
Bath & North East Somerset Council

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Date: 26 January 2015

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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, 3rd February, 2015

You are invited to attend a meeting of the **Licensing Sub-Committee**, to be held on **Tuesday, 3rd February, 2015** 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 - Reception: Civic Centre - 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, 3rd February, 2015

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 - 6TH JANUARY 2015 (Pages 7 - 12)

6. 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.

7. HACKNEY CARRIAGE (TAXI) AND PRIVATE HIRE DRIVER APPLICATION PROCEDURE (Pages 13 - 16)

The Chair will, if required, explain the licensing procedure.

8. APPLICATION FOR HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE:- MR D W (Pages 17 - 30)

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, 6th January, 2015, 10.00 am

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

Officers in attendance: Carrie-Ann Evans (Senior Legal Adviser), Michael Dando (Public Protection Officer) and Kirsty Morgan (Public Protection Officer)

113 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer read out the procedure.

114 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

115 DECLARATIONS OF INTEREST

There were none.

116 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

117 MINUTES: 16 DECEMBER 2014

RESOLVED that the minutes of the meeting of 16th December 2014 should be approved as a correct record and signed by the Chair.

118 TAXI PROCEDURE

The Chair drew attention to the procedure to be followed for the next item of business.

119 EXCLUSION OF THE PUBLIC

RESOLVED that, the Sub-Committee 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 of business, because of the likely disclosure of exempt information as defined by paragraphs 1, 2 and 3 of Part 1 of Schedule 12A of the Act as amended.

120 CONSIDERATION OF MEDICAL CONDITION - MR MM

This item had been deferred from the meeting of 16th December 2014.

Mr MM was not present and had not contacted the office since the previous hearing. The Sub-Committee decided to consider the report in his absence.

The Public Protection Officer presented the report. He reminded Members that the issue was Mr MM's fitness to continue to hold a combined Hackney Carriage/Private Hire licence in view of his medical condition. Mr MM had voluntarily surrendered his licence on 24th November 2014. There was no clear diagnosis of Mr MM's condition or of when he might be fit to resume driving. He circulated a copy of an email received from Mr MM's GP. Members adjourned to consider this document. After they reconvened, they **RESOLVED** to revoke Mr MM's licence.

Decision and reasons

Members have had to determine whether to take any action against a licensee having disclosed a medical condition. In doing so they have taken account of the Local Government (Miscellaneous Provisions) Act 1976, Human Rights Act 1998, Council's Policy, case law and the DVLA current medical guidelines for professional drivers.

Members were due to determine this issue on 16 December 2014, however Mr MM's sister was ill and could not attend the meeting of the LSC on that day. As such Members deferred their decision but put Mr MM on notice that should he fail to attend this meeting the matter may be determined in his absence.

In deciding whether to proceed in Mr MM's absence today Members took into account the fact that he was notified by letter dated 16 December 2014 that if he did not attend today's meeting, it may be heard in his absence. Members also had regard to the fact that no messages had been received by the taxi licensing office or the Guildhall reception in relation to his non-attendance today. In fact no contact has been made by Mr MM since the last hearing, although his sister did write to the Council to apologise for her non-attendance at the last hearing due to illness.

Members heard that the licensee's GP informed the office on 21 November 2014 that the licensee has a chronic relapsing psychotic illness. Whilst this illness has been stable for several years at the present time, it is not under control and he is not fit to drive, nor will he be for some time. Members noted that on 24 November 2014 the licensee attended the office and voluntarily surrendered his combined Hackney Carriage/Private Hire driver's badges and agreed to stop driving.

Members had regard to the DVLA's Group 2 vocational drivers' current medical guidelines. In relation to acute psychotic disorders of any type the guidance states "driving must cease pending the outcome of medical enquiry and that it is normally a requirement that the person should be well and stable for 3 years before driving can be resumed." Further, that 'the DVLA will normally require a consultant's report that specifically addresses the relevant issues before the licence can be considered.' Members noted that the GP had informed the office that he was 'struggling to get him [the licensee] treatment'.

Members noted the DVLA guidance, and having heard nothing further from the GP or consultant to satisfy them that the licensee was not a danger to the public if he were to continue to drive, have determined to revoke the licence with immediate effect in the interests of public safety.

The Sub-Committee returned to open session.

122 LICENSING PROCEDURE

Members noted the procedure to be followed for the next item of business.

123 APPLICATION FOR A PREMISES LICENCE FOR FARRINGTON'S FARM SHOP, HOME FARM, MAIN STREET, FARRINGTON GURNEY, BRISTOL BS39 6UB

Applicant: Farrington Farm, represented by Tish Jeffery (owner) and Paul Castle (Business Manager)

The Public Protection Officer summarised the report and noted the additional information that had been received from the applicant, Parish Council and 'other person', which had been circulated to Members before the meeting.

Mr Castle stated the case for the applicant. He said that part of Farrington Farm already had a premises licence. Since October 2014 a new section of the Farm had been developed and a function room and play centre had been established. Patrons using these facilities who wished to have an alcoholic drink had to cross the road to the café to do so. Customers had asked why this was necessary. The main business of the farm was food; it was not and would not be a drinking establishment. However, it had been decided to apply for an additional licensed area, which included places where children played. He was convinced that it was possible to meet the needs of adult customers while keeping the exemplary operating record that they had achieved with the existing licence. They also wished to be able to provide quiet times for children during which they would be entertained with suitable films. Mr Castle indicated on the plan the two areas where it was intended to screen films, one of which was near the car park and the other near the farm building. He said films would be back-projected so that there would not be a great deal of ambient light.

In reply to questions from Member, Mr Castle and Mrs Jeffery stated:

- staff worked on every part of the site according to the roster and so they all had training in and experience of alcohol sales
- there would be parking spaces for 60-70 vehicles on the site
- there would always be senior people in attendance to ensure the business was being operated properly; they were proud of being a professionally-run business
- films shown would always be appropriate to the age group of the children concerned; the reputation of the business was important

The Senior Legal Adviser pointed out the discrepancy between the Sunday opening hour of 09:00 and the start time for the showing of films of 08:00 on Sundays. Mr Castle said that they would be happy for it to be 09:00 for both.

The applicants were invited to sum up.

Mr Castle said that Farrington Farm was a business with a reputation to maintain. The vast majority of alcohol sales accompanied food. He did not think traffic would be a problem.

Following an adjournment, the Sub-Committee **RESOLVED** to grant the application as applied for.

Decision and reasons

Members have determined an application for a new premises licence at Farrington's Farm Shop, Home Farm, Main Street, Farrington Gurney, Bristol. 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 and must only do what is appropriate and proportionate in the promotion of the licensing objectives.

In reaching a decision Members took account of all the relevant oral and written representations, disregarding the irrelevant and were careful to balance the competing interests of the applicant and interested parties. Members noted that Licensing and Planning are separate regimes and only had regard to representations relevant to licensing.

The applicant emphasised that they are not seeking to promote the premises as a drinking only venue; they merely wish to offer alcohol, primarily wine and beer, to be served with food. The applicant explained that he has carried out a great deal of research in relation to alcohol being consumed in areas where children are and believes they can ensure harmony between the needs of children, needs of customers and maintain the exemplary track record of Farrington's Farm Shop. In the additional information submitted by the applicant an additional condition relating to the exhibition of films was offered, namely, that there shall be a maximum of 3 outdoors screenings per annum. The applicant informed Members that there have been no reported accidents at the junction and entrance to the premises and that traffic flow is well managed. Members were also informed by the applicant that the premises has a clean health and safety record and that as far as the applicant is aware there have been no complaints regarding the sale of alcohol or of disturbance in relation to the premises.

The interested parties made written representations in relation to the prevention of public nuisance, protection of children from harm and public safety licensing objectives. Specifically, concerns were expressed in relation to noise disturbance and light pollution to residents and local wildlife arising from the exhibition of films as well as the risk to public safety due to the premises forming part of a working farm and from increased traffic levels to and from the premises for the purposes of viewing the exhibited films. The interested parties took the view that the sale of alcohol in the play barn and outside play area parts of the premises does not promote the protection of children from harm licensing objective. It was contended that there is a risk of children accidentally consuming alcohol and that parents and supervisors would not give the children their full attention. Concern was expressed

about litter arising on the premises and in the vicinity as a result of licensable activities.

Members noted that there were no representations from Responsible Authorities.

Members noted that whilst the application was for a new premises licence in part there was an overlap with what is proposed and an existing premises licence. Under the terms of the existing premises licence (11/03250/LAPRE) the sale of alcohol is authorised for consumption on and off the premises from Monday to Saturday from 08:00 - 22:30 and on Sunday from 10:00 - 22:30 within the premises comprising the shop, café, café extension and store as shown on the premises plan that accompanies that licence. Members noted that the existing licence has not been subject of any licensing complaints or incident and in all the circumstances, to the extent that this new premises licence application is the same as the existing one, it shall be granted.

Members went on to consider this application in relation to the proposed increase in licensable activities and hours. Members noted that in relation to the sale of alcohol an earlier start time of 09:00 hours on a Sunday as opposed to the 10:00 hours start time currently authorised is proposed. In terms of the areas within the premises where it is proposed the sale of alcohol may take place Members noted that authorisation is sought in relation to the family picnic area, shop courtyard, tenants front walkway, function training room and family play barn café, all of which are shown outlined in red on the premises plan at Annex B to this application.

The application seeks authorisation for the exhibition of films to take place indoors and outdoors between 09:00 hours and 23:00 hours Monday to Sunday. This would be a new licensable activity to the site. The applicant indicated during oral representations that in relation to Sundays he would wish for the exhibition of films to commence from 09:00 hours.

In terms of opening hours for the premises an earlier start time of 09:00 hours is sought for Sundays.

Members resolved to grant the application with conditions consistent with the operating schedule and as proposed by the applicant in the additional information and oral representations save that the exhibition of films is authorised between 09:00 hours and 23:00 hours on Sundays and in order to ensure the licensing objective of prevention of public nuisance is promoted:

There shall be a maximum of 3 outdoors screenings per annum.

Delegated authority to the Public Protection Officer to issue the licence.

The meeting ended at 11.55 am

Chair(person)

Date Confirmed and Signed

Licensing Sub Committee Hackney Carriage (taxi) and Private Hire Driver Application 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 have received and understood that procedure.
2. The Licensing Officer will outline the nature of the matter to be considered by the Sub-Committee.
3. The Applicant, representative and/or witness is asked to leave the room while the Committee consider the Disclosure and Barring Service report, references and statement.
4. The Applicant, representative and/or witness returns and presents the case to the Sub-Committee.
5. The Applicant may be questioned about the matter by the Sub-Committee.
6. The Applicant may call witnesses in support of their application and each witness may be asked questions.
7. The Chair will ask the Licensing Officers present whether they wish to comment. If an Officer makes comment they may be asked questions.
8. The Applicant will be invited to make a closing statement.
9. The Chair will invite the Sub-Committee to move into private session to enable the Members to deliberate in private. The Sub-Committee will reconvene publicly if clarification of evidence is required and/or legal advice is required. The Sub-Committee may retire to a private room, or alternatively require vacation of the meeting room by all other persons.
10. Whilst in deliberation the Sub-Committee will be accompanied by Legal and Democratic Service Officers for the purpose of assisting them in drafting their reasoning for the decision.
11. The Sub-Committee will reconvene the meeting 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.

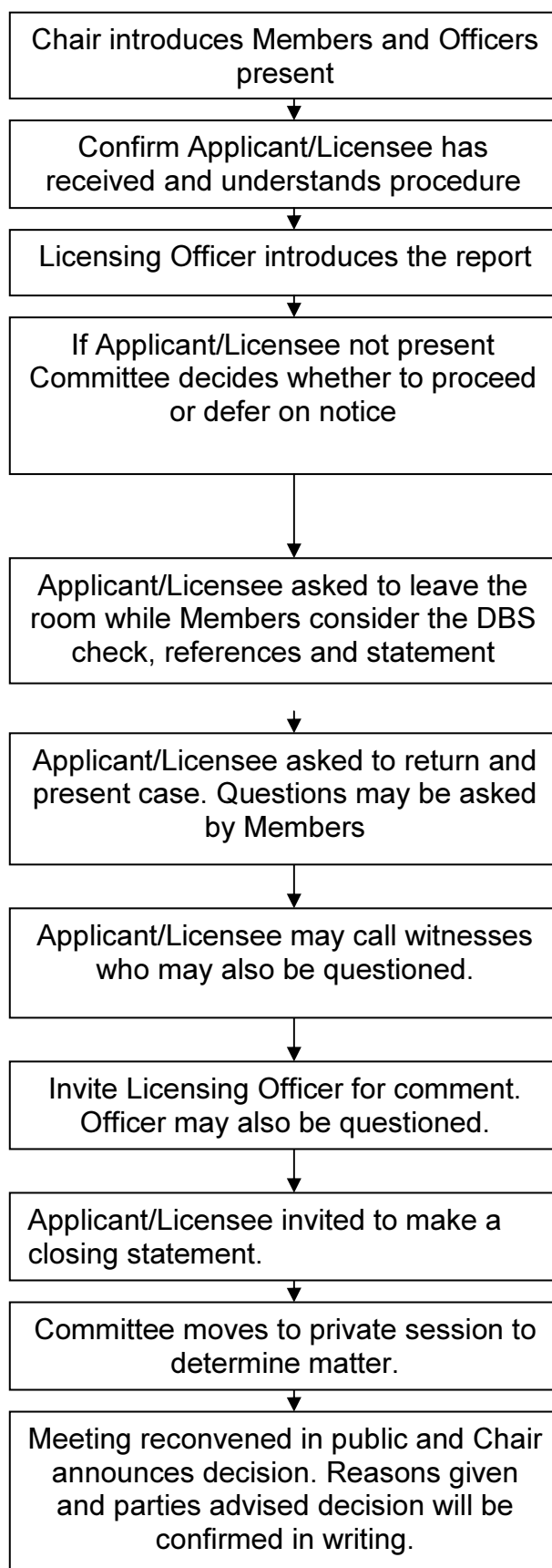
PLEASE NOTE:

- 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 DRIVERS' LICENCE PROCEDURE**



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Access to Information Arrangements

Exclusion of access by the public to Council meetings

Information Compliance Ref: LGA-129/15

Meeting / Decision: Licensing Sub-Committee

Date: 3rd February 2015

Author: John Dowding

Exempt Report Title: Application For Hackney Carriage/Private Hire Driver's Licence

Exempt Appendix Title:
 Annex A – Application Form
 Annex B – Policy on Convictions, Cautions and Fixed Penalty Notices

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
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)

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
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)

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 applying for taxi licences in the area, and in particular, information as to the backgrounds of those individuals.

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.

Due to the factors outlined above, further consideration has not been given to the application of exemption 3 of Schedule 12A.

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

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