hearing, to get an idea of the geography of the premises. If the hearing were to be adjourned, she advised this should only be for a short time period.

Vote on whether to adjourn the hearing

1 in support

2 against

The Licensing Team Leader introduced the report, he explained that an application had been received for a variation of a premises licence from The Lucky Onion LLP in respect of 129 - 131 Promenade, Cheltenham. A copy of the application was included at Appendix A and a plan at Appendix B.

The applicant had applied for a variation to extend the commencement hour for the sale of alcohol from 10am to 7am every day and to extend the terminal hour for the sale of alcohol, recorded entertainment and provision of late night refreshment to the hours outlined at 1.3.4. To remove the condition that currently restricts the use of the outdoor area both front and rear to 23.00 hrs. The proposed revised wording to annex 2G seeks to include the use of the external front of the premises to 23.00 for performance of recorded music and late night refreshment and midnight for the sale of alcohol and to include the use of the external rear of the premise to 1am for the performance of recorded music and late night refreshment and 2am for the sale of alcohol.

He confirmed that no representations had been received from responsible authorities. However, 36 representations had been received from Interested Parties including local residents and businesses. These were included at Appendix C of the report.

The Licensing Team Leader reminded Members that they must have regard to all of the representations made and the evidence heard in order to promote the licensing objectives. He drew Members' attention to the definition of public nuisance as laid down in paragraph 6.10 of the report. He stated that this application did not comply with the special policy or core hours as outlined at 5.26 of the officer report and as such the sub-committee should consider points outlined in para 5.27.

He wished to highlight that the premises had been subject to 3 noise complaints, not 2 as outlined in the report and referred to para 9.1 which gave a breakdown of police recorded incidents at the premises. He confirmed that the police had not made a representation on this application.

In response to questions, the Licensing Team Leader confirmed that he had reported all of the noise complaints recorded by the Environmental Health Service. He also confirmed that the planning restriction against double-glazing on the listed buildings in the vicinity could be treated as a material consideration when thinking about the potential impact of late night noise.

In response to questions from the applicant, the Licensing Team Leader confirmed that there were no substantial changes in terms of core hours in the recently approved 2020 Licensing policy compared to the previous 2015 policy.

In response to a question from the objector (Mr Charalambides) the Licensing Team Leader confirmed that the plans in Appendix B relating to the external front and rear areas of the premises were correct. This was also confirmed by the applicant.

The Licensing Team Leader confirmed, in response to a further question from the said objector, that the existing licence, notwithstanding the conditions restricting use to 11pm, permitted the performance of recorded music Thursday-Saturday until 3am indoors and Sunday-Wednesday until midnight indoors. Late night refreshment was all indoors. In terms of the supply of alcohol the licence was for Monday to Wednesday 2am, Thursday to Saturday 3am and limited by conditions to restrict the supply of alcohol to 11pm.

The Licensing Team Leader confirmed that Cheltenham did not have a cumulative impact area. The policy recognised an area of concern but on an informal basis. He referred to paragraph 5.26 of the officer report that stated what was expected to be reasonable in terms of core hours, but any application beyond that would need to be justified in terms of criteria.

Mr Coppell requested to address the sub-committee and wished to clarify that the area was not proposed to be extended in any way, paragraph 1.3.4 set out the current hours and the proposed extension of hours.

On behalf of residents, Cllr Mason reminded Members of the basis of the local policy - for Cheltenham to be a safe and clean town offering a great diversity in its night-time economy and less focus on alcohol and which protected the quality of life for residents. He suggested that this application focussed on increasing alcohol sales and using recorded music to achieve that. Noise pollution in the early hours, associated with the premises, already affected residents negatively. This would become intolerable and detrimental to them, should this variation be approved, particularly as double-glazing was not permitted on their properties due to planning restrictions. Additionally, anti-social behaviour concerns had been raised by the objectors and should be taken note of by the sub-committee.

On behalf of the Queens Hotel, Mr Charalambides reported that the premises under consideration was already having an adverse impact on the local area and the current request was for the ability to operate as an outdoor bar. He referred the sub-committee to paragraph 8.41 of the Section 182 guidance which refers to drafting a risk assessment considering the impact on the local area. He had seen no evidence of a risk assessment nor any partnership formed to assess the impact. He had attempted to make contact with the applicant's solicitors but no dialogue was forthcoming. Mr Charalambides made reference to the measures his client had taken when installing the external marquee it had erected in accordance with the COVID regulations but managed within the existing conditions of its licence. This included dialogue with neighbouring residents.

He highlighted that there were no measures proposed by the applicant to mitigate the impact of the proposed changes to the licence. The acoustic report, submitted late, recognised the adverse impact of the noise from the premises and stated that measures were to be agreed in cooperation with environmental health in terms of a noise management plan. These had not been prepared in time for the hearing, nor for scrutiny by members of civil society.

He urged the sub-committee to reject the application in its entirety.

In response to a Member question to the objector, it was confirmed that the Queens Hotel was a Grade 2 listed building. It was also confirmed that noise

complaints in the past had been passed to the council or the police but no issues had been raised since March 2020.

On behalf of the applicant, Mr Coppell reminded Members of the specific variation requested as outlined in the report. He highlighted that the majority of the representations revolved around noise nuisance and crime and disorder. He referred to the acoustic report and the noise monitoring which had been undertaken from a representative sample of four locations in the vicinity. The report recognised that noise was created and to address this 2 conditions were proposed which would mean levels of noise could be controlled within the respective guidelines. This would be carried out in cooperation with the council to give the authority maximum flexibility. In relation to patrons, a noise management policy would be produced in accord with WHO guidelines and the Beer and Pub Association guidance. He believed this was entirely consistent with the council's licensing policy.

With respect to issues raised by the objectors, Mr Coppell explained that the noise effects were determined by the noise assessment rather than a projection of what would happen. The noise assessment informed that the effects would be easily managed if the proposed conditions were imposed. In terms of the lack of risk assessment referred to by the objector, as the risk was principally noise, this was covered by the noise assessment. There were mitigating measures in place and with the conditions proposed, officers would be given maximum flexibility.

In response to a Member question, Mr Connor confirmed that at this stage there were no concrete plans to reopen in the current Covid climate; however, he would expect that the majority of the external area would be open, rather than covered when conditions permitted.

When asked what measures were being proposed to ensure customers leave the premises quietly, and not in great number, Mr Connor confirmed that egress from the property after 10.30pm on extended evenings of service would be solely from the Kings House gate, which was the furthest away from the two areas of concern identified.

In terms of the request for variation on the sale of alcohol from 7am, Mr Connor clarified that as the premises hosted a large number of corporate functions and had a number of leisure guests, this would allow for the sale of alcohol with a breakfast or as part of a function.

Mr Connor also confirmed that the licensing/environmental health team had not been consulted on the proposed conditions due to Covid and the working capacity of the consultants providing the acoustic report over the festive period. Having taking experience and legal advice into consideration, it was deemed that the wording and limits would be subject to approval by the relevant bodies.

Acknowledging that a noise management plan had not yet been provided, Mr Coppell suggested that the following addition be made to the end of the first sentence of condition two - that a noise management policy be provided "that is acceptable to the council". This would ensure that a dialogue takes place between the applicant and the council to produce a workable outcome.

Mr Connor confirmed that the existing small speakers in the external terrace areas would continue to be used to play incidental background music for the extended hours, should the variation be granted.

He also confirmed that the testing had been carried out during Covid restrictions but prior to the current full lockdown. As a guide, and pre-Covid, on a busy evening there could be 1000-1100 people on the premises until closing time. Prior to the current national lockdown, 500 people could be on the premises; there were 90 covers seated on the rear terrace and 50 covers on the front terrace and 36 on what was referred to as the drive.

The baseline of the testing was questioned since it was carried out in winter during a global pandemic. The noise concerns raised by objectors concerned 11 pm onwards.

Mr Coppell clarified that sound was monitored between 8.30pm and 9.30pm on 19 December, the week before Christmas and it was highlighted that ambient noise did not really drop off until quite late.

A short adjournment was agreed to allow the applicant to consult with his client.

Upon resumption, Mr Connor proposed an additional condition that external areas be only used for seated capacity in the external hours of service and this would not exceed the restrictions in place under the Covid limitations for its operation.

On behalf of the Queens Hotel, Mr Charalambides questioned how the sub-committee could be satisfied that this variation could work if left to officers to determine in consultation with the applicant. He asked whether this would be in the wider public interest and in accordance with the principles of the Licensing Act.

The Chair emphasised that the conditions needed to be measurable and enforceable and asked the applicant to elaborate how such conditions could be properly consulted upon to manage the nub of the issue, i.e noise.

The applicant clarified the conditions as follows:

- An addition to the end of the first sentence “which is acceptable to the council.”
- On extended hours of service egress is solely to be from the Kings House gate which represented another measure of noise control.
- That the external areas in the extended hours are only to be seated and thereby limited to the seating limit. He elaborated by saying that given the timing of the acoustic report of 19 December-there was full seating capacity that day- it represented an accurate measure that the applicant had offered to restrict.

Councillor Mason reminded the applicant’s representative that residents had previously been subjected to distress from a late night extension of a nearby premises and asked what control the premises would have as people were leaving the establishment at 2am disturbing the neighbourhood.

In reply, the applicant’s representative referred to the applicant’s willingness to stagger people leaving the premises and thereby addressing the concerns of

residents. Mr Connor added that the security team could assist in managing the dispersal and exit from the premises within the boundary but beyond that could not mandate behaviour.

The Chair moved to debate reminding Members of the Licensing Policy and that if they wished to deviate from policy, clear reasons should be given.

One Member could not support the application as he felt it was in breach of at least two of the licensing objectives. There was a record of a small, but significant, number of complaints at the premises. There was also uncertainty about the use of the marquees and operating plan going forward. He supported the reasons the speaker representing the objectors had set out for rejecting the application.

Another Member expressed the opinion that the decision was even harder currently due to pressures of Covid and ensuring that the decision was the right one to enable the recovery of the town. The noise report was referred to, stating that the sub-committee did not often receive these from the applicant, and although it was submitted late and during Covid, it provided more information which would be considered given the circumstances. The conditions volunteered by the applicant during the meeting were welcomed, showed that the applicant was willing to adapt. The Member was minded to approve to enable the applicant the flexibility it needed going forward and did not think it conflicted with the licensing objectives. However the Member wanted to see conditions attached regarding the egress in line with those suggested by the applicant earlier and limiting the outside numbers to seated only.

A Member was happy with the granting of the extension to 7am in the morning, but with the condition of limiting sales to people who were seated and having a table meal which would deal with any potential crime and disorder issues.

There were a number of concerns regarding late night noise issues:-

- The potential impact on the well-being of the occupants of flats in Queens Circus and at the Queens Hotel and other residents in the area which may be very challenging to meet.
- Alcohol enhanced voices were uncontrollable.
- The noise report was carried out at a time not indicative to the actual noise level due to it being done in winter, less traffic, windows not open.
- The noise level base line dropped off significantly between 2300 – 2400 hours.
- A number of issues with regard to public nuisance arose from late night noise attributed mainly to noise from music and from people.
- Even with modifications and conditions it would be difficult to fairly assess as they were quite vague.
- Putting conditions on now, the details of which would have to be worked out afterwards, would be a challenge, and without adequate consultation with local people and businesses, there was a lack of confidence that this would prevent public nuisance.
- The conditions were not robust enough for approval, for example, the positioning of speakers and direction they face.

- Not sufficient detail and not happy leaving that to Officers to undertake a comprehensive piece of work, so not comfortable with outside noise control.
- Although neither the Police nor Environmental Health Officer objected, due to the noise issues, there was no confidence that the variation could be approved.

With regard to objections from residents on the grounds of crime and disorder, a Member noted and accepted their concerns, but stated there was no evidence directly linked to this premises. Once people were away from the premises they were responsible for their own conduct and thus could not tar this premises with their misbehaviour.

In summary, the Chair stated he was happy to approve the extension to 7am from 10am with the condition of no off-sales between 7-10am and sales limited to table meals, but was not in favour of an extension of outside late night sale of alcohol and recorded music on grounds of preventing public nuisance, as he lacked confidence that significant mitigation was in place in terms of the noise impact on local residents.

In his right of reply, Mr Coppell QC, stated the real issue was whether in the opinion of the sub-committee the conditions proposed with the amendments put forward really addressed the noise concerns. He made the point that it was very tempting to make assumptions about noise nuisance and asked the sub-sub-committee to think of the science behind noise nuisance. He felt that the music and noise concerns that had been spoken about, could easily be controlled by a noise management policy. He continued they had also offered further clarification. He said it would be a shame if it was not within their ability to fashion a condition, whereby the officers could get down to the detail, so that it could be approved by the sub-committee. Mr Coppell accepted that the sub-committee would wish to have any conditions accepted by other bodies to ensure they were workable and enforceable but urged them to make a decision that, with some tweaking, would be acceptable to the licensing policy and that struck a balance between the two sides.

The meeting was adjourned to allow the sub-committee to take legal advice.

On resuming the meeting, the Head of Law explained the legal advice given and reminded members of the licensing objectives.

Following the advice of the Head of Law, the sub-committee determined that they could and should split the application into two parts.

First part - to approve the variation of the hour to permit sale of alcohol from 0700 with the conditions of no off sales between 0700 and 1000 and alcohol only served with a table meal.

For : 3

Against : 0

Abstain : 0

Granted subject to conditions approved.

The sub-committee concluded that in the absence of any objections to this, and based upon the reasons given by the applicant, it would be unreasonable to

refuse this part of the variation. However, based upon the proposed usage by the applicant, and to promote the licensing objective of prevention of crime and disorder; the sub-committee believed it was reasonable to impose the conditions.

Second part: to approve the application to extend the terminal hour for external use of the premises.

For : 1

Against : 2

Abstain : 0

Refused

The sub-committee concluded that in light of the numerous objections from interested parties, primarily in respect to late night noise, that despite the conditions which were offered, the sub-committee did not feel they were sufficiently clear or enforceable, and that the licensing objective of prevention of public nuisance was not met by this part of the variation.

The acoustic report was only submitted late in the process, and was not available to objectors or Responsible Authorities to comment on.

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

None.

David Willingham
Chairman

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Licensing Committee – 3 March 2021

Local Government (Miscellaneous Provisions) Act 1982

Application for a Street Trading Consent

Caroline Mukherjee

Report of the Licensing Team Leader

1. Summary and recommendation

- 1.1 We have received an application from Ms Caroline Mukherjee for a street trading consent to sell stir fried and rolled ice cream, confectioneries and soft drinks from a trailer measuring 3.6m (11.8ft) x 2m (6ft) x 2.1m (6ft).
- 1.2 Ms Mukherjee has applied to trade on the High Street adjacent to John Lewis. **Appendix 1** shows the location of the proposed trading pitch.
- 1.3 Ms Mukherjee has applied for an annual consent on the following days and times:

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

N.B. They would like to trade every day in May half term - 31/05/21 – 04/06/21 and on the specific days laid out below until the end of September only.

01/05/2021 to 30/09/2021
01/05 - 30/06 Sat/Sun Only
(31/05/ - 04/06 everyday)
01/07 - 31/08 everyday
01/09 - 30/09 Sat/Sun only

- 1.4 An image of the trading unit is shown in **Appendix 2**.
- 1.5 **The Committee can:**
 - 1.5.1 **Approve the application because Members are satisfied that the location is suitable for the purpose of the provisions of the authority’s adopted street trading policy; or**
 - 1.5.2 **Refuse the application because it does not comply with the provision of the authority’s adopted street trading policy.**

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.

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 11 February 2020. 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 unnecessary obstruction of the highway by street trading activities;
- sustain established shopkeepers in the town;
- maintain the quality of the townscape and add value to the town; and
- encourage inward investment.

3.1 Permitted locations for street trading

The council's adopted policy prescribes three permitted trading locations. These locations 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 established retailers within vicinity. This criterion permits the authority to undertake a qualitative assessment of the goods to be sold by each competing applicant against those on sale in the adjacent area. The authority 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 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.

The authority would expect a minimum of 6 feet (1.8m) of unobstructed highway / walkway on at least one side of the proposed trading unit / location.

- **Appearance of the Stall or Vehicle** – Trading units must enhance the visual appearance of the street and street scene rather than detract from it and be constructed in a suitable scale, style and using 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 authority will generally not permit trading units where the unit fully, or substantially, blocks lines of sight to established retailers in the vicinity.

Any street trading operation which negatively impacts public access by walking, cycling or public transport will not generally be accepted.

- **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 and recycling, waste disposal and waste created by customers.

The authority will encourage the use of sustainable products and will consider the trader's environmental credentials in respect of these when considering whether or not to approve applications. The authority will expect applicants to submit environmental statements setting out how the applicant will operate in an environmentally sustainable way

4. Consultee Comments

4.1 The consultation responses in the form of objections to the application are attached at **Appendix 3**.

4.2 In addition, the following comments were received:-

- Townscape Team CBC – No objection but please note The Traffic Regulation Orders. One of them states that the applicant is not allow to drive on/off the High Street between 10am and 6pm and also, the vehicle with the trailer can only arrive from the Bath Road / Cambray Place end and depart through the Rodney Road (as one wat system indicates).
- Environmental Health Team - The operator will need to be registered as a food business. This is usually the authority in which the vehicle is kept overnight (not always the authority in which it trades) they only need to register with one LA and they may have done this elsewhere. *The applicant is registered for such purposes with Stroud District Council.*

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. The location applied for is not in a permitted location, as it falls outside of the zones in the town centre.

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 In addition, the objections highlight some concerns in particular, and with respect to the assessment criteria at 4.2 of the policy, namely:-
- a) Needs of the area – as it is suggested the offer of the street trader will conflict with the existing permanent businesses.
 - b) Appearance of the unit – the policy mentions situations where a unit may fully or substantially block lines of sight of an established retailer. Comments are made in relation to sight lines and Members should consider the potential impact ‘on the ground’, with regard to the size of this unit and its specific location. The point made about any potential visual impact on the High Street is a more subjective argument, but Members should consider it.
- 5.6 The street trading policy does not refer to social distancing in relation to a health pandemic specifically. However, it does refer to public safety, and this should be considered. The unit may be popular and draw customers, it will be important to understand how the applicant might manage a crowd gathering or queue forming whilst promoting social distancing, at least for the short term if granted consent.
- 5.7 Finally, there now seems a little more clarity from Central Government on how they envisage society may function over the next few months. Members may consider whether this potential slow return to a pre – pandemic town centre experience may affect their consideration. This could be in terms of the behaviour of the public through that process i.e. how quickly will the public return to the town centre and how busy will this area become. Additionally, it could be how will established business be impacted through that process i.e. will this trader add to or detract from that overall experience, could it be a positive draw, which may even benefit other business. These impacts are difficult to assess and quite subjective issues, but promoting public safety and enhancing/ not detracting from the town centre experience should be key drivers.

Background Papers

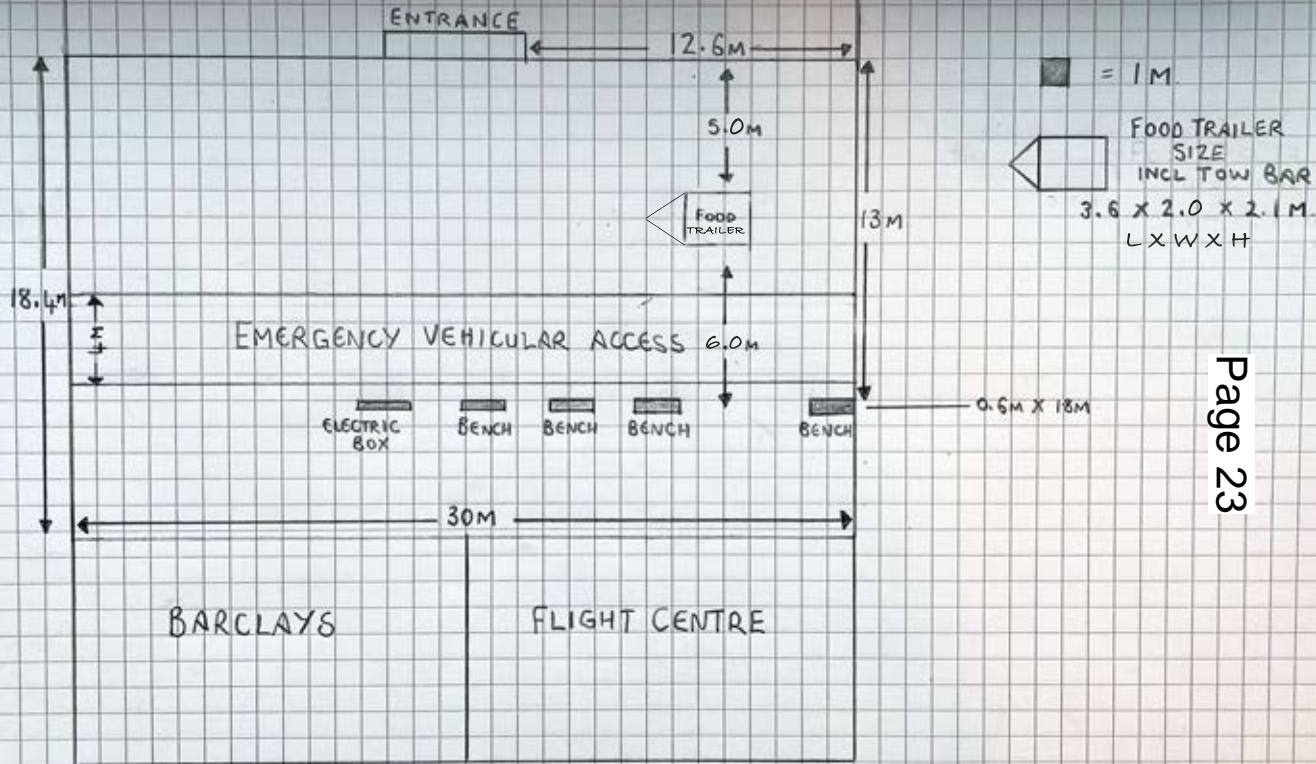
Service Records

Case Officer

Contact officer: Mr Jason Kirkwood
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 264135

JOHN LEWIS STORE

THE HIGH STREET



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A)

John Lewis & Partners

I'm the Branch Manager of John Lewis

I have a restaurant 'The Place to Eat' and a Huffkins cafe.

Between them they sell a variety of cold drinks and sweet snacks, including ice cream.

The unit location is also too close in front of my shop window, blocking sightlines across from the other side into my prominent display window and Charlotte Tilbury shop.

Also with Tesco opening next door, footfall will increase in this area for the first time since we've been open, so I no longer feel that pop ups in this location are viable.

I would be grateful if you could confirm the following, as the matter will be considered by a sub – committee of the Licensing Committee or the full Committee in due course:-

*Which two businesses do you run?
Where are those businesses located?
What products do your businesses provide?*

I'd like to oppose this please.

I have two hospitality propositions in the shop offering a wide range of refreshing drinks and snacks, all year round. There are also several neighbours who offer similar propositions, cafes, deli's, restaurants and other premises offering takeaway solutions.

More than ever, we should be supporting our permanent neighbours on the high street who contribute a lot more to our town.

I also believe these vendors detract from the overall look and feel of the high street.

Happy to discuss in more detail over the phone if it helps.

Many thanks

B)

Cheltenham BID

Thank you for forwarding this and giving us the opportunity to respond.

The BID is against the granting of this licence. There are a number of businesses in the vicinity who offer refreshments including ice cream, confectionary and soft drinks. They pay high rents and business rates and contribute a great deal to the town. This trader would be in direct competition with them.

Further, there is a risk that queues could form at this operator and there does not appear to be any measures in place to ensure social distancing. Although restrictions are likely to have been lifted by the time they begin operating, there is likely to still be a requirement for social distancing. It will therefore fall to the council's officers to check that rules are being adhered to.

Cheltenham Borough Council

Licensing Committee – 3 March 2021

Authority’s Response to Review of the Gambling Act - Call for Evidence

Report of the Licensing Team Leader

1. Executive Summary and Recommendation

- 1.1 The Government has launched a review of the Gambling Act 2005 and in December 2020 issued a call for evidence to support the review.
- 1.2 This authority is a licensing authority under the 2005 Act and the Licensing Committee acts as lead consultees for the authority in this regard.
- 1.3 This report presents an opportunity for the committee to consider its response to the Government’s call for evidence. To facilitate the Committee’s response, officers have drafted an initial response for the Committee to consider and add to or amend as Members see fit.
- 1.4 **The Committee is recommended to:**
 - 1.4.1 **Note the officer’s initial response on behalf of the Licensing Committee;**
 - 1.4.2 **Make comments in relation to the initial response; and**
 - 1.4.3 **Subject to any changes proposed by the Committee, endorse the response as the official response on behalf of the authority.**

1.5 Implications

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

2. Gambling Act - Call for Evidence

- 2.1 On 8 December 2020, Nigel Huddleston MP, Minister for Sport, Tourism and Heritage, issued a call for evidence to support the Government’s review of the Gambling Act 2005.
- 2.2 As a call for evidence, the scope of the review is limited to the specific questions posed by the Minister for Sport, Tourism and Heritage.
- 2.3 The call for evidence is wide ranging, seeking evidence on a number of areas, including:
 - a) Online protections - players and products
 - b) Advertising, sponsorship and branding
 - c) The Gambling Commission’s powers and resources
 - d) Consumer redress
 - e) Age limits and verification

- 2.4 Many of the areas in scope are not directly relevant to licensing authorities. Where opportunities exist and evidence supports a response, officers have taken the opportunity to put forward views on issues in the Act that should be addressed to protect children and other vulnerable persons from being harmed or exploited by gambling.
- 2.5 The officer's draft response is attached at Appendix 1 of this report and a copy of the call for evidence can be found on the Gov.UK website at <https://www.gov.uk/government/publications/review-of-the-gambling-act-2005-terms-of-reference-and-call-for-evidence/review-of-the-gambling-act-2005-terms-of-reference-and-call-for-evidence#contents>.

Background Papers

Service Records

Report Author

Contact officer: Mr Louis Krog
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 264135



CHEL TENHAM BOROUGH COUNCIL

Nigel Huddleston MP
Minister for Sport, Tourism and Heritage

ask for: Cllr Dr David Willingham
ddi number: 07308 954418
fax number:

By email to:
gamblingactreview@dcms.gov.uk

email: cldr.david.willingham@cheltenham.gov.uk
our ref: GA2005 review 2021
your ref:
date: 23 February 2021

Dear Mr Huddleston,

Re: Review of the Gambling Act 2005 - Call for Evidence

In my capacity as Chairman of Cheltenham Borough Council's Licensing Committee, and on behalf of the Licensing Committee & Cabinet Member for Cyber & Safety, I write to submit a response on behalf of the authority.

My response will be limited to the questions of relevance as outlined below.

Q29: What evidence is there on the effectiveness of current measures to prevent illegal underage gambling in land based venues and online?

And

Q43: Is there evidence on whether licensing and local authorities have enough powers to fulfil their responsibilities in respect of premises licenses?

Cheltenham Racecourse is located within the borough of Cheltenham. In March every year it hosts one of the UK's biggest horse racing events, attracting in excess of 250,000 people to the town. Throughout the year, other horse racing events are held at the racecourse also attracting, at times, tens of thousands of spectators.

For a number of years, officers of this authority's licensing department in partnership with Compliance Managers from the Gambling Commission and officers from Gloucestershire Constabulary undertook test purchase operations on on-course bookmakers.

The failure rates were significant as indicated below:

Year	Pass rate	Failure rate
January 2015	58%	42%
November 2015	33%	67%
November 2017	23%	77%

From a local authority perspective, the powers available to local authorities under the Gambling Act 2005 are insufficient to promote the Act's objectives.

1. On-course bookmakers are licensed by the Gambling Commission. Local authorities therefore have no direct access to on-course bookmakers that persistently fail to meet their statutory obligations under the Act to protect children and other vulnerable persons from being harmed or exploited by gambling. To this extent, local authorities are "at the mercy of" the Commission and whatever appropriate action it takes. Whilst it may not be for this authority to comment on the Commission's approach, it is appropriate to say that this authority has been disappointed by the outcome of a

PUBLIC PROTECTION

number of cases particularly relating to operators found to be persistently failing to meet their obligations.

2. Local authority powers under the Gambling Act 2005 are not sufficiently robust to allow it to act to protect children and other vulnerable persons from being harmed or exploited by gambling. The Act, as explained below, creates an unnecessarily complex threshold for action and largely places the duty in the hands of the licence holder.

Track Licences are subject to, amongst others, a number of mandatory conditions as set out by the Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007.

Part 1(1)(5) of schedule 6 of the above mentioned regulations places a duty on the racecourse to "...make arrangements to ensure that reasonable steps are taken to remove from the premises any person who is found to be accepting bets on the premises otherwise than in accordance with the 2005 Act."

This mandatory condition creates a number of issues:

1. The principle responsibility rests with the licence holder to take "reasonable steps" which, as explained, creates an unnecessarily complex threshold for action.
2. It is impractical for a licence holder to have to "remove from the premises" an on-course bookmaker. The reality is that on-course bookmakers cannot, for practical reasons, be removed and they therefore remain on site until the end of the particular meeting. This means that they can continue to trade, potentially accepting bets otherwise than in accordance with the 2005 Act for the duration of the meeting.

We would call on the Government, through this review, to review the legislation and mandatory conditions to strengthen the powers available to licensing authorities to enable it to act robustly and decisively to protect local communities from being harmed or exploited by gambling.

Q45: Is there any additional evidence in this area the government should consider?

It is unfortunate that this call for evidence is somewhat limited to the specific issues raised in the document. We would, in response to the question above, like to raise an additional point not explicitly raised in the call for evidence.

Section 153 of the Gambling Act currently creates a presumption in favour of granting a licence unless one or more of the conditions under sub-section 1 is not met. The requirement to "aim to permit the use of premises for gambling" places a licensing authority "on the back foot" because the starting position favours the applicant, not the licensing authority.

This, in effect, places the obligation on the authority to justify its approach rather than placing that duty on the applicant. This authority is of the view that this is the wrong approach and this review of the Gambling Act should seek to address this imbalance.

Protection of Children and Young People – Prosecution Powers

The prosecuting authority for offences of inviting, causing or permitting a child or young person to gamble under Section 46 of the Gambling Act 2005 is the Gambling Commission.

It is also the Gambling Commission's stance that, where an offender holds a Gambling operating licence, the Commission will deal with the matter using its regulatory powers, rather than any powers of prosecution.

Local Authorities were previously reminded by the Commission that the LAs had the option to use powers under Section 222 of the Local Government Act 1972 to prosecute for any offence should certain criteria be met.

The judgement in R v AB and others (2017) EWHC Crim 534 the Court of Appeal (Criminal Division), however, calls into question the circumstances under which a Local Authority might do so. Specifically with regard to racecourses, where the responsibility for gambling being conducted lawfully sits with the Track Premises licence holder (normally to course owners), more robust mandatory licence conditions might be considered. These may include a requirement, on demand, for the licensee to supply to the LA information regarding gambling operators trading in reliance upon the Track Premises Licence.

If Local Authorities are given responsibility for regulating Track Premises Licences, they should be given the appropriate tools to enforce that regulation and enhance the Authorities' capability to protect the young and vulnerable from Gambling harm. The power to prosecute under the Gambling Act would certainly be a useful such tool.

Occasional Use Notices – Section 39 Gambling Act 2005

The provisions of Section 39 of the Act are aimed at events such as point-to-point meetings where unlicensed venues can, on a limited number of occasions in a calendar year, host sporting events at which facilities for betting can be lawfully provided. The notice must be served on the local licensing authority and on the Chief Officer(s) of Police for the area in which the 'track' is situated. Although Section 39 makes reference to 'tracks' in this context, the term is defined in Section 353 (1) thus:

"track" means a horse-race course, dog track or other premises on any part of which a race or other sporting event takes place or is intended to take place.

There are a number of issues with this interpretation:

1. This definition is taken to mean sporting venues such as rugby, football or cricket clubs, which by their very nature are venues *where a sporting event takes place or is intended to take place*.

Such premises hold events unrelated to the sport normally played at the venue. Frequent examples include events such as virtual 'ladies day' where the Ascot race meeting is screened at a local rugby club, and a licensed bookmaker is operating on site after an Occasional Use Notice has been served. Such events are frequently encountered in Local Authority areas across the country.

2. 'Contrived' sporting events are also used in such a way as to make the venue fit the definition of a track.

In Cheltenham Borough one example included an indoor golf putting surface in the corner of a marquee where the local race meeting was shown on big screens to an audience which had paid for food and entertainment. A licensed bookmaker was providing betting facilities.

One of the more extreme examples concerned a local alcohol licensed premises, situated in the town centre, which housed pool tables and darts facilities over three floors. The owner persuaded a major bookmaker to supply professional pool players to play exhibition matches over the four days of the Cheltenham festival, in exchange for which the bookmaker was allowed to operate a 'pop-up' betting office under the authority of an Occasional Use Notice served in accordance with Section 39.

The betting activity carried on into the evening, when football matches were being shown on TV, and the potential for disorder among a large group of people who had been drinking for most of the day was evident. In this case, following a discussion with the Gambling Commission, the operator withdrew from the arrangement citing concerns about the safety of its staff.

The Section 39 exemption is in the form of a notice, rather than a licence or a permission.

There is no fee, no consultation period and no provision for the LA to seek the views of the Police or public, nor is there provision for any form of counter notice. An Occasional Use Notice can be served immediately prior to an event and LAs have neither the time nor the resources to inspect such events to safeguard the objectives of the Gambling Act or indeed (where applicable) the Licensing Act.

While it is accepted that the Gambling Operators themselves are required by their own licensing conditions and codes of practice to safeguard the young and vulnerable, the lack of clarity around what constitutes valid grounds for an Occasional Use Notice makes its regulation extremely difficult.

Regulation of the activity and protection of the vulnerable would be well served by clarity in the legislation as well as:

- Changing the status of the activity to make it subject of a permission, rather than a notice.
- The requirement to provide a risk assessment detailing measures taken to ensure that the objectives of the Gambling Act are met.
- A minimum time period between application and the event.
- Consultation with relevant bodies prior to grant / refusal decision.
- Provision for the imposition of conditions.
- Powers of entry and inspection.
- A fee payable upon application, in keeping with the costs incurred by the Licensing Authority for the administration of the process and regulation of the activity.

Yours sincerely,

DRAFT

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CHEL TENHAM BOROUGH COUNCIL

COUNCILLOR DR DAVID WILLINGHAM

Jeff Smith MP
Chair of the All-Party Parliamentary
Group for the Night Time Economy

20210129-APPG-NTE-COVID-19

29th January 2021

By email to appg@ntia.co.uk

Dear Mr Smith,

**Re: APPG for the Night Time Economy, Call for evidence:
Inquiry into Covid-19 and the Night Time Economy**

In my capacity as Chairman of Cheltenham Borough Council's Licensing Committee and Cheltenham's Evening and Night Time Economy (ENTE) Champion, I am responding to the APPG for the Night Time Economy's call for evidence.

By way of general comment, Cheltenham has successfully developed and maintained a thriving evening and night-time economy, the largest night life scene between Bristol and Birmingham, exceeding towns comparable to Cheltenham in terms of population size and demographics. This is largely the result of the broad appeal of the night-time offer and the town's reputation as a good and safe night out, confirmed by Cheltenham's status as a Purple Flag town since 2016. Cheltenham's ENTE was also the first recipient of a new ACTM Purple Flag award recognising its appeal as one of the best and safest nights out in the country.

Cheltenham Borough Council published a comprehensive ENTE Strategyⁱ in 2019. Early in 2020, this authority became the first to publish a Licensing and ENTE Recovery Strategyⁱⁱ recognising the important role and contribution made by the ENTE sector and the need to be proactive and pragmatic when considering recovery options and support. Our resolve with regards to this remains unchanged.

In response to the specific questions set out in the call to action:

**1. How many night time economy businesses are operating within your area?
How many people in your area are employed in the night time sector?**

We do not have data on the numbers of people employed in the ENTE in Cheltenham but can confirm we have 55 licensed premises operating in the ENTE within the town centre, broadly broken down as:

- Nightclubs & Late Venues – 10 venues
- Food-led Bars, Café Bars & Branded Food Pubs – 45 venues

It is worth noting that Cheltenham's ENTE saw as many new licensed premises open during the current pandemic as those that have closed leaving the town with a net zero position with regards to premises closures as a consequence of the pandemic.

Whilst we do not have any specific data on employment levels in the sector, we recognise the demographic of people usually employed in the sector are also those that have been most affect by the Government restrictions. Our evolving recovery strategy, for example, recognises that there is likely to be a skill shortage in the sector that we aim to address via offering nationally recognised qualifications such as the Level 2 Award for Personal Licence holders. This is one of a range of options being considered in the evolving strategy.

2. Please describe the importance of nightlife businesses in your local area

As mentioned, Cheltenham's has successfully maintained a thriving and award winning ENTE. Whilst, like other towns, it has severely suffered as a consequence of the Government's restrictions, indications are that it has fared much better than other places. An example of this is the net zero position with regards to venues closing and new ones opening.

Cheltenham's ENTE has always played a very important role in the town's economy and cultural offer. It has attracted people from far afield, provided valuable employment and opportunities for people, is important for making the University of Gloucestershire an attractive place to study and played its part, through close and honest partnerships, in making Cheltenham a safe, vibrant and diverse night out.

Cheltenham's ENTE has, and will continue to, play an important role in the cultural identity of the town. Cheltenham is well known as a festival town hosting one of the country's biggest horse racing events and other very internationally renowned festivals such as the literature and jazz festivals. These festivals attract hundreds of thousands of people to Cheltenham every year and the ENTE plays a vital role in proving diversity and choice for visitors, but also makes its own contribution towards making sure people are safe.

The importance of the ENTE is captured in our strategy document that recognises: *"The evening and night-time economy is crucial to Cheltenham and never more so than now. With the shopping experience progressively moving online, a thriving evening and night-time offer will be fundamental in sustaining the vitality of our town centre. It will attract visitors and residents to the centre and will encourage business growth within the sector. Spending by visitors and residents makes a substantial contribution to the economy of the town. A thriving ENTE will be a key element in plans to promote Cheltenham as a festival town and leisure destination."*

The above is the basis of our approach and important to maintaining a safe, vibrant and diverse ENTE – pre- and post-Covid.

3. How much money did the night-time sector contribute to your local area pre-Covid?

We unfortunately do not have up to date information on this. The last indication of the economic contribution of the ENTE to the town was in 2004 when the value was estimatedⁱⁱⁱ to be between £21 & £31 million. If these values have increased in line with inflation then they would be between £33 & £49 million today.

4. What measures have your local authority implemented to support businesses during the Covid-19 pandemic?

As an authority, Cheltenham is proud to have been very proactive in its support for businesses. This proactive and pragmatic approach has been upheld as good practice and we are pleased to have been invited by the Local Government Association to share our work with other local authorities in February at its national licensing conference.

Specifically, we have taken the following actions:

- Businesses in the nightlife sector are being paid the national business grant schemes for which they are eligible. In addition Cheltenham is prioritising this sector for support from the Local Restriction Support Grant (Open) scheme and the Additional Restrictions Grant which are both discretionary
- Worked proactively to keep businesses informed of regulatory development and changes^{iv}.
- Worked with Cheltenham BID, Cheltenham Safe and other organisations to provide advice and support on regulatory issues through video seminars and engagement directly with businesses.
- Statutory annual licensing fees were delayed in many cases to ensure businesses did not have to deal with the prospect of licence suspensions.
- We supported businesses with relaxation of planning^v and licensing^{vi} regulations locally.

5. What would you like to see from the Government to support your local nightlife businesses?

1. The Government should review the statutory section 182 guidance issued under the Licensing Act 2003 to support local recovery action. It should include a strong emphasis on the need for licensing authorities to give due consideration to recovery strategies and work.
2. Much of the processes and procedures are set out in primary legislation such as the Licensing Act 2003. This leaves little local discretion. Examples of local action to support recovery, but constrained by statutory provisions include:
 - a) Discretion to suspend the requirement to suspend licences for non/delayed payment of fees. Whilst the fees are relatively low, the prospect of a licence suspension carries substantial operational risk. This is particularly relevant to smaller, independent businesses.

- b) More flexibility in relation to how late night levies are adopted and operated to allow more local discretion.
 - c) Similarly, a review of Cumulative Impact Zones (CIZ) to allow for greater local flexibility, for example, by allowing licensing authorities to lift restrictions imposed by CIZs – even on a temporary basis to support recovery.
 - d) Review restrictions relating to the minor variation process to allow greater flexibility for premises to adapt their operation. Current restrictions mean that, in some cases, changes to the operation of business can only be achieved through a full variation that is a long and complex process often attracting local objection. A review of restrictions relating to the minor variations is feasible without removing important local safeguards.
3. Many businesses will benefit from re-opening support and advice. When restrictions are lifted, it is expected that there will be an overwhelming demand for hospitality and ENTE businesses. The Government should work with key industry bodies to work on guidance for the sector to help them carefully consider reopening strategies and approach to ensure this is done in a managed and safe way.
4. Central government should issue a specific grant to each Licensing Authority allowing them to refund licensing fees paid to that authority by venues that have been unable to use that license due to the Coronavirus restrictions imposed on those premises. This should cover licenses issued under the Licensing Act 2003 and the Local Government (Miscellaneous Provisions) Act 1982.
5. The government should remove the irrational restriction which currently prohibits licensed restaurants from selling alcohol with food that is ordered by click-and-collect, but permits sale of alcohol with orders that are delivered.
6. The government should provide support to services ancillary to a successful ENTE. This would include:
- a) Transport services such as night-buses, taxi and private hire services, which have been equally hard-hit by Covid-19, and are essential to help people get safely home after their night out.
 - b) SMEs in the supply-chain of the ENTE, this could include local breweries, as well as businesses that support the performing arts and live music.
- 6. What role do you envision the night-time sector playing in your local economic recovery, and high street regeneration, following the Covid-19 pandemic?**

As mentioned, there has always been a great emphasis and importance attached to Cheltenham's ENTE and our resolve with regards to this remains unchanged.

The recovery of the ENTE in Cheltenham will not be limited to just reopening the evening and night-time economy. The ENTE in Cheltenham will play a key part in the recovery of wider cultural activities such as the various festivals already referred to above. It will also provide a platform for the recovery of live music, playing its part

in the recovery and reopening of theatres, cinemas, overnight accommodation, night markets and other “ancillary” businesses in the ENTE and supporting other affected sectors such as the transport and security sectors, both which have been badly affected by the pandemic.

It is a well-known fact that young people have been particularly badly affected by the pandemic particularly in relation to unemployment and it is also the case that young people make up a high proportion of employees in the sector. The reopening of the ENTE and wider hospitality sector will support local economic recovery by again providing employment and development opportunities for this demographic. This is particularly important for Cheltenham as a University town.

I would like to thank you for this opportunity to contribute to this inquiry on the strategic recovery of the ENTE, and record my gratitude to the Licensing Team at Cheltenham Borough Council who performed much of the research to produce this submission. If the APPG needs any further information, or evidence, then please feel free to contact me (Cllr.David.Willingham@cheltenham.gov.uk) or Cheltenham Borough Council’s Licensing Team (Licensing@cheltenham.gov.uk), as we would be more than happy to support this important piece of work.

Yours sincerely,

David Willingham

Councillor Dr David Willingham

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- ⁱ https://www.cheltenham.gov.uk/downloads/file/8311/ente_strategy
 - ⁱⁱ <https://www.cheltenham.gov.uk/licensed-premises-recovery>
 - ⁱⁱⁱ https://www.alcoholpolicy.net/files/Cheltenham_NTE_strategy.pdf
 - ^{iv} <https://www.cheltenham.gov.uk/licensed-premises-recovery>
 - ^v <https://www.cheltenham.gov.uk/temporary-structure-guide>
 - ^{vi} https://www.cheltenham.gov.uk/info/11/licensing_and_permits/1608/covid-19_recovery_for_licensed_premises/6

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APPG for the Night Time Economy

Call for evidence:

Inquiry into Covid-19 and the Night Time Economy

To whom it may concern,

I am writing as Chair of the All-Party Parliamentary Group (APPG) for the Night Time Economy to inform you of a new inquiry into the impact of Covid-19 on the nightlife sector in the UK.

The focus of the report will be on the particular challenges facing night-time hospitality businesses and an exploration of what the sector needs for a prosperous and long-term recovery. The inquiry will investigate the unique contributions of the sector to the cultural and economic life of local communities and assess how the Night Time Economy can drive the UK's wider economic recovery.

At this early stage, the intention of the APPG is to collect written evidence submissions. We would be most grateful if your council/authority was able to contribute to our investigation in this way.

I would ask that you please send your responses to the Secretariat of the APPG at the following email address: appg@ntia.co.uk, before **Sunday 31st January 2021**.

Please include your name and contact details and provide a brief description of your role within the council.

Please do not feel that you have to answer every question and do feel free to include any additional information that you feel may be relevant. Submissions may be any length that you feel necessary, although we would recommend between one and two pages.

This is a challenging time for our communities, but we hope that this inquiry will help to inform future policy decisions to protect valued cultural institutions and ensure that our nightlife sector remains viable.

Yours sincerely,

Jeff Smith MP

Chair of the All-Party Parliamentary Group for the Night Time Economy

WRITTEN EVIDENCE

Written evidence submissions may be cited within the APPG report on Covid-19 and the Night Time Economy. Please do not feel that you have to answer every question and feel free to add any extra information that you feel is relevant.

1. How many night time economy businesses are operating within your area? How many people in your area are employed in the night time sector?
2. Please describe the importance of nightlife businesses in your local area
3. How much money did the night time sector contribute to your local area pre-Covid?
4. What measures have your local authority implemented to support businesses during the Covid-19 pandemic?
5. What would you like to see from the Government to support your local nightlife businesses?
6. What role do you envision the night time sector playing in your local economic recovery, and high street regeneration, following the Covid-19 pandemic?

Cheltenham's approach to supporting licensed premises through the pandemic

CLlr Dr David Willingham, Chair of Licensing Committee

Jason Kirkwood, Senior Licensing Officer



Introduction

- Impact of the pandemic
- CBC's 'New Deal'
- Local business support measures
- National measures
- Practical steps taken
- Open discussion for feedback on experiences from elsewhere



Friday 19 March 2020 - Gold Cup Day



Cheltenham Borough Council's Response

- CBC formulated the Cheltenham Recovery Strategy – a local new deal for Cheltenham.
- CBC's reworking of Franklin Roosevelt's 'New Deal' following the Great Depression.
- Under which sat the Business, ENTE and Licensing work stream, and the Licensing Recovery Plan.



Overarching Strategy - Principles

- Inclusive growth through investment in the area.
- Continue to be commercially focussed.
- Show strong leadership in investing for growth.
- Use data and tech to make business decisions.
- Provide strategic coordination.
- Invest and develop staff.
- Create action plans to underpin each priority.



Priorities

Progress would be measured against:-

- Revitalising the economy.
- Well being and creating strong communities.
- Being a modern, efficient and responsive council.
- Working with service delivery partners.
- Ensuring a secure financial future.



Policy

Reviewing Licensing Policies to:-

- Allow best use of the public realm to allow businesses to reopen.
- Increase the provision of tables and chairs in outdoor areas.
- Ease restrictions on 'A' boards.

LICENSING RECOVERY PLAN



Advice/ Support

To assist business in complying with restrictions:-

- Provide support to business as widely as possible and easily accessible.
- Work with partners to share important information/ best practise.
- Ensure good availability of officers to provide advice.



Communication

Engagement with the licensed trade through effective communication to highlight:-

- The economic support packages available to help keep their businesses solvent during closure.
- The recovery planning which CBC was undertaking.



Furthermore

- Licensing inspections – reduce the burden on businesses.
- Pre- app service – to support applicants.
- Regulation – working with partner agencies to provide advice or take action against premises to ensure a level playing field for all.



SERVICE DELIVERY



Advice and Support (1)

- The BID hosted webinars.
- EHOs, Police and Licensing Officers were engaged to provide up to date information/ support.
- Recovery newsletters were started 16 June 2020 and continue (19 in total).
- Signposting to practical/ technical advice, grants, risk assessment advice, etc.



Advice and Support (2)

- More targeted *trade bulletins* were produced.
- From 15 June 2020.
- Topics included – selling alcohol through apps, takeaways, deliveries – to provide clarity.
- Before national relaxations, we worked with the Police to give detailed advice to make minor variations to allow off – sales.



Public Realm (1)

- Locally we relaxed the table and chairs consent scheme in July.
- We relaxed our enforcement of A – boards to help certain businesses raise their profile.
- The BID/ CBC/ Glos Highways worked on a number of schemes to widen pavement areas and increase outdoor space for tables and chairs.



Public Realm (2)

- We implemented the pavement licence scheme very promptly and had built up a latent demand by promoting its implementation.
- Existing consents for tables and chairs were given 4 months *free* to account for closures/ delayed reopening.



Other Steps

- Sensitivity in discussing late annual fee payments.
- Liaising with the Police and all local authorities in Gloucestershire through weekly meetings.
- Offering mediation through video conferencing on contested premises licence applications.



Conclusion

- Cheltenham had a clear recovery strategy from early in the pandemic.
- This drove the implementation of practical steps to support business.
- Which was supported on the ground with comprehensive advice and support.
- We worked in partnership with the Police, the BID, Environmental Health, county Highways.



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Briefing Notes

Committee name: Licensing Committee

Date: 3 March 2021

Responsible officer: 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.

This briefing note updates Members on a number of debriefs resulting from Licensing Sub-committee hearings held.

The Licensing Service always strives to deliver the best possible service. An important aspect of this is to continuously review its work and performance and, based on learning from this, make improvements where necessary.

The Licensing Sub-committee hearings held in relation to 129-131 Promenade presented an opportunity for officers and Members involved to reflect and to implement improvements where necessary.

This briefing notes specifically updates the Committee on changes already implemented to improve service delivery but also matters proposed that will impact on the work of the Licensing Committee.

Steps already implemented

Following an initial review of service and committee procedures, the following recommendations have already been implemented:

1. Revised and clearer guidance to applicants and licence holders - https://www.cheltenham.gov.uk/info/40/licences_-_alcohol_entertainment_and_events/113/premises_licence
2. Standard inclusion on all future licensing reports will be a general compliance and licensing history overview

Further changes to be implemented

At a subsequent debrief meeting following the second hearing of 129-131 Promenade on Tuesday 9 February 2021, the following further amendments to service and committee procedures were identified:

1. **Member training & development** – An opportunity has been identified to provide Members with specific training on how to chair a sub-committee. Feedback from Members was that, although there are several experienced Members on the committee, chairing a Licensing Act sub-committee presented additional challenges that Members would benefit from training on.

Officers will work to identify suitable Page 50 and report back to Members. It was noted that Member training has been scheduled in for May and this can, potentially, be used as an opportunity to deliver this training.

2. **Deferment of decisions for Licensing Act Sub-committees** – A recommendation to include, in the sub-committee procedure, discretion to defer a decision has been accepted by Members who took part in the debrief.

Officers are of the view that including the option to defer a decision would hold a number of benefits for Members including:

- a. Taking pressure of Members to make a decision whilst applicants and objectors are waiting; and
- b. It will allow Members the space to thoroughly consider the decision and record the decision notice with sufficient information and clarity.

Officers are working on the practical considerations for implementing this recommendation and will feedback to the committee in due course.

3. **Guidance for Members** – There was recognition that Members might benefit from a guidance note to assist them with the licensing committee process and advice on the requirements with regards to the relevance of objections and how these could be presented to a sub-committee.

Officers will work in this guidance and make arrangements to have this distributed to Members.

4. Other matters

- a. Printed copies of the relevant licensing policies will be available for Chairs to refer to in hearings.
- b. Democratic Services are reviewing the functionality of virtual breakout rooms to improve the process and address issues that have arisen during the most recent hearing.
- c. Officers will have printed copies of the sub-committee pack as a reference to avoid confusion over page references.
- d. Officers will review the inclusion of plans in sub-committee reports to ensure the most relevant plans are included to avoid unnecessary confusion.

Contact Officer: Louis Krog
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