

Democratic Services

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Date: 24 September 2012

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**To: All Members of the Licensing (Taxis, Street Trading and Miscellaneous)
Sub-Committee**

Councillor Sarah Bevan
Councillor Gabriel Batt
Councillor Bryan Chalker

Chief Executive and other appropriate officers
Press and Public

Dear Member

**Licensing (Taxis, Street Trading and Miscellaneous) Sub-Committee: Tuesday, 2nd
October, 2012**

You are invited to attend a meeting of the **Licensing (Taxis, Street Trading and
Miscellaneous) Sub-Committee**, to be held on **Tuesday, 2nd October, 2012 at 10.00 am** in
the **Council Chamber - Guildhall, Bath**.

Briefing

Members of the Sub-Committee are reminded that the meeting will be preceded by a briefing at
9.30am.

The agenda is set out overleaf.

Yours sincerely



Enfys Hughes
for Chief Executive

**If you need to access this agenda or any of the supporting reports in an alternative
accessible format please contact Democratic Services or the relevant report author
whose details are listed at the end of each report.**

This Agenda and all accompanying reports are printed on recycled paper

NOTES:

1. **Inspection of Papers:** Any person wishing to inspect minutes, reports, or a list of the background papers relating to any item on this Agenda should contact Enfys Hughes who is available by telephoning Bath 01225 394410 or by calling at the Riverside Offices Keynsham (during normal office hours).
2. **Details of Decisions taken at this meeting** can be found in the minutes which will be published as soon as possible after the meeting, and also circulated with the agenda for the next meeting. In the meantime details can be obtained by contacting Enfys Hughes as above.

Appendices to reports are available for inspection as follows:-

Public Access points - Riverside - Keynsham, Guildhall - Bath, Hollies - Midsomer Norton, and Bath Central, Keynsham and Midsomer Norton public libraries.

For Councillors and Officers papers may be inspected via Political Group Research Assistants and Group Rooms/Members' Rooms.

3. **Attendance Register:** Members should sign the Register which will be circulated at the meeting.
4. THE APPENDED SUPPORTING DOCUMENTS ARE IDENTIFIED BY AGENDA ITEM NUMBER.
5. **Emergency Evacuation Procedure**

When the continuous alarm sounds, you must evacuate the building by one of the designated exits and proceed to the named assembly point. The designated exits are sign-posted.

Arrangements are in place for the safe evacuation of disabled people.

**Licensing (Taxis, Street Trading and Miscellaneous) Sub-Committee - Tuesday, 2nd
October, 2012**

at 10.00 am in the Council Chamber - Guildhall, Bath

A G E N D A

1. EMERGENCY EVACUATION PROCEDURE

The Chair(person) will refer to the emergency evacuation procedure as set out under Note 5 for each case.

2. APOLOGIES FOR ABSENCE

To inform the meeting of any apologies and substitutions for the meeting.

3. DECLARATIONS OF INTEREST

At this point in the meeting declarations of interest are received from Members in any of the agenda items under consideration at the meeting. Members are asked to indicate:

(a) The agenda item number in which they have an interest to declare.

(b) The nature of their interest.

(c) Whether their interest is **a disclosable pecuniary interest** *or* **an other interest**,
(as defined in Part 2, A and B of the Code of Conduct and Rules for Registration of Interests)

Any Member who needs to clarify any matters relating to the declaration of interests is recommended to seek advice from the Council's Monitoring Officer before the meeting to expedite dealing with the item during the meeting.

4. TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR(PERSON)

5. MINUTES -23RD AUGUST 2012 (Pages 7 - 12)

6. MINUTES - 4TH SEPTEMBER 2012 (Pages 13 - 16)

7. LICENSING PROCEDURE - HACKNEY CARRIAGE (TAXI) AND PRIVATE HIRE DRIVERS HEARING PROCEDURE (Pages 17 - 18)

8. EXCLUSION OF THE PUBLIC

The Committee is asked to consider passing the following resolution:

“that, having been satisfied that the public interest would be better served by not disclosing relevant information, in accordance with the provisions of Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item(s) of business because of the likely disclosure of exempt information as defined in paragraphs 1 and 2 of Part 1 of Schedule 12A of the Act, as amended”.

9. APPLICATION FOR HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE:-
MR GWRG (Pages 19 - 26)
10. CONSIDERATION OF CONVICTION OBTAINED:-:- MR P A F (Pages 27 - 34)
11. CONSIDERATION OF CONVICTION OBTAINED:-:- MR R J M (Pages 35 - 42)

The Committee Administrator for this meeting is Enfys Hughes who can be contacted on 01225 394410.

BATH AND NORTH EAST SOMERSET

LICENSING (TAXIS, STREET TRADING AND MISCELLANEOUS) SUB-COMMITTEE

Thursday, 23rd August, 2012

Present:- Councillors Sarah Bevan (Chair), Bryan Chalker and Tim Warren

Also in attendance: John Dowding (Senior Licensing Officer), Enfys Hughes and Francesca Smith (Senior Legal Adviser)

10 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer drew attention to the emergency evacuation procedure set out on the agenda.

11 APOLOGIES FOR ABSENCE

Councillor Gabriel Batt sent his apologies, Councillor Tim Warren was his substitute.

12 DECLARATIONS OF INTEREST

There were none.

13 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR(PERSON)

There was none.

14 MINUTES - 1ST MAY 2012

RESOLVED that the minutes of the meeting of Tuesday 1st May 2012 be confirmed as a correct record and be signed by the Chair(person).

15 MINUTES - 7TH JUNE 2012

RESOLVED that the minutes of the meeting of Tuesday 7th June 2012 be confirmed as a correct record and be signed by the Chair(person).

16 LICENSING PROCEDURE - APPLICATIONS FOR LICENCES, PERMITS AND CONSENTS

RESOLVED that the procedure for this part of the meeting be noted.

17 APPLICATION FOR PERMISSION TO PROVIDE FACILITIES ON THE HIGHWAY FOR RECREATION/REFRESHMENT AT NO 5 BISTRO, 5 ARGYLE STREET, BATHWICK, BATH.

The Sub-Committee considered the report which sought permission to provide facilities on the highway in respect of No. 5 Bistro, 5 Argyle Street, Bathwick, Bath.

The applicant had appointed a representative/agent who was present, David Holley. The applicant himself was not present. The representative confirmed he had read and understood the procedure. Several of the objectors were also present.

The Licensing Officer presented the report. The application was for 4 tables with appropriate seating. He explained that the normal consultation process had taken place including the police, highways, development control, ward councillors and local residents. He had received objections from the ward councillor, local residents and two late objections from highways and another local resident and his doctor. He confirmed that the applicant had seen the late objections and the application had been reduced in order to address the concerns. He reported that in light of the reduction to the application the highways objection had been withdrawn.

At that point Councillor Webber informed the meeting that he could not hear people speaking and the objector added that he could not hear the proceedings either. The Chair reminded everyone present to speak clearly and use their microphones. The earlier part of the meeting was repeated.

The Legal Adviser gave some advice in respect of the late representations and read out the judgement relating to a case *Miss Behavin' Limited versus Belfast City Council*.

"It would be very strange if such a provision (that there is a deadline for the receipt of objections) designed to allow the council to carry on its business in an orderly and expeditious manner, had the effect of shutting its eyes to facts which it considered relevant to its decision.

- It would therefore be unrealistic and unjust if a council were effectively precluded from taking into account late objections.
- If an objection which revealed to a Council, for the first time, certain highly relevant information was received one day late it would be little short of absurd if it could not be taken into account.
- In such cases it would be contrary to the purpose of the general public interest if the council was obliged to ignore the information.
- If a council received significant relevant information in a late objection there could be circumstances in which its failure to take it into account would itself be judicially reviewable.
- A council officer, charged with the duty to open and read the letter etc., which contained new and important information, would be in an impossible position if he was effectively precluded from communicating it to council members.
- A late objection could be disregarded if it was sent intentionally last minute or if it was received so late so as to mean that the applicant had not had sufficient time to consider it, or cause disruption to the council's business.

- Fairness obviously requires that the terms of any representations, which the Council proposes to consider, should be communicated to the applicant in good time so that he may have an opportunity to comment upon them.
- A late objection is therefore governed by general administrative law principles; it is matter for the council whether to take it into account and the court will not interfere with its decision unless the decision took into account relevant factors or was a decision which no reasonable council could, in all the circumstances, have made.”

Members of the Sub-Committee took some time to consider the legal advice and agreed to admit the late representations which were then circulated to the meeting.

Councillor Webber asked whether the application should be considered today or re-submitted as it had been changed and some of the other objectors would not be aware of this. The Legal Adviser stated that it was quite common for applications to be amended in light of objections and as long as there was a reduction not an increase this was acceptable. Mr Holley would address the application as amended.

The applicant’s agent put the case and was questioned. In summary he stated that No 5 had been taken over and had a huge make over. They had also applied for a new alcohol licence and made a planning application. Having received the objections to this application it had been agreed to reduce the application to 2 tables with appropriate seating in front of the window furthest away from the corner of Argyle Street and Grove Street. He stated that to place tables and chairs outside a premises, was a valuable way of advertising the business within. The Licensing Officer had no comment to make.

The two objectors present put their case and were questioned. The Chair reminded the objectors they had to consider each application on its merits and could not take account of other premises, planning issues and the previous history of the premises involved. In summary the issues of concern were those of pedestrian safety and that tables and chairs outside attracted seagulls and other vermin. Councillor Webber in his statement said that he would not have objected to the amended proposal. The Legal Adviser obtained confirmation from Councillor Webber that he had withdrawn his objection.

The applicant’s agent and the one objector made a closing statement.

Following an adjournment it was

RESOLVED that the application for permission to provide facilities on the highway in respect of No. 5 Bistro, 5 Argyle Street, Bathwick, Bath be granted as follows subject to the standard conditions:

2 tables with appropriate seating as outline on the amended plan
Every day from 10:00 to 22:00 hours.

Reasons for decision

Members have determined an application for permission to place tables and chairs on the highway at No 5 Bistro, 5 Argyle Street, Bathwick, Bath.

In doing so they took into account the Local Government (Miscellaneous Provisions) Act 1982, Part VIIA Highways Act 1980 and the Human Rights Act 1998.

Members noted that two objections to the application had been submitted to the Council after the statutory consultation period had closed. The representations were from Highways and a local resident and his doctor, and were based on highway safety. The objections had been sent to the applicant in advance of the hearing.

The applicant's representative, Mr Holley, advised that the application was to be amended and the Licensing Officer advised that the Highways objection had been withdrawn. One of the other objections had also been withdrawn on the basis of the amended application.

Members were advised that the case of *Miss Behavin' Ltd v Belfast City Council* [2007] 3 All ER 1007 was of guidance to them when considering the matter of late representations.

The Members decided to take into account the late objection, from the resident and his doctor, as it contained highly relevant information and, if they effectively closed their eyes to facts which they considered relevant to their decision, it would not allow the council to carry on its business in an orderly and expeditious manner or be in the public interest.

The objection had not been sent to the Council intentionally last minute or received so late so as to mean that the applicant had not had sufficient time to consider it, and they decided that it would not cause disruption to the Council's business. The objection had also been sent to the applicant in good time so that he may have an opportunity to comment upon it

Members therefore considered the amended application, the late representation from the resident and his doctor, took into account all of the objections and listened carefully to all of the relevant oral representations. They balanced the interests of the applicant, the objectors and the general public.

Members noted that objections had been made by the public on the basis that the premises are situated at the junction of Grove Road and Argyle Street which is a busy junction, that the pavement in that area is an essential refuge for pedestrians and that the corner is obstructed by hanging poles and traffic signs all of which already narrow the pavement. In addition, if the permission was granted, it would have the effect of narrowing the area even further and cause danger to pedestrians who would then have to step into the road.

The resident's late objection was based on highway safety issues and that, if the permission was granted, it would lead to further obstacles on the pavement which would be difficult to negotiate. This was supported by the resident's doctor who stated that the resident had severe balance problems and that further obstructions would impede his passage along the pavement.

Members did not take into account the comments made on the former premises, on planning matters, on other premises, nor generally on litter and vermin as this application was to be determined on its own merits.

Members listened carefully to what the applicant said as regards the amended application which they considered addressed the objections raised especially in relation to the junction at Grove Road and Argyle Street and were satisfied that as to how the permission would operate. They therefore decided to grant the amended application and authorised that the Licensing officer issue the permission.

The meeting ended at 11.20 am

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services

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BATH AND NORTH EAST SOMERSET

LICENSING (TAXIS, STREET TRADING AND MISCELLANEOUS) SUB-COMMITTEE

Tuesday, 4th September, 2012

Present:- Councillors Sarah Bevan (Chair), Gabriel Batt and Bryan Chalker

Also in attendance: John Dowding (Senior Licensing Officer), Enfys Hughes and Shaine Lewis (Senior Legal Adviser)

18 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer drew attention to the emergency evacuation procedure set out on the agenda.

19 APOLOGIES FOR ABSENCE

There were none.

20 DECLARATIONS OF INTEREST

There were none.

21 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR(PERSON)

There was none.

22 LICENSING PROCEDURE - HACKNEY CARRIAGE (TAXI) AND PRIVATE HIRE DRIVERS HEARING

RESOLVED that the procedure for the meeting be noted.

23 EXCLUSION OF THE PUBLIC

RESOLVED "that, having been satisfied that the public interest would be better served by not disclosing relevant information, in accordance with the provisions of Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item(s) of business because of the likely disclosure of exempt information as defined by paragraphs 1 and 2 of Part 1 of Schedule 12A of the Act, as amended."

24 APPLICATION FOR HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE:- MR AVP

The Sub-Committee considered the report which sought determination of an application by Mr AVP for the grant of a combined hackney carriage/private hire driver's licence.

The applicant Mr AVP was present. He confirmed he had read and understood the procedure for the meeting.

The Licensing Officer presented the report and stated that as part of the application process a Criminal Records Bureau check was undertaken which had revealed previous convictions. He circulated the Criminal Records Bureau check, personal statement and reference in respect of Mr AVP. The applicant and the officer withdrew from the meeting while Members took some time to consider these documents.

Mr AVP put his case and was questioned. Mr AVP then made a closing statement.

Following an adjournment it was

RESOLVED that a hackney carriage/private hire driver's licence in respect of Mr AVP be granted subject to the standard terms and conditions.

Reasons for decision

Members have determined an application for a combined hackney carriage/private hire vehicle driver's licence. In so doing they took into account the Local Government (Miscellaneous Provisions) Act 1976, the Council's Policy and the Human Rights Act 1998.

Members listened carefully to the applicant's representations, had regard to a Criminal Records check and his written statement. Members noted he had been convicted of a number of violence offences with the last being in 1998.

Members found Mr P presented himself very well and that the offences whilst serious had occurred when he was a young man and fell outside of the general policy on convictions. In the circumstances Members found his offending behaviour was in the past, that he has turned his life around and was a fit and proper person to hold a combined hackney carriage/private hire driver's licence.

25 APPLICATION FOR HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE:- MR VVB

The Sub-Committee considered the report which sought determination of an application by Mr WB for the grant of a combined hackney carriage/private hire driver's licence.

The applicant Mr WB was present. He confirmed he had read and understood the procedure for the meeting and did not wish to have an interpreter.

The Licensing Officer presented the report and stated that as part of the application process a check was undertaken which had revealed previous motoring offences. He circulated a translated Romanian Certificate of motoring offences and personal statement in respect of Mr WB. The applicant and the officer withdrew from the meeting while Members took some time to consider these documents.

Mr WB put his case and was questioned. Mr WB then made a closing statement.

Following an adjournment it was

RESOLVED that a hackney carriage/private hire driver's licence in respect of Mr WB not be granted.

Reasons for decision

Members have determined an application for a combined hackney carriage/private hire vehicle driver's licence. In so doing they took into account the Local Government (Miscellaneous Provisions) Act 1976, the Council's Policy and the Human Rights Act 1998. Members asked Mr B to confirm he had read and understood the licensing policy which he did and asked if he required an interpreter which he did not.

Members listened carefully to the applicant's representations, had regard to a Romanian Certificate of the applicant's Driving Record and his written statement. Members noted the convictions related to motoring matters which occurred in close proximity to each other and were concerned that this demonstrated a pattern of reoffending behaviour. Members noted that Mr B did not give a satisfactory explanation of the circumstances of the offences and appeared reluctant to explain the reasons for his behaviour. Given the nature of the application and lack of any adequate explanation Members did not consider they, their friends, family or loved ones would be safe in a vehicle driven by Mr B and found him not to be a fit and proper person to hold a combined hackney carriage/private hire driver's licence .

26 CONSIDERATION OF COMPLAINT RECEIVED :- MR A N F

The Sub-Committee considered the report which sought determination of a complaint received in respect of Mr ANF's behaviour whilst carrying out his duties as a licensed private hire driver.

Mr ANF was present. He confirmed he had read and understood the procedure for the meeting.

The Licensing Officer presented the report and stated that he had received information from the Mr ANF's operator in respect of a complaint about him. He played a recording of the message left by Mr ANF.

Mr ANF put his case and was questioned. Mr ANF then made a closing statement.

Following an adjournment it was

RESOLVED that a strict warning be issued to Mr ANF in respect of the complaint about his behaviour whilst carrying out his duties as a licensed Private Hire Driver.

Reasons for decision

Members took into account the Human Rights Act 1998, the Local Government (Miscellaneous Provisions) Act 1976 and the Council's Policy.

Members had to consider what action, if any, to take in light of the complaint received against Mr ANF during the course of his employment as a licensed driver.

In doing so Members had to consider whether Mr F continued to be a fit and proper person and therefore had regard to his history as a Licence holder, the substance of the complaint and his representations. However, with regard to fitness Members disregarded matters relating to Mr F's personal circumstances.

Members considered the circumstances of that evening, Mr F's record as a licensed driver and his apology and on this occasion determined that he continued to be a fit and proper person to continue to hold a licence. However, Mr F was warned as to his future conduct and reminded that should he appear before the sub-committee in the future this and any subsequent matter would be considered and which might result in the possibility of his licence being revoked.

27 RETURN TO OPEN SESSION

RESOLVED that the meeting return to open session.

28 APPLICATION FOR A STREET TRADING CONSENT - BROAD STREET CHRISTMAS MARKET, LOWER BROAD STREET, BATH (SARAH MANSFIELD, ST MICHAELS CHURCH/MILSOM PLACE LTD)

The Sub-Committee considered the report which sought determination of an application for a Street Trading Consent for a Christmas Market at Lower Broad Street, Bath.

The Licensing Officer informed Members that he had received an e-mail the day before the meeting from the applicant, stating that she wished to withdraw the application. The objectors had been informed.

RESOLVED that as the application had been withdraw the matter not be considered.

The meeting ended at 11.25 am

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services

Licensing (Taxis, Street Trading & Miscellaneous) Sub Committee Hackney Carriage (taxi) and Private Hire Drivers Hearing Procedure

1. The Chair will introduce Members of the Sub-Committee, introduce the Officers present, explain the procedure to be followed and ensure those present understand that procedure.
2. The Licensing Officer will outline the nature of the matter to be considered by the Sub-Committee.
3. The Applicant is asked to leave the room while the Sub-Committee consider the CRB check, references and statement.
4. The Applicant (or his/her representative) addresses the Sub-Committee.
5. The Applicant may be asked questions about the matter by the Sub-Committee.
6. The Applicant (or his/her representative) may call witnesses in support of their case and each witness may also be asked questions.
7. The Chair will ask the Licensing Officers present whether they wish to make any comments. If the Officers makes comment they may be asked questions.
8. The Applicant will be invited to make a closing statement.
9. The Sub-Committee withdraw to private session to consider their decision. The Sub-Committee may reconvene to resolve any points of uncertainty on matters already raised. The Sub-Committee will be accompanied for advice only by the Legal Adviser and Democratic Services Officer.
10. The Sub-Committee will return to the meeting room and the Chair will announce the Sub-Committee's decision with reasons and advise that the decision will be released in writing within the statutory time limits.
11. Where the Sub-Committee attach conditions to the licence the Sub-Committee will detail those conditions.

PLEASE NOTE:

- Where the Sub-Committee considers it necessary the procedure may be varied.
- In circumstances where any party fails to attend the Sub-Committee will consider whether to proceed in that party's absence or defer to the next meeting on notice to all parties that the matter may proceed in a parties absence on the next occasion. In deciding whether to proceed all notices and representations will be considered.
- Only in **exceptional circumstances** will the Sub-Committee take into account any additional late documentary or other information produced by an existing

party in support of their application/representation. This will be at the discretion of the Chair and with the agreement of all the other parties. No new representations will be allowed at the hearing.

- The Sub-Committee will disregard any information or representation given by a party they consider not to be relevant to an Application.
- The hearing will take the form of a discussion and the Sub-Committee will allow all parties to ask questions of other parties present. However, formal cross examination will be discouraged although supplementary questions may be asked for clarification purposes.
- If any person has special needs regarding access, hearing or vision, this should be brought to the Licensing Authority's attention prior to the hearing in order that reasonable adjustments can be made.
- Parties will be allowed an equal maximum period of time to make representations. Although time limits will be at the discretion of the Chair, in the interests of costs and efficiency, this will not normally exceed **twenty minutes** and will include both case presentation and summing up. The time limit will not include the time taken for questions.

N.B.

1. Where there is more than one party making relevant representations the time allocated will be split between those parties and it is therefore recommended parties arrive early to discuss the application with other interested parties.
 2. Where several parties make the same or similar representations one representative should be appointed to make the representations.
 3. Where an objection is made by an association or local residents group, a duly authorised person – as notified to the Licensing authority – may speak on behalf of that association or local residents group.
- The Chair may require any person attending the hearing who is behaving in a disruptive manner to leave the hearing and refuse to allow that person to return, or only allow them to return subject to certain conditions. Any person so excluded will however be entitled to submit to the Sub-Committee any information which they would have been entitled to give orally had they not been required to leave.
 - Bath & North East Somerset Council is committed to taking decisions in an honest, accountable and transparent fashion, but on occasion may find it necessary to exclude members of the press and public based upon the legal framework given in the Local Government Act 1972 Schedule 12 (a). On these occasions decisions based on the above framework will be given.

By virtue of paragraph(s) 1, 2 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Agenda Item 9

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By virtue of paragraph(s) 1, 2 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Agenda Item 10

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of the Local Government Act 1972.

Agenda Item 11

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