



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

**Wednesday, 5 October 2022  
6.00 pm  
Council Chamber - Municipal Offices**

<b>Membership</b>	
<b>Councillors:</b>	David Willingham (Chair), Angie Boyes (Vice-Chair), Barbara Clark, Diggory Seacome and Simon Wheeler
<b>Officers:</b>	Vikki Fennell and Jason Kirkwood

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

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The Chair will confirm this at the start of the meeting.

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### **Agenda**

<b>1.</b>		<b>APOLOGIES</b>	
<b>2.</b>		<b>DECLARATIONS OF INTEREST</b>	
<b>3.</b>		<b>MINUTES OF THE PREVIOUS MEETING</b>	(Pages 3 - 6)
<b>4.</b>		<b>APPLICATION FOR A STREET-TRADING CONSENT</b> The Promenade, Cheltenham	(Pages 7 - 20)
<b>5.</b>		<b>ANY OTHER ITEMS THE CHAIRMAN DETERMINES URGENT AND WHICH REQUIRES A DECISION</b>	

**Contact Officer:** Claire Morris, Democratic Services, 01242 264130  
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## Licensing Sub-Committee - Miscellaneous

**Wednesday, 6th July, 2022**

**6.00 - 7.20 pm**

<b>Attendees</b>	
<b>Councillors:</b>	David Willingham (Chair), Angie Boyes (Vice-Chair), Barbara Clark, Diggory Seacome and Simon Wheeler
<b>Also in attendance:</b>	Vikki Fennell (One Legal) Louis Krog (Head of Public Protection)

## Minutes

### 1. **APOLOGIES**

Prior to the apologies the Chair opened the meeting confirming that the Purple Flag has been retained and offered his congratulations to Colin Pilsworth, the coordinator, along with the Licensing Team and the other organisations who work on this to make it possible.

He also offered his congratulations to Louis Krog on his new position as Head of Public Protection. He also confirmed that Jason Kirkwood would be stepping into the role as a temporary measure until a new Licensing Team Leader is appointed.

The Chair then went to the apologies – there were none.

### 2. **DECLARATIONS OF INTEREST**

Cllr Willingham declared that he had a mobile contract with 3 and that he had made an independent site visit.

### 3. **APPLICATION FOR A HACKNEY CARRIAGE DRIVERS LICENCE.**

The Head of Public Protection introduced the report. He explained that the reason that it was at committee was due to the fact that the applicant had 2 motoring convictions, one being in the last 12 months, and didn't want to incur the expense of paying for the necessary tests if he was not going to be granted a licence

The following responses were given in response to Member questions:

- There was confirmation that the assessment that the applicant would take was just the standard assessment.
- The information that the DVLA holds on the applicant has been disclosed.
- There was also confirmation that you can only do 1 speed awareness course in a three year period.

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The applicant was then asked to address the committee and he made the following points:

- He is currently a private hire driver with Tewkesbury Borough Council.
- He alleged that there are drivers that are favourites in the private hire offices so therefore the jobs aren't distributed fairly. He felt that working on the rank would be fairer. He applied for a Hackney licence to give him the potential to earn more money and be free to work independently.
- He explained that the first set of points was awarded when he was an Amazon delivery driver, he stated that although the shift should have been 8 or 9 hours they ended up being 12-14. The day he was awarded his points he was tired having worked such a long day and it was dark and he was a few miles over the limit. He hadn't seen the camera and paid the fine and took the three points.
- The second penalty was in January 2022 when the applicant was working as a delivery driver for a car parts company. He had to get home quickly due to a personal reason and he went to overtake two bikes that were in front of him going up a hill, he had to put his foot on the gas to pass them. He was not aware of the speed limit and was trying to overtake to get to a roundabout quickly. He has not received any other penalties.

The Members then had the opportunity to ask the applicant questions and the responses were:

- He applied for a private hire licence in Tewkesbury as he did not have the funds to purchase a new car as per CBC policy.
- He had been granted a licence in Tewkesbury in December 2021 but did not receive it until January 2022.
- He stated that although there is reference to the applicant writing a letter he has not done so.
- He confirmed that neither offence occurred when he was driving a taxi it was whilst driving good vehicles.
- One offence was for driving 37mph in a 30 limit and the other was for going more than 45 mph but less than 50 mph.
- He stated that he is aware that he is responsible for the safety of his passengers and understood and accepted the risk.
- The applicant had made TBC aware of the points that he had been awarded.
- He understood that he would have to take a test.

The matter then went to Member debate where the following points were made:

- It is not for the committee to punish the applicant but to decide that they are fit and proper and safe to drive the public. The applicant was caught speeding, something that can easily happen and could happen to anybody.
- One Member stated that as the applicant still had to complete tests and had taken the time and trouble to attend the committee that some consideration can be given in mitigating circumstances ie dark or under pressure to make deliveries quickly.
- The point was made that as the applicant was driving in Tewkesbury there is no reason why he couldn't already be driving in Cheltenham.

- It was acknowledged that the applicant had been open with officers, he has declared the points to TBC and been open with the committee. TBC have concluded that he is fit and proper. Stated that there are reasons to vary the policy in the current circumstances.
- One Member stated that as it seems that the offences were committed due to the pressure of time commitments and if the applicant is working within his own parameters this should not be an issue.
- There was confirmation that the driving tests are still to be done.

The Head of Public Protection stated that in the Licensing Policy at appendix N there are provisions relating to recommended hours of working and that the committee may wish to remind the applicant of these working practices.

The applicant was then given the final right to reply where he stated that this job will be paying his bills and he doesn't speed intentionally. He understands the responsibility of the job and does not want to put anyone's life at risk.

The matter then went to the vote

1.4.1 to grant the licence:

For : 5

Against: 0

The licence was granted with confirmation that the officer will send details regarding working times and ensure that the tests are completed.

#### **4. APPLICATION TO PLACE AN OBJECT ON THE HIGHWAY**

The Head of Public Protection introduced the report.

There were no representatives for the applicant.

The responses to Member questions were as follows:

- There was clarification that the A board would be adjacent to the front door by the display window.
- There was acknowledgement that a plan would be helpful and would be provided going forward.

The matter then went to Member debate where the following points were raised:

- One Member made the point that the shop are a ground floor premises so there should be no reason for them to need the board and could not see how the board would benefit the business.
- As the shop is no different to when the applicant moved in they should look at their existing signage, their signage is not a reason to deviate from the policy.
- The committee is required to be a good regulator of the policy, A boards are clutter. The applicant makes references in his application to other A boards that are around the town. This is a matter for licensing enforcement and not a reason to grant permission.
- Having looked at the mapping pre the Regent Arcade it shows that the sticking out part of the building was there already. The agent of change principle will apply, cannot change something that was already there.

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- There was a point raised regarding building across the front but it was explained that this is a planning issue not a licensing one.
- Although there is a tree in the way when you view the store from the Regent Arcade this was there when they took over the property and therefore does not seem a reason to deviate from the policy.
- One member stated that there does not appear to be any numbers on any of the buildings so that does not help.
- It was established that the store has a bracketed sign next to the boundary with Marks and Spencer.

As the applicant was not there to make any further representation the matter went to the vote:

1.2 to Grant –

For: 0

Against: 4

Abstain: 1

Refuse:

For: 4

Against: 0

Abstain: 1

The application was refused

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

There were none

David Willingham  
**Chairman**

## Licensing Committee – 05<sup>th</sup> October 2022

### Local Government (Miscellaneous Provisions) Act 1982

#### Application for a Street Trading Consent

**Mr Maximilian Ilau**

#### Report of the Licensing Officer

#### 1. Summary and recommendation

- 1.1 We have received an application from Mr Maximilian Ilau for a street trading consent to sell beef burgers, chicken burgers, chicken wings, loaded chips and soft drinks from a Mercedes Sprinter LWB measuring 7345cm x 1993cm.
- 1.2 Mr Ilau has applied to trade on the pedestrian area of the Promenade, Cheltenham. **Appendix 1** shows the location of the proposed trading pitch.
- 1.3 Mr Ilau has applied for an annual consent on the following days and times:

Monday	12:00 - 20:00
Tuesday	12:00 - 20:00
Wednesday	12:00 - 20:00
Thursday	12:00 - 20:00
Friday	12:00 - 20:00
Saturday	12:00 - 20:00
Sunday	12:00 - 20:00

- 1.4 An image of the trading unit is shown in **Appendix 2**.
- 1.5 This application is referred to the Licensing Committee because:
- 1.5.1 The application has received 8 objections and does not comply with the policy provisions for the town centre; and
- 1.5.2 All new street trading applications are referred to the Licensing Committee for determination.
- 1.6 The Committee can:**
- 1.6.1 Approve the application because Members are satisfied that the location is suitable,**
- 1.6.2 Approve the application because Members are satisfied that the location is suitable with added conditions set by Members, or**
- 1.6.3 Refuse the application because it does not comply with the provision of the 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.

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

**Contact officer: One Legal**  
**E-mail: [legalservices@teWKesbury.gov.uk](mailto: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. Purpose of the Policy

- 3.1 This policy sets out Cheltenham Borough Council's ("the authority") framework and approach for the management of street trading in the borough.
- 3.2 Through the street trading scheme the authority aims to control:
1. the location of street traders;
  2. the number of street traders; and
- 3.3. The scheme also aims to:
1. prevent unnecessary obstruction of the highway by street trading activities;
  2. sustain established shopkeepers in the town;
  3. maintain the quality of the townscape and add value to the town; and
  4. encourage inward investment.
- 3.4 In doing so, the authority recognises the importance of licensed businesses to the local economy and the character of the area whilst trying to ensure that the activities do not cause public or statutory nuisance to the people in the area.
- 3.5 This policy will guide the authority when it considers applications for street trading consents. It will inform applicants of the criteria against which applications will be considered.

### Assessment Criteria

- 3.6 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 trading activity represents, or is likely to represent, a substantial risk to the public from the point of view of obstruction, fire hazard, unhygienic conditions or danger that may occur when a trader is accessing the site.

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 Eight objections have been received in relation to this application. These are attached at **Appendix 3** of this report.

## 5. Licensing Comments

- 5.1 The Committee must determine the application with a view to promoting the council's adopted policy and Members should not arbitrarily deviate from the council's policy.
- 5.2 The policy takes into account a number of factors when determining the permitted trading types. These are outlined above ("Permitted Locations") and Members should take these into account when determining this application.
- 5.3 Whilst the policy creates a presumption against the grant of an application if the application does not comply with the policy, this position should not fetter the committee's discretion to take into account the individual merits of the application and any circumstances that may warrant a deviation from the policy.
- 5.4 Members are reminded that clear and thorough reasons should be given for decisions made by the committee particularly where the decision is contrary to adopted policy.
- 5.5 In coming to a determination, the committee must also take into consideration the representations received. For this application, eight objections were received as outlined at **Appendix 3** of this report.

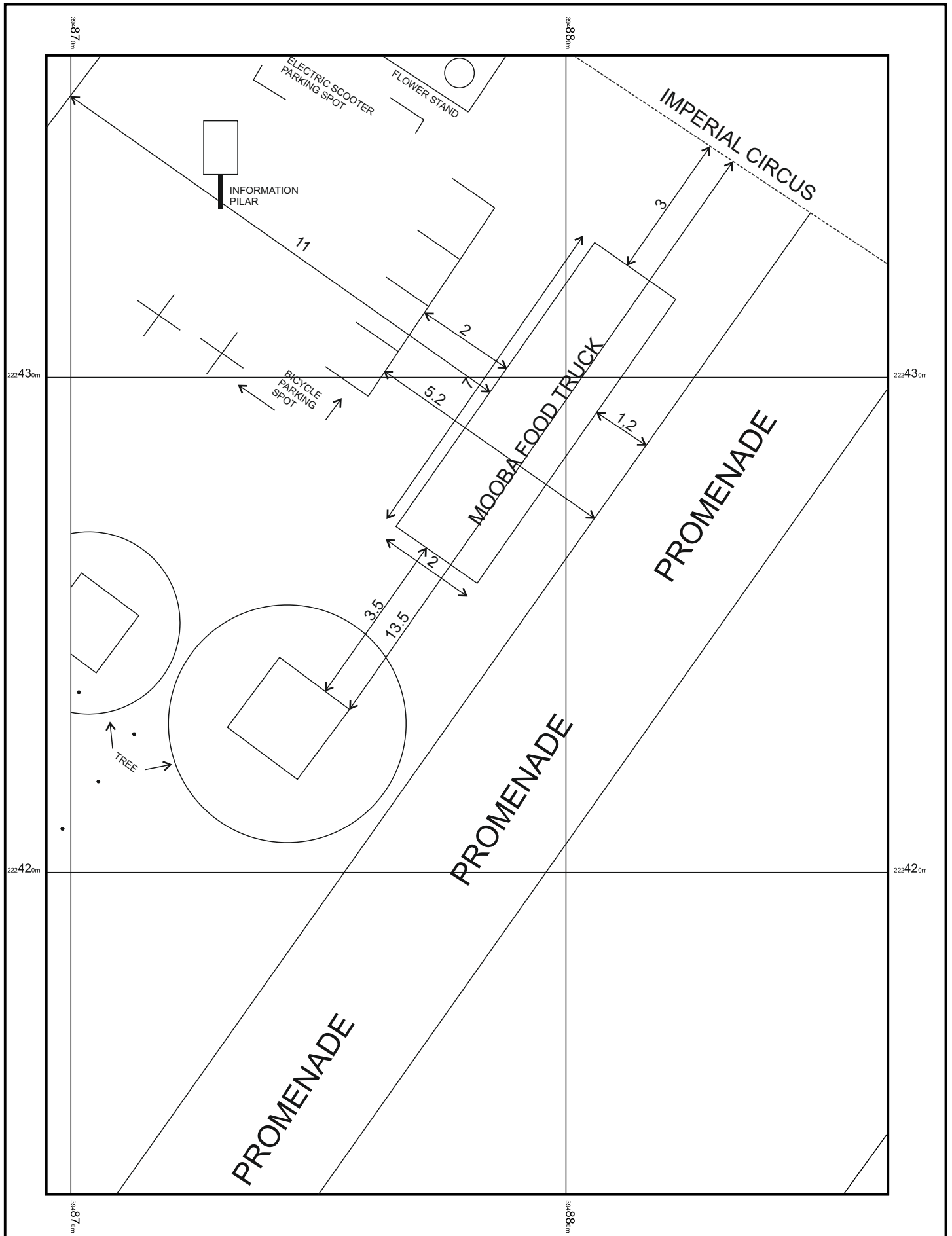
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**Background Papers**

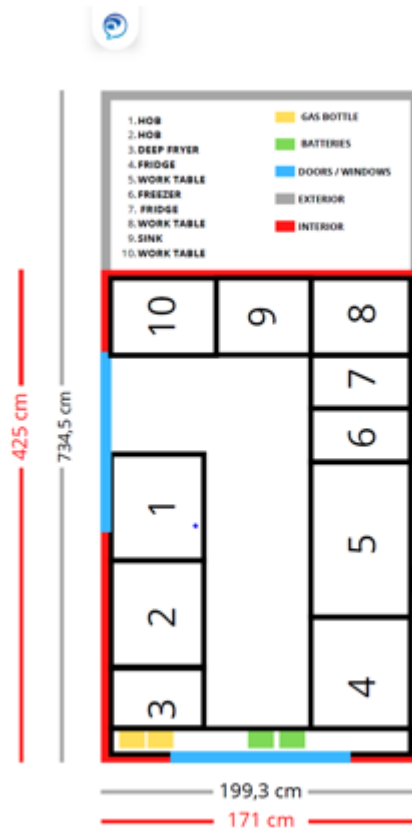
Service Records

**Case Officer**

**Contact officer: Miss Catherine Drinkwater**  
**E-mail: [licensing@cheltenham.gov.uk](mailto:licensing@cheltenham.gov.uk)**  
**Tel no: 01242 775200**



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## **Objection 1**

Cheltenham Civic Society consider this to be an unwelcome application that would further reduce the quality of the town centre of Cheltenham. Cheltenham Civic Society strongly objects on the following grounds, as set out in Cheltenham Borough Council's Street Trading Licensing Policy (2020):

### Needs of the Area.

CBC has designated The Promenade as a 'market designated area', which this van is obviously not part of or contributing to. Neither the proposed van nor its fast food complement The Promenade's retail or Food & Beverage offer. Indeed, it appears to conflict with the style and feel of the area. Cheltenham already has more than enough burger-type outlets: McDonalds, 5 Guys, Burger King and many others. Those premises already pay high rents and business rates, so encouraging competition that undercuts them in the present economic environment seems most unfair. There is no demand for such a downmarket offering. Businesses on the Promenade pay the highest rents and business rates per square foot in the town centre. They represent brands at the top of the retail hierarchy who contribute to Cheltenham's reputation as a high-end destination.

### Public Nuisance.

Selling burgers and chicken wings from midday to 8pm, i.e. 8 hours a day, 7 days a week 52 weeks a year from a particularly gaudy van in the heart of Cheltenham's prime shopping area would be highly inappropriate.

### Public Safety.

The noise, look of and smell from a huge burger van 24/7/365, running for 8 hours a day would have a significant negative impact on the whole area, would cause more litter and be a magnet for potential antisocial behaviour. The town centre already suffers from dirty pavements, mainly as a result of food and drink waste, and this proposal would only contribute to that filth.

### Appearance of the Stall or Vehicle.

It is a fallacy that street vending of food adds to the vitality of a town, especially from a solitary van. It does exactly the opposite, in our opinion. We are neither 'nimbys' nor anti small business, but are saddened to think that anyone would think that an outsize mobile van selling fast food in the prime retail area of town is a sensible idea that could enhance the visual appearance of the street scene. The proposed van is too large, overbearing and inappropriate in colour, design and style. Siting it on The Promenade would be to the detriment of surrounding businesses and damage the sight lines and character of such an important part of the Central Conservation Area.

### Environmental Credentials.

The environmental impact of the van is significant. It would bring yet another large goods vehicle into the pedestrianised area of the town centre daily. Its weight would contribute to damage of the stone surface, which has suffered from years of abuse and is presently undergoing reinstatement by the Highway Authority. The reinstatement of bollards as part of this work will once again reduce areas for use by vehicles to the reinforced areas, so this vehicle risks blocking that access and contributing to further deterioration of the public realm. The application fails to state what fuels the van is operating on but it is fair to assume that this model has a diesel engine and a petrol generator, and gas hobs, unsustainable fossil fuels that contribute significantly to carbon and climate change, air particulates and poor air quality in a built-up area.

### Conclusion.

The Civic Society, through its Successful Streets Group (which deals with public realm issues), has already been campaigning to remove the clutter caused by other ugly street vending such as the unsightly donut and crepe hut plonked on the High Street with noisy generator and attendant smell. All this within yards of retailers such as Next and John Lewis, who are making an effort to raise standards and who were welcomed to the town to enhance the high quality retail offer.

We consider this burger van proposal to be absurd and totally wrong for Cheltenham town centre and particularly for The Promenade, even if it were for one day a week. It should be completely rejected. This also smacks of a cynical attempt to get a watered-down licence by applying for a 7 days a week licence in the hope of settling for, say, a weekend licence. That would be equally unacceptable and we object to that accordingly.

The Promenade badly needs to be tidied up and improved - its paving, the facades of empty shops etc., not dragged further down by such a dreadful proposal.

We strongly urge you to refuse this application and equally, refuse any diluted variant of it. The townspeople, both residents and businesses alike, would be incensed if this were allowed to go ahead.

### **Objection 2**

On behalf of the levy paying businesses which the BID represents, the BID is lodging a formal objection on the following grounds:

#### *Visual impact on the area*

The application is to place a large, brightly coloured van in a Central Conservation Area. Businesses which have moved into, or are about to move into, long-empty premises have designed their exteriors sympathetically so that they do not have an adverse effect on the area. This burger van does not compliment this area at all in terms of its appearance.

#### *Impact on local businesses*

Cheltenham Borough Council is working with Cheltenham BID to address the issue of vacancy rates. The Promenade has seen significantly high vacancy rates in the past. In the last twelve months this has been reversed and even long-empty premises such as the former Austin Reed and Jones the Bootmaker hereditaments are now being occupied.

The majority of businesses in this area offer high-end products and services. The type of food and design of this fast-food van do not, in the BID's view, compliment their offering. The smell of the cooked food which is likely to emanate from this van could end up wafting into nearby businesses and tainting their products, particularly those selling clothes and soft furnishings. Whilst we acknowledge that during the Christmas markets there are food stalls, they are not there seven days a week 365 days a year until 8pm at night.

In the current financial climate when people are tightening their purse strings, every business is fighting for a share of the market. Cheltenham has Current providers of this type of food range from the value, fast-food outlets such as McDonalds, Burger King and KFC to the higher end 5 Guys, Hub Box, Holee Cow, The Tavern and Smokey Joes. There are innumerable outlets where it is possible to purchase chips and soft drinks.

All of these businesses pay high rents, business rates and overheads which are set to increase. Allowing more competition from a trader with significantly lower overheads would be unjust.



## *Environmental impact*

It is not clear from the application how this van and the cooking equipment would be powered.

If the intention is to use a petrol- or diesel-powered generator to run the cooking equipment and refrigeration, this would have an adverse effect on the air quality. It would be also not be in line with Cheltenham Borough Council's desire to reduce the reliance on unsustainable sources of power.

Littering, particularly from takeaway vessels, is already a problem in the town centre and the BID has been campaigning for an increased number of bins in public areas. The additional litter this outlet is likely to create will compound the situation. The Promenade does not currently see the volume of litter that the High Street does, but this burger van is likely to cause that to change.

## **Objection 3**

There are three main strands to my objection. These are:

1. The appropriateness of the location
2. Adverse impact on business ratepayers in the vicinity/economic wellbeing of the Town Centre.
3. Litter and environmental impact

1. The area. The Promenade is important within the town centre as part of the conservation area. To site a long wheel base unit there, selling what is described by the applicant as 'street food' (presumably in an attempt to give the application more credibility when in fact they are selling burgers and chicken wings) is completely contrary to any reasonable view of what constitutes good use of this sensitive area. It's also the market area - how would both be accommodated? Many organisations, not least Cheltenham Borough Council itself, work hard to keep Cheltenham the vibrant regency town it is. Placing a fast food van within the heart of the conservation area completely cuts across policies contained within the Cheltenham Plan, such as 'Assist in developing and maintaining an attractive retail offer in the town centre and other designated centres'.

2. Businesses locally would suffer as a consequence of this application. The smell of fast food would cause problems for many, and the fact that it is so close to Huffkins, Santiagos, and Franco Manca is unacceptable. They pay business rates on their premises, including the outside seating areas. This outdoor seating would be seriously undermined by having a fast food van so near. There is also the risk of antisocial behaviour stemming from the van, which would be a deterrent to people wishing to eat outdoors at any of these restaurants, or of those shopping in the retail units nearby.

3. Like all towns, Cheltenham suffers from litter. You don't need to be a regular litter picker (which I am) to know this sort of van will increase the problem. This is unacceptable. Not only is this unsightly and undermines the efforts of those seeking to promote the town, it also attracts gulls which are a huge issue. Furthermore, the van is almost certainly a petrol or diesel engine which would add to pollution. It would also, of course, further damage the already damaged slabs.

To summarise, this is utterly inappropriate for the location. This would contribute nothing to the town centre in terms of economic growth, and I would urge the licensing committee not to go down this path. As a former Head of Economic Development, I am familiar with this sort of application, and I know this would undermine economic growth rather than support it. Town Centre health is all about creating the conditions for businesses to establish themselves and grow, and for people to have a range of activities to enjoy. A van selling burgers does not contribute to this. I admire the applicant's chutzpah in applying, but ultimately, that is all there is to admire. They can work at festivals and events and in appropriate locations to build up their business, and good luck to them. The town centre is not such a location.

### **Objection 4**

I am writing to provide comments on behalf of Cotswold Markets regarding the above application for street trading.

We have to object to this application on the grounds that it would be a big conflict with our markets that take place on the Promenade.

Not only do we have Farmers Markets every 2nd and last Friday of each month in this position, but we also have Monthly Arts & Crafts Markets on the third Saturday of the month covering the whole of the Promenade.

In addition to this, in the run-up to Christmas we have an extended run of dates of craft markets, which is in discussions to be integrated with a wider christmas market that would fill the promenade for a longer period of time; obviously having a catering unit on the site would be a big issue for us at this time as well as at all other periods of the year.

### **Objection 5**

The unit is applying to trade and sell a range of food types, most of which are fried and also will have a strong odour, which has a high potential to impact those in the vicinity including businesses. As a result there is a likelihood of odour complaints being received as a result of the trading of this vehicle which would then be investigated under the Environmental Protection Act 1990 as an alleged statutory nuisance

- The application states the vehicle will be on the proposed pitch 7 days a week from 12:00 – 20:00 this is a total of 8 hours of trading, furthering the likelihood of complaints of a persistent and continuing nature of odour as a result of trading
- Although the applicant states there will be no generator with the vehicle during trading, there will need to be a power source of some description, which again could result in noise complaints for any kind of power source/engine running for the period of time on the application

### **Objection 6**

I would like to raise a concern to the license planning as I believe the approval will be more detrimental to the ambience of the local area and businesses. Reasons for this belief, is as such; as the business is run out of a van it is unlikely to have adequate refuse facilities resulting in increased litter, I feel that it will. 1, spoil the view and the feel of the promenade and 2, increase the amount of pests in the area E.G. seagulls, foxes, rats. I also believe the

type of business is inappropriate to the area and location as the promenade is a showcase of Cheltenham and a burger van would ruin the high end reputation of the town.

### **Objection 7**

This will hamper footfall, create unwanted mess, create unwanted smells and will have an impact on the visuals of the lovely Cheltenham prom.

### **Objection 8**

1. There are plenty of food businesses in the local vicinity that pay business rates, employee staff and contribute to the local economy and community.
2. The style of the unit does not fit in with the character of the Promenade.
3. Having a huge van park daily on the already decaying paving slabs is a bad idea
4. What power source are they using? Likely diesel. How does this fit in with net zero targets?
5. The smell of the cooking will enter retail shops on the Promenade and especially clothing shops and ruin their merchandise.

There's no benefit to this licence being granted. The location and type of food unit is wrong.

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