

Licensing Sub-Committee

Date: Thursday, 12th August, 2021

Time: 10.00 am

Venue: Kaposvar Room - Guildhall, Bath

Councillors: Rob Appleyard, Steve Hedges and Sally Davis

Chief Executive and other appropriate officers
Press and Public

**A briefing session for Members will be held at
9.30am**



Mark Durnford

Democratic Services

Lewis House, Manvers Street, Bath, BA1 1JG

Telephone: 01225 394458

Web-site - <http://www.bathnes.gov.uk>

E-mail: Democratic_Services@bathnes.gov.uk

NOTES:

1. **Inspection of Papers:** Papers are available for inspection as follows:

Council's website: <https://democracy.bathnes.gov.uk/ieDocHome.aspx?bcr=1>

2. **Details of decisions taken at this meeting** can be found in the minutes which will be circulated with the agenda for the next meeting. In the meantime, details can be obtained by contacting as above.

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. We request that those filming/recording meetings avoid filming public seating areas, children, vulnerable people etc; however, the Council cannot guarantee this will happen.

The Council will broadcast the images and sounds live via the internet www.bathnes.gov.uk/webcast. The Council may also use the images/sound recordings on its social media site or share with other organisations, such as broadcasters.

4. Public Speaking at Meetings

The Council has a scheme to encourage the public to make their views known at meetings. They may make a statement relevant to what the meeting has power to do. They may also present a petition or a deputation on behalf of a group.

Advance notice is required not less than two full working days before the meeting. This means that for meetings held on Thursdays notice must be received in Democratic Services by 5.00pm the previous Monday.

Further details of the scheme can be found at:

<https://democracy.bathnes.gov.uk/ecCatDisplay.aspx?sch=doc&cat=12942>

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

6. Supplementary information for meetings

Additional information and Protocols and procedures relating to meetings

<https://democracy.bathnes.gov.uk/ecCatDisplay.aspx?sch=doc&cat=13505>

Licensing Sub-Committee - Thursday, 12th August, 2021

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 OF PREVIOUS MEETING: 29TH JULY 2021 (Pages 5 - 12)

6. LICENSING PROCEDURE (Pages 13 - 16)

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

7. EXCLUSION OF THE PUBLIC

The Committee is asked to consider passing the following resolution:

“the 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, **RESOLVES** that the public shall 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 IMPACT OF MEDICAL DIAGNOSIS - 19/00946/TAXI (Pages 17 - 38)
9. CONSIDERATION OF IMPACT OF MEDICAL DIAGNOSIS - 19/01164/TAXI (Pages 39 - 60)

The Committee Administrator for this meeting is Mark Durnford who can be contacted on 01225 394458.

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Thursday, 29th July, 2021, 10.00 am

Councillors: Rob Appleyard (Chair), Steve Hedges and Sally Davis

23 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer advised the meeting of the procedure.

24 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

25 DECLARATIONS OF INTEREST

There were none.

26 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There were none.

27 MINUTES OF PREVIOUS MEETINGS: 1ST JULY 2021 & 15TH JULY 2021

The Minutes for the 1st July 2021 and the 15th July 2021 were approved as a correct record.

28 LICENSING PROCEDURE

The Chairman explained the procedure to be followed for the meeting.

29 APPLICATION: NEW STREET TRADING PITCH - BATHFORD

The Licencing Officer outlined the application to the Sub-Committee. He explained that it was for a new Street Trading pitch to be created near the junction of Ostlings Lane and Bathford Hill, Bathford. The application proposes the sale of hot food and drink from a trailer unit.

The type of stall to be used will be a mobile trailer unit measuring 12ft. in length.

The times applied for are 5pm to 11pm every day.

39 Objections were received. The grounds for the objections are: Public nuisance, litter, detrimental effect on the area and public safety.

One message of support for the application was received.

The Applicant addressed the Sub-Committee regarding their application and an opportunity to question the applicant was given to the Committee and the interested parties present.

Councillor Peter Martin (Bathford Parish Council) as an interested party addressed the Sub-Committee regarding the objections to the application and was questioned by the Sub-Committee and the applicant.

Decision and Reasons

Members had to determine an application to create a Street Trading pitch at Ostlings Lane, Bathford. In determining the application, the Local Government (Miscellaneous Provisions) Act 1982, Council Policy and Human Rights Act were taken into account.

The applicant Mr Akdeniz states he is applying for a street licence for a pitch for a self-contained 12-foot trailer van to sell kebabs, burgers and chips from a pitch in Ostlings Lane, Bathford. The proposed operating hours will be as set out in the application. He will be using battery power not a petrol generator, will remove all waste and grey water.

There were written representations from 39 objectors, who stated they lived in the locality. Objections can be summarised as:

- Highway safety issues. The pitch is close to the busy junction of Bathford Hill and Bradford Road and Ostlings Lane. Customers would be turning across the A363 to access Ostlings Lane. There is a history of highway incidents. Parked cars and queuing customers would further reduce sight lines. Customers would breach the Highway Code by parking close to the junction.
- Shortage of parking. Ostlings Lane is narrow and the area already becomes congested, especially when the Crown Inn is open or a rugby match and with parked camper vans reducing the road to single lane.
- The need for the business is not demonstrated and it would compete with and take business away from the nearby Crown Inn and Robbie's place in Batheaston.
- The location is on the edge of an Area of Outstanding Natural Beauty and at the entrance to a village with a conservation area and would not be in keeping.

- Public nuisance fears from litter, disposal of grey water, attracting vermin (this is already an issue with the pub), cooking smells, noise from generator and customers, increased risk of visitors and associated risk of burglary and general impact on a quiet residential area.
- Better locations nearby.
- If trailer left in situ, it would not be possible to sweep the street in an area where drains become blocked.

There was one letter of support from a local person who considered the business would increase choice as it was difficult to get takeaway deliveries to the village.

There were no representations from statutory consultees.

To grant

In reaching a decision Members took account of the relevant representations and balanced the competing interests of the applicant, supporting representation and the objections. Members were mindful to deal with the matter on its merits and disregarded concerns raised relating to anticipated issues that could be regulated by conditions attached to the licence.

Members noted there were no objections from the Highway Authority or Planning. Given the size of the trailer and the proposed location, Members found there was no evidence that it would have a detrimental effect on public safety, amenity or cause an obstruction. Risk of nuisance and other potential problems could be regulated by attaching to the Licence the Council's standard conditions for a street trading stall as set out in the Council's policy. If there is evidence of breaches of the licence conditions, then ultimately the licence can be withdrawn.

So far as the nature of the food sold Members reminded themselves of their Policy and placed little weight on the objections referring to the lack of perceived need for an additional food outlet and any similarity between the food offered for sale by a nearby premises based provider in Batheaston nor could they take into account the issue of competition with nearby providers.

Accordingly, Members found it reasonable and in the public interest to grant the Street Trading Licence. Therefore, the application is granted as applied for and authority is delegated to the Licensing Officer to issue consent subject to the standard conditions, which includes clauses to prevent potential problems arising from obstruction of the street, customers gathering at the trailer, playing of music, advertising boards, furniture and other obstructions, danger or nuisance, litter, waste and grey water and would require the applicant to have insurance.

30 APPLICATION: WINES OF BOHEMIA

The Licensing Officer outlined the application to the Sub-Committee. He explained that it was for a new Premises Licence for Wines of Bohemia Ltd, 175 Catherine Way, Batheaston, Bath BA1 7PA.

The application proposes the following licensable activity:

The Sale of Alcohol for consumption off the premises. 05:00 to 23:00 hours.

The application proposes the following opening times: Everyday 05:00 to 23:00 hours

A representation of objection had been received within the statutory period from the Police. They express concern that the applicant's proposals are likely to undermine the Prevention of Crime and Disorder, Prevention of Public Nuisance and Protection of Children from Harm licensing objectives

The Licensing Officer informed the Committee that he had received apologies from the Applicant regarding attendance at the meeting and the reasons distributed to all the Committee members.

There were no interested parties for this application.

Paul Kendall (Avon & Somerset Police). The responsible Authority representative addressed the Sub-Committee and answered questions from the Sub-Committee, he informed them that he had communicated with the applicant and worked with them to

formulate the points raised in his representation and the applicant had agreed to all the suggested points.

Decisions and Reasons

Members had to determine an application for a new Premises Licence by Wines of Bohemia Ltd for 175 Catherine Way, Batheaston. In doing so they have taken into consideration the Licensing Act 2003, Statutory Guidance, the Council's Policy, Human Rights Act 1998 and case law.

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 on the information before them. Members reminded themselves that each application must be considered on its own merits.

The applicant stated this application is for a new premises licence for an existing room within her home, which has its own external entrance. The application is for the hours 5am to 11pm. The applicant stated the business is to operate an online mail order business selling wines. The wines will either be delivered if local or the applicant will use mail delivery service if further away. The premises will be used as a storage facility. There will be no sales direct to customers calling at the premises. There will be a declaration at point of sale as to the age of the purchaser and the delivery driver will be required to check photo ID from the purchaser for proof of age. The applicant is prepared to be flexible over the hours which they trade.

The Police have objected to the application citing concerns over prevention of crime and disorder, prevention of public nuisance and protection of children from harm.

The Police have not provided in their written presentation any evidence of a history of concerns or of a likelihood of these occurring to support their concerns.

The Police if the application is granted have requested eleven conditions including CCTV, recordings of which are to be made available to the Police on request.

The applicant has agreed to these conditions.

There are no other objections or representations from statutory or responsible authorities.

In determining this application, the Committee reminded itself, this is a Licensing Act 2003 matter. Matters to consider are:

- a) the prevention of crime and disorder
- b) public safety
- c) the prevention of public nuisance; and
- d) the protection of children from harm

The licence can be granted with or without additional conditions.

The Committee reminded itself that when considering the application and any conditions it must do so acting on the evidence.

The Committee also noted the advice from the ICO on the subject of CCTV and licensed premises.

ICO view on CCTV and alcohol licenses

“If there has been no history of crime or antisocial behaviour associated with your premises and no likelihood of future trouble, it is difficult to see how the installation of CCTV can be justified as a licensing condition to prevent crime or antisocial behaviour. ...”

The ICO view where licensing condition provides for CCTV images to be provided to the local police “on request” is that this wording “does not fit in with the provisions of the Data Protection Act 1998 (GDPR) which requires a prejudice test.”

Accordingly, as Members had not been presented with any evidence upon which to base a reasonable belief that these premises would have a detrimental impact on the licencing objectives, or grounds to depart from Policy and or Guidance, the application is granted as applied for with the following conditions:

1. Not to start trading before 7am.
2. Sales to be in sealed containers
4. Staff training on underage sales to be to the standard requested by the Police.
5. All delivery drivers must be over 18.
6. Delivery drivers to require photo ID of age on delivery.
7. Deliveries only to a fixed postal address
8. Each delivery must be accompanied by an accompanying bill, except for returns.

The Members noted the intention of the applicant to install CCTV but are not imposing a condition for the provision of CCTV or the supply of images to the Police

on request. Any Police request for images will have to follow the appropriate application process.

Whilst noting the interest of the Police in ensuring that the licensing objectives are maintained, the Sub-Committee considered it was not appropriate or proportionate to impose any other conditions.

Authority is therefore delegated to the licensing officer to issue the licence with the additional conditions set out above.

The meeting ended at 11.26 am

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services

This page is intentionally left blank

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.

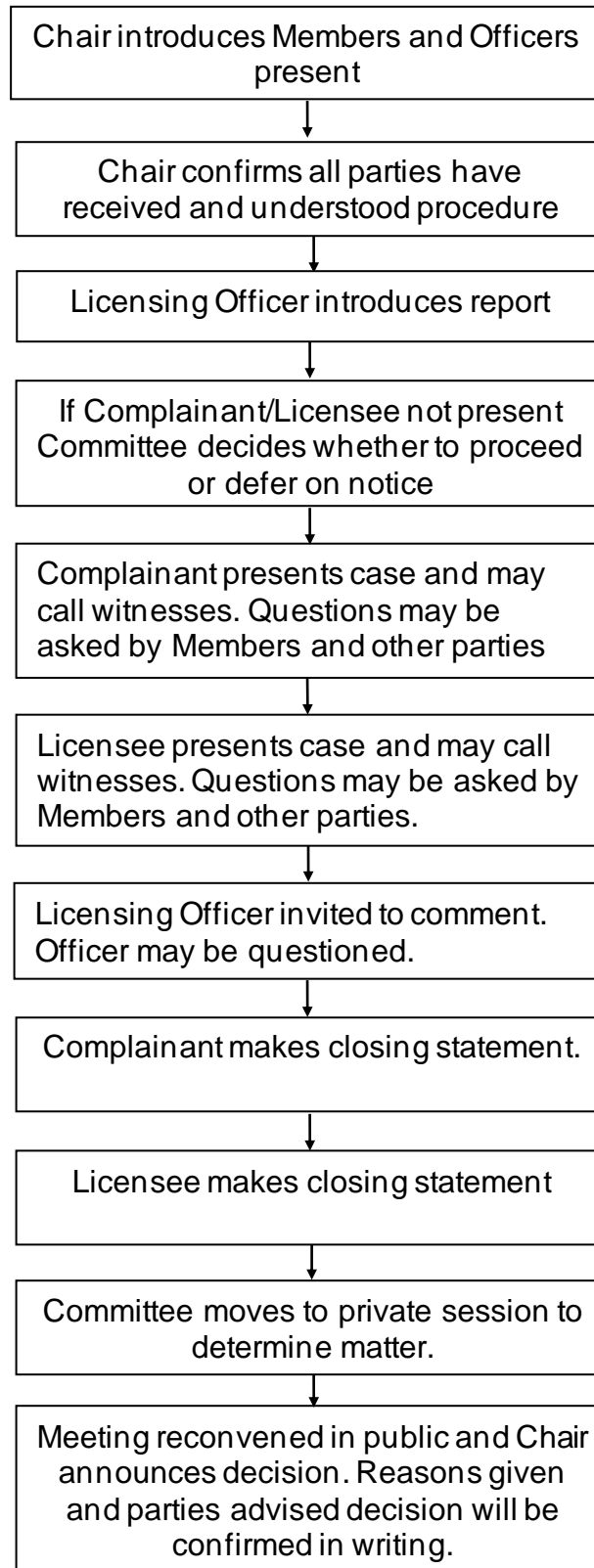
PLEASE NOTE:

- 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**



This page is intentionally left blank

Access to Information Arrangements

Exclusion of access by the public to Council meetings

Information Compliance Ref: LGA 963/21
--

Meeting / Decision: Licensing Sub-Committee

Date: Thursday 12 th August 2021

Author: John Dowding

Exempt Report Title: Consideration of Impact of Medical Diagnosis
--

Exempt Appendix Title(s):

Exempt Annex A- Current Licence
--

Exempt Annex B- Letter from Community Nurse
--

Exempt Annex C – Operator, Vehicle and Driver Standards Policy

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:

- | |
|---|
| <ol style="list-style-type: none"> 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 and appendices 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 2018 (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.

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. The Council considers that the public interest is in favour of not holding this matter in open session at this time and that any reporting on the meeting is prevented in accordance with Section 100A(5A)

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.

Document is Restricted

This page is intentionally left blank

Access to Information Arrangements

Exclusion of access by the public to Council meetings

Information Compliance Ref: LGA 949/21

Meeting / Decision: Licensing Sub-Committee

Date: Thursday 12th August 2021

Author: John Dowding

Exempt Report Title: Consideration of Impact of Medical Diagnosis

Exempt Appendix Title(s):

Exempt Annex A- Current Licence

Exempt Annex B- Letter from Community Nurse

Exempt Annex C – Operator, Vehicle and Driver Standards Policy

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 and appendices 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 2018 (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.

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. The Council considers that the public interest is in favour of not holding this matter in open session at this time and that any reporting on the meeting is prevented in accordance with Section 100A(5A)

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.

Document is Restricted

This page is intentionally left blank