

Bath & North East Somerset Council

MEETING: **Licensing (Taxis, Street Trading and Miscellaneous) Sub Committee**

DATE: **23 August 2012**

AGENDA
ITEM
NUMBER

TITLE: **Application for permission to provide facilities on the highway for recreation/refreshment at No 5 Bistro, 5 Argyle Street, Bathwick, Bath.**

WARD: **Abbey**

AN OPEN PUBLIC ITEM

List of attachments to this report:

Annex A Application
Annex B Site Plan
Annex C Council's Standard Conditions
Annex D Highways Notice
Annex E Objections

1 THE ISSUE

- 1.1 An application has been received for permission to provide facilities on the highway in respect of No 5 Bistro, 5 Argyle Street, Bathwick, Bath.

2 RECOMMENDATION

- 2.1 That the Licensing (Taxis, Street Trading and Miscellaneous) Sub Committee determines the application.

3 FINANCIAL IMPLICATIONS

- 3.1 The costs of processing licences are covered by the fees charged. The fee for this application is £241.

4 THE REPORT

- 4.1 An application has been received for permission to provide facilities on the highway in respect of No 5 Bistro, 5 Argyle Street, Bathwick, Bath (Annex A).
- 4.2 The application is for permission to place 4 tables on the highway outside the premises, along with appropriate seating (site plan attached at Annex B).
- 4.3 The size of the area applied for is 2m x 7m.
- 4.4 The times applied for are:

Every day from 10:00 to 22:00 hours

- 4.5 Sections 115 A-K were inserted into the Highways Act 1980 by the Local Government (Miscellaneous Provisions) Act 1982 and relate to the provision of Amenities on certain highways.
- 4.6 Upon application the Council may grant permission to provide, maintain and operate facilities for recreation and/or refreshment on a highway.
- 4.7 A grant of permission under Section 115E of the Highways Act 1980 is not to be unreasonably withheld but permissions may be given subject to any reasonable conditions that the Council thinks fit, Section 115J of the Highways Act 1980.
- 4.8 The Council's standard conditions for permission to place tables and chairs on the highway are attached at Annex C.
- 4.9 This report has not been sent to the Trades Union because they would have no involvement in this application.
- 4.10 A notice was placed on the highway on 20 June 2012 (Annex D). The application was also placed on the Council's website.
- 4.11 Objections have been received from Councillor Webber and local residents who allege that the placing of tables at this location would be wholly impracticable; that the pavement is a vital refuge for pedestrians, and is very narrow.

(Copies attached at Annex E).

5 RISK MANAGEMENT

- 5.1 A risk assessment related to the issue and recommendations has been undertaken in accordance with the Council's decision making risk assessment guidance.

6 EQUALITIES

- 6.1 An Equality Impact Assessment (EqIA) has been completed. No adverse or other significant issues were found.

7 CONSULTATION

- 7.1 In accordance with current Bath & North East Somerset Council policy, the Licensing Service consulted with the Police, the Council's Highways Maintenance Services, Property Services and Development Control Services, Ward Councillors and affected frontagers.

8 ISSUES TO CONSIDER IN REACHING THE DECISION

- 8.1 Human Rights.

9 ADVICE SOUGHT

- 9.1 The Council's Monitoring Officer (Divisional Director – Legal and Democratic Services) and Section 151 Officer (Divisional Director – Finance) have had the opportunity to input to this report and have cleared it for publication.

Contact person	Alan Bartlett, Principal Licensing Officer, Telephone 01225 477536
Background papers	None
Please contact the report author if you need to access this report in an alternative format.	

APPLICATION

**Bath & North East
Somerset Council**

Receipt no^o 482415
taken

**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982
PART VIIA HIGHWAYS ACT 1980**

PERMISSION TO PLACE TABLES AND CHAIRS ON THE HIGHWAY

NO 5 BISTRO 5 ARGYLE STREET BATHWICK BATH BA2 4BA		19 JUN 2012
I/We	ANTON CEGOREANU	Post Log No:
		Receipt No: 482415
		CH/CA E.C.A.T.C.S

hereby give notice that I/we intend to apply for a permit in accordance with the particulars in the attached Schedule.

NEW applicants only to complete the following section

- I/We enclose an illustration/photo of the type, colour and dimensions of the furniture
- I/We enclose a site plan indicating the dimensions of the area of highway upon which we wish to place the above furniture (all plans should be drawn to scale)

Applicants REAPPLYING only to complete the following section

(please check the attached application form and amend the details as necessary)

- I/We certify that there have been no alterations to the size of the area
- I/We certify that there have been no alterations to the number or style of the furniture
- I/We enclose the maps/diagrams and/or photographs illustrating change to area/furniture

ALL applicants to complete the following section

- I/We enclose the fee as follows:

Application fee		£241.00
▪ Number of tables	4 @ £64 per table	256.00
OR IF NO TABLES USED		
▪ Number of items (e.g. chair, parasol)	1 @ £32 per item	
Total enclosed		<u>497.00</u>

- I/We declare that the information given in this application is true.

Signed by the applicant(s) ANTON CEGOREANU Dated 18/06/12
CP Dated 18/06/12
 BATH & NORTH EAST SOMERSET

Please return the completed application to: 18 JUN 2012
 Licensing Services, Bath & North East Somerset Council, Bath Street, Bath BA1 1SN

RECEIVED 12/02145/TABLE

APPLICATION

**Bath & North East
Somerset Council**

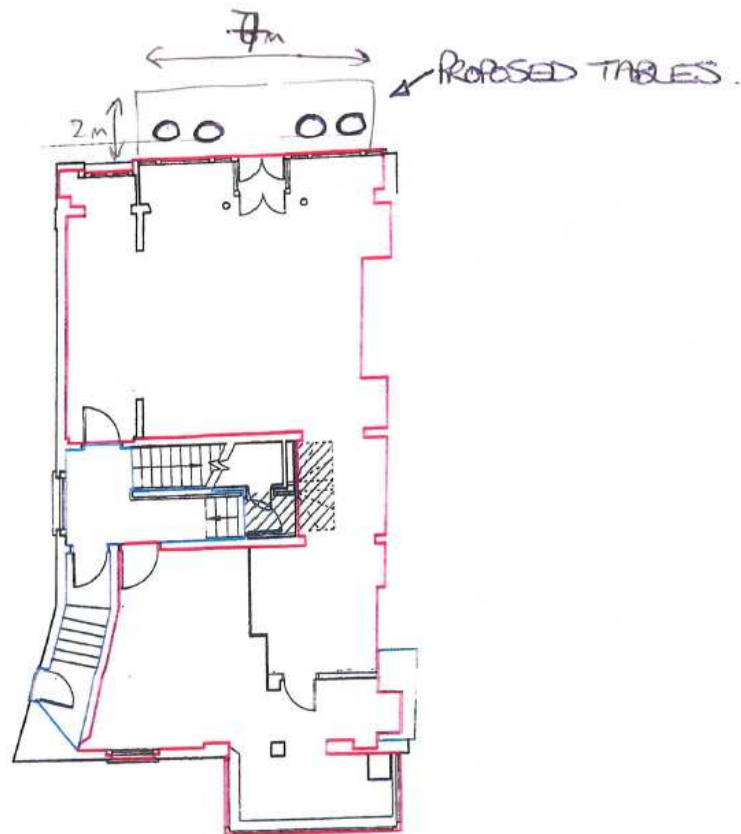
**Local Government (Miscellaneous Provisions) Act 1982
Part VIIA Highways Act 1980
Permission to Place Tables and Chairs on the Highway at No 5 Bistro
5 Argyle Street Bathwick Bath BA2 4BA**

1	Full name and address of each applicant	Mr Anton Cegorehnu 5 St Mark's Gardens Widcombe Bath BA2 4PZ <i>tonicegorehnu@yahoo.co.uk.</i>
2	Contact telephone number	<i>01225/444499</i> <i>07861415653</i>
3	The date or dates, or the period of time for which the permit is required (maximum one year)	From: <i>ASAP</i> To: 30 April 2013
4	Number of tables	<i>4</i> <i>60cm D.</i> <i>70cm H.</i>
5	Size/Dimensions of area	<i>2m x 7m</i>
6	The Council must notify any "affected frontages" of this application. Please provide details of the adjoining premises.	—
7	Days of the week and hours of operation on those days	<i>7 (10.00 to 22.00)*</i>
8	Specific part of the premises proposed to be used	<i>FRONT OF PREMISES</i>
9	Alcohol permitted	<i>A.C. YES NO</i>
10	If yes, please state your premises licence number	<i>A.C. 1</i> <i>LAPRE</i>

APPLIED FOR

** Times confirmed by telephone*

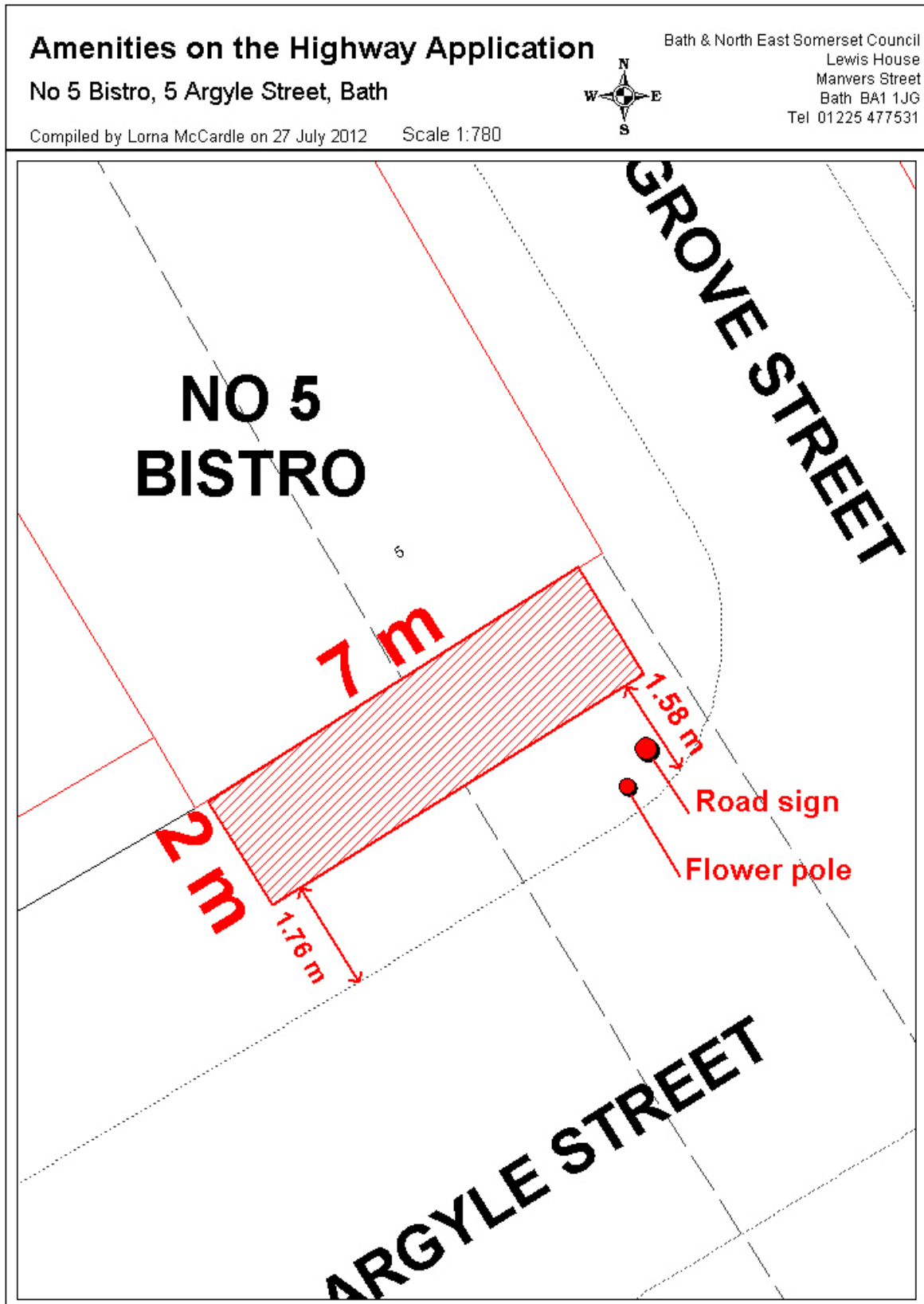
APPLICATION



GROUND FLOOR
5 ARGYLE STREET
BATH

SCALE 1:100

SITE PLAN



Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown Copyright License number 100023334
Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.

**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982
PART VIIA HIGHWAYS ACT 1980
PERMISSION TO PLACE TABLES AND CHAIRS ON THE HIGHWAY**

CONDITIONS

- 1 The holder(s) of this Permission shall not exercise privileges granted by this Permission otherwise than strictly in accordance with this Permission.
- 2 The holder(s) shall produce this Permission on demand when so required by a Police Officer or a duly authorised Officer of the Bath & North East Somerset Council.
- 3 The holder(s) shall return this Permission to the Office of the Head of Environmental and Consumer Services immediately on revocation of this Permission.
- 4 The holder(s) shall not cause any unnecessary obstruction of the highways or danger to persons using it and shall not permit persons to gather so as to cause a nuisance or annoyance or danger to any persons lawfully using the highway.
- 5 The holder(s) shall not use or suffer or permit any music playing music reproduction or sound amplification apparatus or any musical instruments, radio or television receiving sets whilst exercising privileges granted by this Permission.
- 6 The holder(s) shall not make any excavations or indentations of any description whatsoever in the surface of the highway or place or fix any equipment of any description in the said surface.
- 7 The holder(s) shall not use the highway for any other purpose whatsoever nor at any time other than during the permitted hours, other than lawfully passing or re-passing thereover as (a) member(s) or the public.
- 8 The holder(s) shall not place on the highway any furniture or equipment or advertisement other than as permitted by the Council and must maintain the same in a clean and tidy condition and not place them so as to obstruct the entrance to or exit from any premises.
- 9 Notwithstanding the specific requirement in Condition 5 above the holder(s) shall not do or suffer anything to be done in or on the highway which in the opinion of the Bath & North East Somerset Council may be or become a danger, nuisance or annoyance to or cause damage or inconvenience to the said Council or to the owners or occupiers of any adjacent or neighbouring premises or to members of the public.
- 10 The holder(s) shall not assign, underlet or part with any interest or possession given by this Permission or any part thereof but the holder(s) may surrender it at any time.
- 11 The holder(s) shall observe and comply with any directions in relation to the use of the highway given by the Head of Environmental and Consumer Services, or the Head of Engineering Services for the time being of the Bath & North East Somerset Council.
- 12 The holder(s) shall maintain the area shown on the plan attached to this Permission and edged in red, and the immediately adjacent area, in a clean and tidy condition during the permitted hours and shall leave the same in a clean and tidy condition and unobstructed, which shall include washing down the area, at the end of each daily period of use and on revocation or surrender of this Permission.

ANNEX C

- 13 The holder(s) shall provide litter bins or similar receptacles for the deposit of cartons, wrappers, containers and similar discarded items if required by the Head of Engineering Services and ensure that the same are emptied daily.
- 14 The holder(s) shall remove all furniture or equipment, litter bins or other articles placed on the highway in accordance with this Permission at the expiry, surrender or revocation of the Permission.
- 15 The holder(s) shall indemnify and save harmless the Bath & North East Somerset Council their agents, servants and workmen from and against all proceedings, claims, damages, costs or expenses in respect of any injury (including personal injury) in damage or loss which may be sustained by the Council or any person or persons, body or company whatever arising out of or in any way connected with the provision or use of facilities under this Permission, except where such injury, damage or loss is attributable to the negligence of the Council.
- 16 This Permission may be revoked by the Bath & North East Somerset Council at any time and the Bath & North East Somerset Council shall not in any circumstances whatsoever be liable to pay any compensation to the holder(s) in respect of such revocation.
- 17 Nothing herein contained shall be construed as the granting or purported granting by the council of any tenancy under the Landlord and Tenant Act 1954 or any permission under the Town and Country Planning Act 1971 or any statutory modification or re-enactment thereof for the time being in force.
- 18 The holder shall, whilst members of the public are using the facilities provided for the consumption of intoxicating liquor, provide and maintain in a prominent position, to the satisfaction of the Council's Head of Environmental and Consumer Services, notices in the form approved by him concerning the provisions of the Byelaw made by the Bath City Council on 30th January 1991 relating to the consumption of intoxicating liquor in public places.

Notes:

- 1 Section 115K of the Highways Act 1980 provides as follows:-
 - (1) If it appears to a council that a person to whom they have granted a permission under section 115E of this Act has committed any breach of the terms of that permission, they may serve a notice on him requiring him to take such steps to remedy the breach as are specified in the notice within such time as is so specified.
 - (2) If a person on whom a notice is served under sub-section (1) of this Act fails to comply with the notice, the council may take the steps themselves.
 - (3) Where a council have incurred expenses in the exercise of the power conferred on them by sub-section (2) of this Act, those expenses, together with interest at such reasonable rate as the council may determine from the date of service of a notice of demand for the expenses, may be recovered by the council from the person on whom the notice under sub-section (1) of this Act was served.
- 2 Failure to comply with any Condition of the Permission will require the Council to consider whether any subsequent Permissions should be granted to the holder(s) of this Permission.

**BATH & NORTH EAST SOMERSET COUNCIL
ALCOHOL CONSUMPTION IN DESIGNATED PUBLIC PLACES (BATH) ORDER 2004**

This Order is made under the Criminal Justice and Police Act 2001 and relates to the consumption of alcohol in a Public Place. For the purposes of the Order, your premises and the area covered by your permit are not a Public Place.

Where a constable reasonably believes that a person is, or has been, consuming alcohol in a designated public place or intends to consume alcohol in such a place. The constable may require the person concerned either not to consume in that place anything which is, or which the constable reasonably believes to be, alcohol; or to surrender anything in his possession which is, or which the constable reasonably believes to be, alcohol or a container for alcohol. A constable may dispose of anything surrendered to him in such manner as he considers appropriate.

A person who fails without reasonable excuse to comply with a requirement imposed on him under in such circumstances commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale (currently £500).

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

PART VIIA HIGHWAYS ACT 1980

NO 5 BISTRO 5 ARGYLE STREET BATHWICK BATH BA2 4BA

NOTICE IS HEREBY GIVEN that an application has been made to Bath & North East Somerset Council by the proprietor of the abovementioned premises for permission to provide facilities for recreation or refreshment consisting of a number of tables and chairs in or on that part of the highway specified above until:

30 April 2013

and at the following times:

Every Day 10:00 - 22:00 hours

Further information about the above application, including the area of footpath or footway, may be obtained by calling at the address below.

If you wish to make any representations to the Council regarding the above application you should do so in writing to the undersigned within 28 days from the date of this notice.

Under the provisions of the Local Government Act 1972 as amended by the Local Government (Access to Information) Act 1985, such representations will normally be made available for public inspection.

Dated 20 June 2012



Andrew Jones
Environmental Monitoring and Licensing Manager

Licensing Services
Bath and North East Somerset Council
Lewis House
Manvers Street
Bath BA1 1JG

OBJECTIONS

From: Brian Webber (Cllr)
Sent: 22 June 2012 16:23
To: Wendy Stokes
Cc: Manda Rigby (Cllr)
Subject: RE: Tables and chairs application - No 5 Bistro

Wendy

Thank you for this.

I wish to object to the application. The premises are hard by the junction of Argyle Street and Grove Street. It is a busy junction with much turning traffic. The pavement on the corner is a vital refuge for pedestrians, who either are crossing from, or waiting to cross to, the other corner, or have advanced up Grove Street on the very narrow pavement to the corner. Although the Argyle Street pavement directly in front of the No 5 Bistro is quite wide, the corner is obstructed by two Council poles - one for hanging flower baskets and the other carrying traffic signs.

These signs effectively narrow the pavement for pedestrians, who would then have to squeeze round any tables and chairs. I note that the plan with the application does not show the edges of the pavements or the poles. In my opinion, it would be wholly impracticable to put out tables and chairs.

Though it is a Planning matter, I recall that the restaurant Thai by the Weir on the opposite side of Argyle Street were refused planning permission (and lost on appeal) because tables and chairs were felt to be harmful to the setting of Pulteney Bridge. Though the No 5 Bistro is further away from the Bridge, they might also have difficulties with the Planners.

BRIAN
22 June 2012

-----Original Message-----

From: Simon Miller [mailto:simonmiller@mac.com]
Sent: 14 July 2012 16:33
To: Licensing
Subject: 12/02145/TABLE

To whom it may concern

We wish to object to the above application as this is a very busy junction, both for pedestrians and vehicles. Already there is not enough pavement, especially as the pavement approach from Grove Street is very narrow. To have tables, chairs and no doubt umbrellas in addition to the numerous existing A boards would make a dangerous junction even more dangerous.

If the application is approved we can foresee many injuries.

Yours sincerely

Simon Miller & Dr Jos Darling

Henrietta Place, Bath BA2 6PP

OBJECTIONS

The CEO or Director
 BANES Planning Dept.
 Lewis House
 Bath.

Napier House
 9 Henrietta Street
 Bath
 BA2 6LL



13/7/12

Your Ref: 12/02145/TABLE

Dear Sir

With reference to the new occupancy of the restaurant at 5 Argyle St, Bath, no tables, chairs, potted trees, menu boards or other pavement obstructions should be permitted on this stretch of pavement in front of No. 5 Restaurant.

This pavement is frequently crowded with pedestrians, especially on Saturdays. The previous occupants were there for many years and never found it necessary to conduct their business on the pavement. The restaurant interior is of sufficient area to accommodate all the customers they are called upon to serve. Eating outside encourages vermin with all the scattered waste food — McCall's convenience store on the opposite corner was recently fined £20,000 for the vermin infestation of their shop.

And I would remind you of the decade long (ten years) reign of terror conducted by Clarke of Clarke's Restaurant at No. 5 Argyle Street, Bath, from 2001 to 2011, when

OBJECTIONS

the congregation of United Reform Church and many of our nearby residents were compelled to endure the many tables and chairs, A-boards, containers, trees and many other 'povement' obstructions perpetrated by Clarke, spread all along the pavement in front of the restaurant and most of the church foredge. Despite the many complaints to the Planning Dept. and to other BANES departments and the police, nothing was ever done about all the 'povement' obstructions.

Haven't we suffered enough with this problem throughout Bath?

If you wish to discuss this with me please arrange for a meeting, preferably at Lewis House, Bath.

Yours sincerely,

F. Blake

F. BLAKE

To: The CEO or Director
BANES Planning Dept.
Lewis House