

Licensing Committee

Friday, 5th September, 2014

2.00 - 3.55 pm

Attendees	
Councillors:	Roger Whyborn (Chair), Diggory Seacome (Vice-Chair), Andrew Chard, Garth Barnes, Wendy Flynn, Adam Lillywhite, Anne Regan, Rob Reid, Pat Thornton and Jon Walklett
Also in attendance:	Vikki Fennell and Andy Fox

Minutes

1. APOLOGIES

There were no apologies.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. PUBLIC QUESTIONS

There were no public questions.

4. MINUTES OF MEETING HELD ON

The minutes of the Licensing Committee held on 1 August 2014 were approved and signed as a true record.

5. MINUTES OF SUB COMMITTEE MEETINGS

The minutes of the Licensing Sub Committee meetings held on 23 July 2014 and 6 August 2014 were approved and signed as a correct record.

6. APPLICATION FOR A STREET TRADING CONSENT

The Senior Licensing Officer, Andy Fox, introduced the report which had been circulated to Members. He advised that an application had been received from Mrs Marie Fullwood for a street trading consent. Mrs Fullwood was proposing to sell specialist coffees, chilled drinks, cakes and biscuits from a mobile unit measuring 2.5m x 2.1m (8ft x6.8ft) on the High Street (facing East) adjacent to French Connection and Burger King. Mrs Fullwood had applied to trade from Monday to Saturday 08:00 to 18:00 and Sunday 09:00 to 18:00, with extended hours (08:00 to 21:00) during late night shopping over Christmas.

The Officer referred members to point 5 in the report, outlining the objections received from:

- Howard Barber, Public Realm Designer, Cheltenham Borough Council
- Martin Quantock Cheltenham Business Partnership Manager
- Martin Levick, Senior Enforcement and Compliance Officer, Cheltenham Borough Council, and

- William Danter

All objections were along similar lines of direct competition with nearby businesses selling similar produce and not conducive to the character and appearance of the area.

Appendix A of the report provided an image of the trading stall. Appendices B and C of the report showed location maps of where trading would take place and other traders in the locality.

The officer referred members to the Council's current policy in relation to street trading and said that members must be satisfied that the proposed street trading is such that "it enhances the town's reputation as a tourist and leisure destination, and is in keeping with the streetscape".

In reply to a question from a Member, the Officer said that Appendix C showed the other street traders in the vicinity, who were joined at varying times throughout the week and year by charity sellers and seasonal traders, such as the turkey man over the Christmas period.

The applicant Mrs Fullwood attended the meeting and spoke in support of her application. She said they were a small family catering business, wishing to keep everyone in the family employed and that they would like to sell specialist coffees.

In response to questions from Members, Mrs Fullwood said that:

- The coffee bean would be specifically for sale in Cheltenham and be of a type that was not too bitter.
- The illustration of the unit was only a proposal and that it could be made specially to conform to how the committee would like it to look and smaller in size to the proposed 6ft x 8ft if required.
- The family were in the catering business but were not currently trading elsewhere.

Members were advised that they had the following recommendations to determine:

1. The application be approved because Members are satisfied that the application does comply with the provision of the Street Scene policy and the location is deemed suitable; or
2. The application be refused because it does not comply with the provision of the Street Scene policy as the proposed location is deemed unsuitable.

A vote on option 1 was LOST Voting (For 1, Against 7 with 2 abstentions)

A vote on option 2 was CARRIED Voting (For 7, Against 0 with 3 abstentions) and therefore it was

RESOLVED that the application be refused because it does not comply with the provision of the street scene as the proposed location is deemed unsuitable.

Mrs Fullwood asked the Chairman if the refusal was completely due to its location, to which he replied that it was certainly an important part of the reason, but that street trading applications must add to or enhance the tourist, leisure or residential enjoyment of the town and be in keeping with the present street scene.

7. APPLICATION FOR A HACKNEY CARRIAGE VEHICLE LICENCE

The Senior Licensing Officer, Andy Fox, introduced the report which had been circulated to Members. He advised that an application had been received from Mr Aditya Rai for a Hackney Carriage vehicle licence on 14 August 2014 to license a Peugeot E7 registration SC57 UJF. Mr Rai had failed to renew his vehicle licence on time and was now making a new application, however the vehicle in question was older than the maximum permitted age limit of 5 years from date of manufacture and thus members were being asked to determine whether the application be permitted.

The Officer added that Mr Rai's previous licence had expired on 8 August 2014 and that despite numerous reminders he had failed to renew it in time. The Licensing and Business Support Team leader having considered the facts, notified Mr Rai in writing on 8 August that he had decided not to renew his expired licence. A copy of this letter was attached at Appendix A.

The Officer reminded members that this application must be determined on its merits as a new licence application and advised that the vehicle had passed all relevant assessments and was a disabled access vehicle.

In response to questions from members the Officer confirmed that :

- It was the same vehicle seeking a new licence
- The vehicle was 7 years old and that as it was a disabled access vehicle, it could continue working for 14 years.
- The vehicle had been purpose built as a disabled access taxi and specifically modified with sliding doors and built in ramps.
- Mr Rai's licence expired on 8 August and that the letter refusing Mr Rai's renewal was dated 8 August, confirming that the renewal was a day late. Mr Rai's application of 14 August was for a new licence.

The applicant Mr Rai attended the meeting and spoke in support of his case for a licence renewal. Mr Rai told members that he had tried to renew his licence on 4 August but that his car was due for an MOT on 6 August which it subsequently failed and thus he thought he could not reapply for his licence without a valid MOT. As the Depot was busy the car could not be fixed straightaway so it was left there for the work to be done and it passed its MOT on 8 August. Mr Rai rang the council on 8 August to renew his licence, but was told it had expired.

Members felt that the Officer's stance had been unreasonable as it was only one day late, however the Officer pointed out that allowances were made for MOTs if they had been contacted and relevant forms stamped.

Councillor Thornton moved to vote, but questioned the resolution at 1.4.1, stating that the renewal should be granted. The Solicitor advised the committee

that it should vote on the recommendations as set out in the report.

Members were advised that they had the following recommendations to determine:

1. The application be granted because the Committee considers there to be sufficient grounds to deviate from the adopted policy;
or
2. The application be refused because the vehicle does not comply with the Council's adopted policy.

Upon a vote it was unanimously

RESOLVED that the application be granted because the Committee considered there to be sufficient grounds to deviate from the adopted policy.

The Chair made the comment that Officers should think carefully about how they use their discretion with situations of renewal one day after expiry, especially when the vehicle was overnight in the council depot. A Member considered it was disgraceful that Mr Rai had been deprived of his income for a month, for the sake of one day.

8. REVIEW OF A HACKNEY CARRIAGE DRIVER'S LICENCE

The Senior Licensing Officer, Andy Fox, introduced the report concerning the review of Mr Lance Stuart Hepworth's Hackney Carriage Driver's Licence which was due for renewal on 19 January 2015. He advised members that Mr Hepworth's licence was suspended on 14 August 2014 as Mr Hepworth had pleaded guilty on 11 August 2014 to the death of Katie Clutterbuck on 15 September 2013 by careless / inconsiderate driving.

The Officer referred members to point 1.5 of the report stating that the Licensing Committee has the delegated authority to revoke a driver's licence. He also informed members that since writing the report Mr Hepworth had been sentenced to 7 months in prison and disqualified from driving for 3 years.

On points of clarification, the Officer confirmed that:

- In 3 year's time Mr Hepworth would be able to re-apply for a new licence.
- Mr Hepworth could not attend to speak for himself as he was in prison and thus the decision should be made at this meeting.
- The committee were being asked to revoke his licence with immediate effect, despite the fact that he had now been disqualified from driving.

Members felt this was merely a matter of formality and the Chair moved to vote.

Members were advised that they had the following recommendations to determine.

1. Mr Hepworth's Hackney Carriage driver's licence be continued with no further action because the Committee is satisfied that he is a fit and

proper person to hold such a licence; or

2. Mr Hepworth's Hackney Carriage driver's licence be revoked as the Committee considers him to no longer be a fit and proper person to hold such a licence in accordance with section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976. and
3. Subject to the resolutions above, the Committee must also determine whether Mr Hepworth's Hackney Carriage driver's licence should be revoked with immediate effect in the interests of public safety in accordance with section 2B of the Local Government (Miscellaneous Provisions) Act 1976.

Upon a vote it was (9 for, 1 against)

RESOLVED, that Mr Hepworth's Hackney Carriage driver's licence be revoked as the Committee considered him to no longer be a fit and proper person to hold such a licence in accordance with section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 and that it be revoked with immediate effect in the interests of public safety in accordance with section 2B of the Local Government (Miscellaneous Provisions) Act 1976.

9. SEXUAL ENTERTAINMENT VENUES IN CHELTENHAM

The Senior Licensing Officer, Andy Fox Officer introduced the report which summarised the results of the public consultation on whether Cheltenham Borough Council should limit the number of Sexual Entertainment Venues ("SEV") it will license in the borough. Under the Council's constitutional arrangements, the Licensing Committee acted as consultee to Cabinet/Lead Member on recommendations/responses for the adoption and review of the licensing policy. The Committee therefore needed to consider the relevant facts and put forward a view for consideration by Cabinet.

The officer circulated a paper of the results of SEV consultations with other Council's, as well as the Chair's proposed framework for forming a resolution and Members were given time to read these.

He reminded Members that premises could provide relevant entertainment on an infrequent basis via a Temporary Event Notice (TEN) without the need for a SEV licence, this being for no longer than 24 hours on no more than 11 occasions a year, but that this report was concerned with the regulation of frequent sexual entertainment.

The Solicitor advised Members that the Council were not legally required to adopt such a policy but that it would be considered good practice to do so. She added that the current policy, adopted on 4 February 2011, did not set a limit on the number of SEVs, but dealt with each application on a case by case basis. However following the recent grant of a SEV licence that attracted significant local opposition, the Council had considered it appropriate to undertake consultation on whether to limit the number of licensed SEVs in the borough. She advised that the Council was empowered to set a limit on the number of

licensed SEVs permitted in the relevant locality, with zero being an option, but that the relevant locality must be defined. The whole of Cheltenham Borough cannot be defined as the relevant locality ruling out a total zero limit.

Appendix A gave a summary breakdown of the 174 responses received from the public consultation on the views of the town's residents.

Members were also reminded that a petition had been submitted to the Council meeting on 21 July calling for it to adopt a zero limit and that it was resolved to refer the matter to Cabinet for consideration. Members were also referred to point 4.8 in the report from the Gloucestershire Constabulary who said there were no statistics suggesting that SEVs were responsible for or increased the likelihood of sexual offences.

The Chair reminded Members that the sexual entertainment policy varied from the alcohol licensing policy in that there is no "presumption of grant". Whilst acknowledging that all members have various moral views, they should consider the best interests of the borough as a whole; also a borough wide zero limit would not be in the spirit of the act. He reminded that the committee were not acting today as regulatory body but as an advisory body to Cabinet.

Councillor McKinlay attended the meeting as Cabinet Member for Development and Safety in order to take the views of this committee to the next Cabinet meeting on 16 September. Cllr McKinlay gave his views saying that a blanket ban was not a possibility but that he would recommend restricting potential SEVs to the town centre and not a particular ward. He considered the core commercial area to represent the town centre and would favour no SEVs in residential areas, with each application in the town centre area being taken to Licensing Committee and assessed on its individual merit.

The Chair asked Members if they had all seen the maps that had been circulated defining the core commercial and town centre cleansing areas of the town and the ward boundaries. He pointed out that the cleansing area of the town equated to the area of the night time economy and that the town centre would also need to be defined. The chair introduced his suggested framework for forming a resolution which had been circulated at the start of the meeting and suggested the following options:

1. No change. Applications for SEVs within the town should continue to be assessed on their individual merits without numerical or geographical limit.
2. A limit of (say) zero applies to the number of SEVs outside the town centre, however applications for SEVs within the town centre should continue to be assessed on their individual merits without numerical limit.
3. A limit of (say) zero applies to the number of SEVs outside the town centre, however applications for SEVs inside the town centre should be regulated in accordance with(e.g. resolution 4 below)
4. Applications for SEVs would not normally be permitted within a geographical distance (e.g. 90m is in use in another authority) of, for example, premises or areas frequented by children, young persons or families, schools, parks, libraries, swimming pools, markets, churches,

mosques and certain shops mainly used by families or children, or a residential area.

5. Any other definition which Members may propose.

In reply to questions from Members about the SEV consultation with other councils, the Officer responded as follows:

- Approximately 15 other councils of varying sizes had been approached, some because they were of a similar size to Cheltenham or had a university and some on the personal knowledge of the officers.
- Due to work load, the consultation had only started two weeks previously and thus not all councils had had time to reply.

The Chair concluded that the results obtained gave a good snapshot with a range of responses, showing some had a zero limit and some had a geographical limit.

Some members were concerned about the validity of the public consultation survey saying that 174 responses from a Borough of 20 wards and a population of 114,000 was a poor representative sample that didn't reflect the town as a whole and probably also depended on their experience of the night time economy.

The chair felt 174 was a high number for a licensing consultation and the Officer reported that the consultation had been advertised on the council's website for 12 weeks, with a press release and posters in council buildings as well.

Councillor Regan referred to the figures in the survey of 98% and 99% per ward who wanted a zero limit on the number of permitted SEVs in each ward. She said Cheltenham was a cultural town and the survey showed the strong views of the electorate. She concurred that the Borough as a whole could not have a zero limit, but wanted the relevant locality to be by ward and moved to set a zero limit in every ward. This was seconded by Cllr Barnes.

Councillor Barnes, as a ward member of College Ward where the current SEV was situated, highlighted that a large proportion of the signatures on the recent petition calling for a zero limit came from his ward. He added that if a zero policy outside the town centre was applied, the core commercial centre would include parts of several wards and in particular parts of College ward where the majority of people against SEVs live. The residents did not want a permanent SEV club in one area, but were not against the TENs that clubs can use.

Another Member also felt that the survey was not a reflective view of the town and supported the Cabinet Member's proposal, with a no to a blanket ban, and looking at each application on an individual basis. Cheltenham had one club so far and that there had not been any problems – no increase in violence or rape and no problems with the police. He felt the market should dictate commercial business.

Another Member highlighted that the sex shop in Kingsditch which the committee had approved some 12 years ago, had not resulted in anything

untoward going on and that the Blue Room, a former SEV, which was closer to residential areas, had closed after 3 or 4 years and had not caused any problems. He said incidents could still happen during race week and the other 11 occasions in the year permitted under a TEN. He suggested that there appeared to be lot of opposition as those who opposed things were generally more vocal than those who approved. He was not in total favour but felt each case should be judged on its merits. He also asked if there were any figures for sexual assaults in the last two years in the town, but the officer replied that he didn't have these figures.

In reply to a question from a Member, the Officer informed Members that there was more control if premises were licensed than under a TEN.

A member suggested that a zero limit would not stop any activity of this nature and there could be more risk if premises were not licensed.

Councillor Regan as the proposer of the amendment said that people who didn't respond to the consultation may not care about the town but she did and Members should not disregard the many people who signed the petition.

The chair invited Members to vote on the proposal from the Member that there should be a zero limit in every ward.

Upon a vote the motion was LOST
Voting (For 2, Against 7, Abstentions 1)

Councillor Chard proposed that the committee should recommend option 2 on the sheet circulated at the start of the meeting i.e. a zero limit outside the town centre and applications within the town centre considered on their individual merits. This was seconded by Councillor Thornton.

Speaking against the proposal, a Member was concerned that there should be some restrictions even in the town centre to avoid residential areas, churches etc. Another Member favoured a more clearly defined policy rather than assessing each case on its 'merits' and supported option 4 on the sheet. Members acknowledged the difficulty of defining a geographical limit.

The chair invited Members to indicate their support for an amended version, as in Option 3 with some restrictions as set out in 4.

Upon a vote this was LOST. Voting (For 4, Against 6)

The chair invited Members to continue to debate option 2 and in particular to agree a definition of the town centre. The two options seemed to be the core commercial area or the cleansing area and the former was substantially bigger and contained more residential areas.

Upon a vote it was (Voting For 8 with 2 abstentions),

Resolved that it be recommended to Cabinet that a zero limit applies to the number of SEVs outside the town centre, however applications for SEVs within the town centre should continue to be assessed on their

individual merits without numerical limit. The town centre to be defined as the Cleansing area of the town.

[Post meeting note: The cleansing area as on the map circulated to members, and with these minutes is correctly titled the Primary Cleansing Area]

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

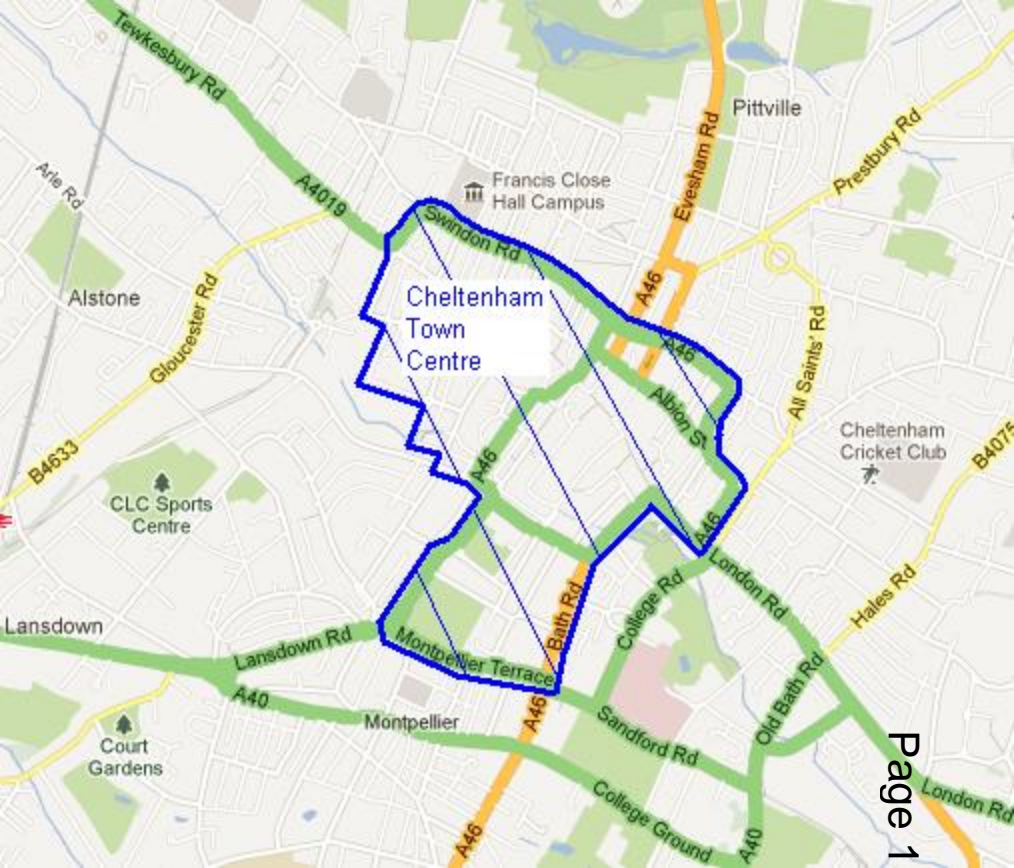
None

11. DATE OF NEXT MEETING

3 October 2014.

Roger Whyborn
Chairman

This page is intentionally left blank



This page is intentionally left blank