

Democratic Services

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Date: 1 October 2014

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To: All Members of the Licensing Sub-Committee

Councillors:- Manda Rigby, Roger Symonds and Anthony Clarke

Chief Executive and other appropriate officers
Press and Public

Dear Member

Licensing Sub-Committee: Tuesday, 7th October, 2014

You are invited to attend a meeting of the **Licensing Sub-Committee**, to be held on **Tuesday, 7th October, 2014 at 10.00 am** in the **Kaposvar Room - 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, Sean O'Neill
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, Sean O'Neill who is available by telephoning Bath democratic_services@bathnes.gov.uk or by calling at the Guildhall Bath (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, Sean O'Neill 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. Recording at Meetings:-

The Openness of Local Government Bodies Regulations 2014 now allows filming and recording by anyone attending a meeting. This is not within the Council's control.

Some of our meetings are webcast. At the start of the meeting, the Chair will confirm if all or part of the meeting is to be filmed. If you would prefer not to be filmed for the webcast, please make yourself known to the camera operators.

To comply with the Data Protection Act 1998, we require the consent of parents or guardians before filming children or young people. For more information, please speak to the camera operator

The Council will broadcast the images and sound live via the internet www.bathnes.gov.uk/webcast An archived recording of the proceedings will also be available for viewing after the meeting. The Council may also use the images/sound recordings on its social media site or share with other organisations, such as broadcasters.

- 4. Attendance Register:** Members should sign the Register which will be circulated at the meeting.
- 5. THE APPENDED SUPPORTING DOCUMENTS ARE IDENTIFIED BY AGENDA ITEM NUMBER.**
- 6. 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.

Protocol for Decision-making

Guidance for Members when making decisions

When making decisions, the Cabinet/Committee must ensure it has regard only to relevant considerations and disregards those that are not material.

The Cabinet/Committee must ensure that it bears in mind the following legal duties when making its decisions:

- Equalities considerations
- Risk Management considerations
- Crime and Disorder considerations
- Sustainability considerations
- Natural Environment considerations
- Planning Act 2008 considerations
- Human Rights Act 1998 considerations
- Children Act 2004 considerations
- Public Health & Inequalities considerations

Whilst it is the responsibility of the report author and the Council's Monitoring Officer and Chief Financial Officer to assess the applicability of the legal requirements, decision makers should ensure they are satisfied that the information presented to them is consistent with and takes due regard of them.

Licensing Sub-Committee - Tuesday, 7th October, 2014

at 10.00 am in the Kaposvar Room - Guildhall, Bath

A G E N D A

1. EMERGENCY EVACUATION PROCEDURE

The Chair will draw attention to the emergency evacuation procedure as set out under Note 5 on the previous page.

2. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

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 or a member of his staff before the meeting to expedite dealing with the item during the meeting.

4. TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

5. MINUTES - 9TH SEPTEMBER 2014 (Pages 7 - 12)

6. LICENSING PROCEDURE - COMPLAINT HEARING (Pages 13 - 16)

7. 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 and the reporting of the meeting be prevented under

Section 100A(5A) 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.

8. CONSIDERATION OF COMPLAINTS AND BEHAVIOUR MR C D C (Pages 17 - 36)

The Committee Administrator for this meeting is Enfys Hughes, Sean O'Neill who can be contacted on
democratic_services@bathnes.gov.uk.

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BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Tuesday, 9th September, 2014, 10.00 am

Councillors: Manda Rigby (Chair), Roger Symonds and Anthony Clarke

Officers in attendance: Enfys Hughes, Alan Bartlett (Principal Public Protection Officer), Kirsty Morgan (Public Protection Officer) and Shaine Lewis (Principal Solicitor)

69 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer read out the procedure.

70 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

71 DECLARATIONS OF INTEREST

There were none.

72 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

73 MINUTES - 19TH AUGUST 2014

RESOLVED that the minutes of 19th August 2014 be approved as a correct record and signed by the Chair(person).

74 LICENSING PROCEDURE FOR A NEW PREMISES LICENCE OR FOR A VARIATION OF A PREMISES LICENCE

The procedure for the meeting was explained.

75 APPLICATION FOR A PREMISES LICENCE ROSH LTD 5-6 SEVEN DIALS MONMOUTH STREET BATH BA1 1EN

Applicant: Rosh Ltd, Kambiz Shayegan.

Agent: David Holley.

Other persons present: Martin Grant (Gascoyne Place), Charlie Digney (Garrick's Head).

The procedure for the meeting was explained.

The Chair made introductions and explained that the application would be determined on its merits. The Public Protection Officer outlined the application.

The applicant's agent David Holley presented the case and introduced Mr Shayegan of Rosh Ltd. He explained that Mr Shayegan was experienced in the trade in Bath,

had a good reputation and wanted to open the premises as a wine bar for fine wines by the glass, coffees, soft drinks with cheese, olives and small platters of meats. The food would be brought in from his other restaurants and there would be waiter service. The area outside would have tables and chairs. There were no other similar premises in the vicinity, though there were many selling alcohol and restaurants.

He had read through the representations received and felt there was a possibility they were vexatious. The Chair stated that having taken legal advice the Sub-Committee deemed all the representations to be relevant.

In response to questions from Mr Holley, Mr Shayegan explained that most places near the theatre were booked up pre-theatre and he felt it would be nice to have somewhere to enjoy a fine wine with cheese, olives or cold meat. He had looked around London and seen similar places. He had lost one of his licensed premises with the casino development and felt a wine bar would suit the area with the redevelopment. All his staff were trained but this type of operation would not attract a 'bad' crowd. Mr Holley commented that they had discussed the proposal with the responsible authorities who had made no comment.

The following responses were given to questions:-

- The late night food would be cheese, olives, cold meats and other light foods;
- A condition had been agreed with the applicant that there would be no use of the outdoor area after 22:00 hours;
- There would be approximately 8-10 tables;
- It was confirmed that there would only be one cask of beer/lager as in the operating schedule;
- The target customers would be theatre goers and wine lovers;
- This type of wine bar was in response to demand in the locality;
- With regard to the premises being in the cumulative impact zone, the agent explained the application had been discussed with the police who had not made representations, the others did not want the premises at all so the applicant had been unable to offer any conditions to satisfy them;
- The applicant could only operate the premises according to the operating schedule and if he wished to change anything would need to apply for a variation;
- Details in the operating schedules would form conditions on the licence.

Representations:

Mr Martin Grant made his representation, he stressed that there were too many licensed premises in Bath and particularly in the Sawclose area where he had premises and where he lived. Lots of people walked passed and there was a lot of noise, drink related behaviour and anti-social behaviour. There was an over saturation of licensed premises and local people should not suffer more nuisance, crime and disorder. He disagreed with the applicant's point that there were no similar premises to a wine bar in the area, as he sold approximately 100 wines and provided cheese and meat platters. He also disagreed with the point that most places in the area were fully booked and stated that many were struggling in the current economic climate. He believed there was a need for more shops in the area

not licensed premises and thought a change from A1 to A3 use was optimistic. The casino development would change the fabric of the area in the future.

Mr Charles Digney made his representation. He stated that there were too many businesses in the licensed sector in the area and public safety was a real issue in Bath on Friday and Saturday night. He said that this site was unsuitable for the purpose, it was not a restaurant but a clothes shop and had no kitchen and no smoking area. Providing food would not be sustainable without a kitchen. There was no guarantee that the wine and cheese idea would go ahead once licensed. He already provided wine with cheese boards and they were not full but struggling. There were two new licences with the casino development.

He referred to several points which were not considered relevant – planning and other premises the applicant managed.

The following responses were given to questions and specific evidence to address the licensing objectives:-

- Change of use was a planning issue not licensing.
- There was no facility to cook food;
- The operation would be drinks-lead with the problems associated with that anti-social behaviour and crime and disorder;
- With no smoking area the nearby alleyway would be used for smoking and cause congestion;
- No extractor and the provision of salty foods would encourage more drinking.

The Legal Adviser stated that a number of issues raised in the written representations and mentioned at the Sub-Committee were covered by separate statutory processes and were not considered relevant to the licensing regime. Other issues that could not be taken account of were previous premises the applicant owned and whether the applicant was a fit and proper person. In relation to the premises changing from a wine bar a variation to the licence would need to be applied for.

Summing up

The objectors summed up by saying that the premises were unsuitable due to safety and nuisance, in an area where there were already lots of licensed premises, in Bath where many people lived in the city centre. The operation would be drink-lead with the associated problems of anti-social behaviour, crime and disorder and public safety.

The applicant's agent summed up stating this was an opportunity to provide food and wine. They had had discussions with responsible authorities to discuss what could be applied for and no representations had been received from the responsible authorities. Representations should address issues affecting the licensing objectives and what he had heard were more general comments rather than specific. There was no similar operation in the area.

The Sub-Committee adjourned to consider the application.

Following an adjournment it was

RESOLVED that the application for a new premises licence under s17 of the Licensing Act 2003 in respect of Rosh Ltd. 5-6 Seven Dials, Monmouth Street, Bath BA1 1EN be granted. The conditions consistent with the operating schedule were imposed.

Reasons for decision

Members have today determined an application for a new premises licence for Rosh Ltd at Monmouth Street, Bath. In doing so they have taken into consideration the Licensing Act 2003, Statutory Guidance, the Council's Policy and the Human Rights Act 1998.

Members are aware that the proper approach under the Licensing Act is to be reluctant to regulate in the absence of evidence and must only do what is appropriate and proportionate in the promotion of the licensing objectives based on the information put before them. In this case Members noted the premises are in the Cumulative Impact Area and accordingly a rebuttable presumption is raised that such applications should be refused unless the applicant demonstrates that the application if granted will not add to the Cumulative Impact being experienced.

The applicant

The applicant stated he had operated a number of highly respected restaurants in the city for the last 35 years. It was proposed that the premises will operate as a wine bar selling fine wine by the glass with food such as cheese, meat and quiche rather than a full meal. It will have one draft ale/lager and a wide range of non-alcoholic hot and cold drinks. It was stated that the premises share an outside area with neighbouring premises and there will be waiter service at tables. With regard to cumulative impact this was discussed with the police and the idea put forward that the general use of the premises was not the same as the type in the area. Accordingly conditions such as CCTV covering both the inside and outside of the premises and staff keeping a record of incidents and a refusal register for inspection by police could address cumulative impact. With regard to outside areas all empty glasses would be collected, tables and chairs secured when not in use and any alcohol purchased for consumption off the premises would be provided in sealed containers only. It was stated that these premises will compliment what is in the area at present and also feed into the restaurants in the area.

The objectors

The objections were based on the crime and disorder and public nuisance objectives. It was stated that there was concern that the area would see an increase in antisocial behaviour caused by excessive drinking for example vomit, urine and noise from smokers and drinkers congregating in the outside areas. It was also stated that the premises were unsuitable as a licensed premises and given the over saturation of licensed premises in the area this could lead to Sawclose becoming a heavy drinking no go area.

Members

Members took account of the relevant oral and written representations and were careful to balance their competing interests. Members were also mindful to take into account all relevant matters and disregard the irrelevant such as any need for licensed premises, health and safety of the public in the vicinity, assertions about the character of the applicant and any planning approval given for other premises.

With regard to the Cumulative Impact area Members found, with conditions consistent with the operating schedule and the mandatory conditions, these premises were unlikely to add significantly to the cumulative impact experienced and therefore granted the application as applied for.

Authority was delegated to issue the licence.

The meeting ended at 11.25 am

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services

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Agenda Item 6

Licensing Sub Committee Hackney Carriage and Private Hire Drivers Complaint Hearing Procedure

1. The Chair will introduce Members of the Committee, introduce the Officers present, explain the procedure to be followed and ensure those present have received and understood that procedure.
2. The Licensing Officer will outline the nature of the matter to be considered by the Committee.
3. The Complainant presents their case, may call witnesses and may be questioned by the Committee and other parties. Where a written complaint has been made the complaint will be read by the Committee. The procedure will be repeated should there be more than one complainant.
4. The Licensee presents their case, may call witnesses and may be questioned by the Committee and other parties.
5. The Chair will ask the Licensing Officers present whether they wish to comment. An Officer making comment may be asked questions.
6. The Complainant is invited to make a closing statement
7. The Licensee is invited to make a closing statement.
8. The Chair will invite the Committee to move into private session to enable the Members to deliberate in private. The Committee will reconvene publicly if clarification of evidence is required and/or legal advice is required. The Committee may retire to a private room, or alternatively require vacation of the meeting room by all other persons.
9. Whilst in deliberation the Committee will be accompanied by Legal and Democratic Services Officers for the purpose of assisting them in drafting their reasoning for the decision.
10. The Committee will reconvene the meeting and the Chair will announce the Committee's decision with reasons and advise that the decision will be released in writing within the statutory time limits.

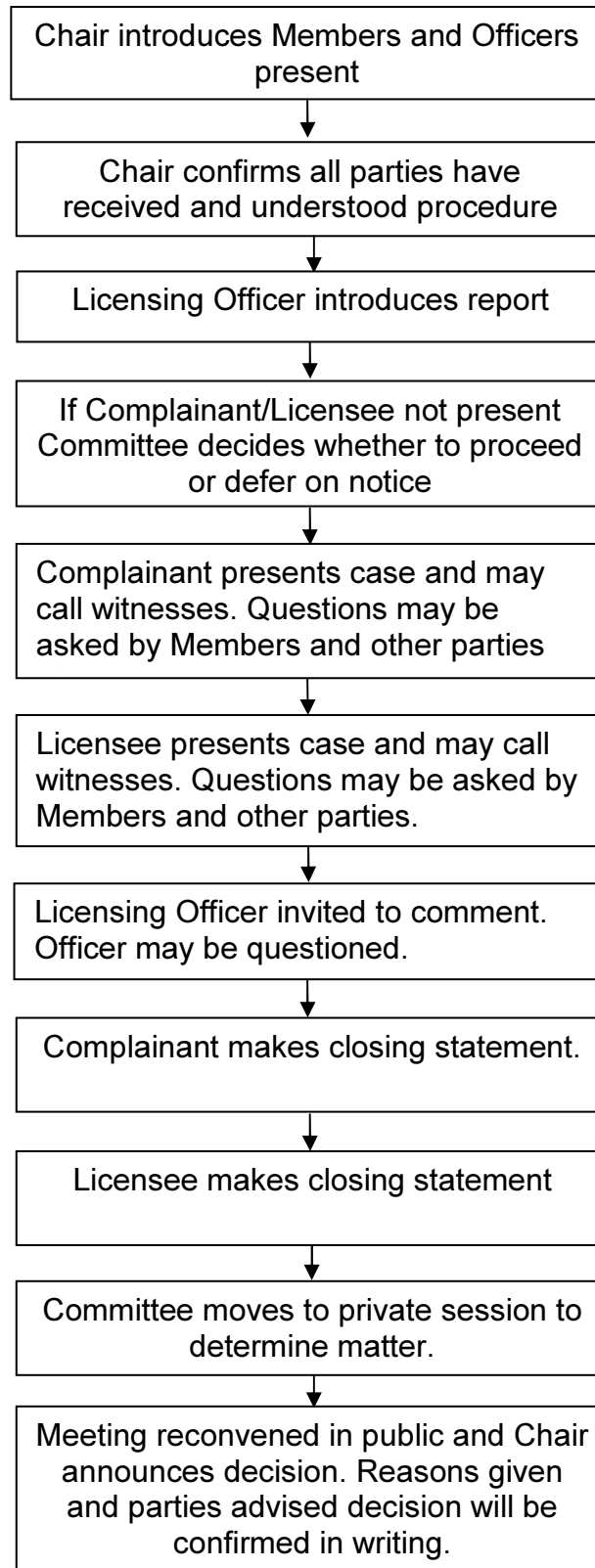
PLEASE NOTE:

- Where the Committee considers it necessary the procedure may be varied.
- In circumstances where a party fails to attend the Committee will consider whether to proceed in absence or defer to the next meeting. Should a matter be deferred the deferral notice will state that the matter may proceed in a party's absence on the next occasion. In deciding whether to proceed all notices, communications and representations will be considered.
- Only in **exceptional circumstances** will the Committee take account of additional late documentary or other information and will be at the discretion of the Chair and on notice to all the other parties. No new representations will be allowed at the hearing.
- The Committee will disregard all information or representations considered irrelevant.
- The hearing will take the form of a discussion. The Committee will allow parties to the proceedings to ask questions. Formal cross examination will be discouraged and, should they be necessary, supplementary questions allowed for clarification purposes only.
- Parties will have an equal amount of time to present their cases. Whilst time limits are at the Chair's discretion, in the interests of cost and efficiency, presentations will not normally exceed **twenty minutes** to include summarising the case. Time limits 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.
 2. Where several parties are making the same or similar representations it is suggested that one representative is appointed to avoid duplication and to make the most efficient use of the allocated time.
 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 request that persons behaving in a disruptive manner should leave the hearing and their return refused, or allowed subject to conditions. An excluded person is however, entitled to submit the information they would have been entitled to present had they not been excluded.
 - Bath & North East Somerset Council is committed to taking decisions in an honest, accountable and transparent fashion. On occasion however, it may be necessary to exclude members of the press and public pursuant to the Local Government Act 1972 Schedule 12 (a). In those circumstances reasons for such decisions will be given.
 - If a person has special needs regarding access, hearing or vision, this should be brought to the Licensing Authority's attention prior to the hearing so that reasonable adjustments may be made.

**LICENSING SUB-COMMITTEE
HACKNEY CARRIAGE (TAXI) AND
PRIVATE HIRE VEHICLES COMPLAINT PROCEDURE**



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Access to Information Arrangements

Exclusion of access by the public to Council meetings

Information Compliance Ref: LGA-1603-14

Meeting / Decision: Licensing Sub-Committee

Date: 7th October 2014

Author: John Dowding

Exempt Report Title: Consideration of Complaints and Behaviour of

Exempt Appendix Title:

ANNEX A – Current Combined Hackney Carriage/Private Hire Drivers Licence.

ANNEX B – Minutes and Resolution of LSC meeting 7th April 2014.

ANNEX C – Correspondence relating to dangerous driving incident 29th May 2014.

ANNEX D – Correspondence relating to dangerous driving incident 5th August 2014.

ANNEX E – Email from Avon & Somerset Constabulary 18th August 2014

ANNEX F – Letter dated 18th August 2014.

The Report contains exempt information, according to the categories set out in the Local Government Act 1972 (amended Schedule 12A). The relevant exemption is set out below.

Stating the exemption:

1. Information relating to any individual
2. Information which is likely to reveal the identity of an individual

The public interest test has been applied, and it is concluded that the public interest in maintaining the exemption outweighs the public interest in disclosure at this time. It is therefore recommended that the Report be withheld from publication on the Council website. The paragraphs below set out the relevant public interest issues in this case.

PUBLIC INTEREST TEST

If the sub-Committee wishes to consider a matter with press and public excluded, it must be satisfied on two matters.

Firstly, it must be satisfied that the information likely to be disclosed falls within one of the accepted categories of exempt information under the Local Government Act 1972.

The officer responsible for this item believes that this information falls within the following exemptions and this has been confirmed by the Council's Information Compliance Manager.

The following exemptions are engaged in respect to this report:

1. Information relating to any individual
2. Information which is likely to reveal the identity of an individual

Exemptions 1 and 2 above must be considered in conjunction with the Principles of the Data Protection Act 1998 (DPA). It is considered that disclosure of the information in this report would breach the first principle of the DPA, which requires personal data to be fairly and lawfully processed. Further, as any information revealed by the Criminal Records Bureau check is likely to constitute sensitive personal data in terms of the DPA, this information cannot be disclosed by the Council without the explicit consent of the individual concerned.

Secondly, it is necessary to weigh up the arguments for and against disclosure on public interest grounds. It is considered that there is a public interest in information about individuals suitability to continue to hold a combined Hackney Carriage/Private Hire Drivers Licence.

Other factors in favour of disclosure include:

- furthering public understanding of the issues involved;
- furthering public participation in the public debate of issues, in that disclosure would allow a more informed debate;
- promoting accountability and transparency by the Council for the decisions it takes;
- allowing individuals and companies to understand decisions made by the Council affecting their lives and assist individuals to challenge those decisions.

However there is a real risk that the first Principle of the DPA will be breached by this disclosure, and that the individual/s concerned could bring a successful action against the Council if the disclosure occurred. Therefore it is recommended that exemptions 1 and 2 in Schedule 12A stand, and that the report be discussed in exempt session and that any reporting on the meeting is prevented in accordance with Section 100A(5A)

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

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