

Bath & North East Somerset Council

MEETING: **Licensing Sub Committee**

DATE: **Thursday 20th July 2017**

AGENDA
ITEM
NUMBER

TITLE: **Application for permission to provide facilities on the highway for recreation/refreshment at Caffe Nero 11 Old Bond Street, Bath, BA1 1BP**

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 Objection (including photograph)

Annex F Supporting statement from applicant – *To be supplied in due course*

Annex G Previous (2016) complaint

- Letter of complaint
- Letter to Nero Holdings
- Response from Nero Holdings

1 THE ISSUE

- 1.1 An application has been received for permission to provide facilities on the highway in respect of Caffe Nero, 11 Old Bond street, Bath BA1 1BP

2 RECOMMENDATION

- 2.1 That the Licensing Sub Committee determines the application.

3 RESOURCE IMPLICATIONS

- 3.1 The costs of processing licences are covered by the fees charged. The fee for this application is £251.

4 STATUTORY CONSIDERATIONS

- 4.1 Sections 115 A-K Highways Act 1980 give the Council discretion to grant permission to provide, maintain and operate facilities for recreation and/or refreshments on the highways subject to any reasonable conditions the Council thinks fit.

4.2 When making a decision consideration needs to be given to the Human Rights Act 1998.

4.3 An Equalities Impact Assessment (EqIA) has been completed. No adverse or other significant issues were found.

5 THE REPORT

5.1 An application has been received for permission to provide facilities on the highway in respect of Caffe Nero, 11 Old Bond Street, Bath Ba1 1BP (Annex A).

5.2 The application is for permission to place 3 tables on the highway outside the premises, along with appropriate seating (site plan attached at Annex B).

5.3 The Council's standard conditions for permission to place tables and chairs on the highway are attached at (Annex C).

5.4 The size of the area applied for is 3m x 1m 20cm.
The times applied for are:

Every Day from 07:00 to 21:00 hours

5.5 A notice was placed on the highway on 7th June 2017 (Annex D). The application was also placed on the Council's website.

5.6 An objection has been received. The grounds for objection allege that the applicant is failing to keep the area outside the premises clean and tidy.

(Copies attached at Annex E).

5.7 A supporting statement has been received from the applicant; this can be found in Annex F.

5.8 Following the grant of the 2016 permit a complaint was received in April 2016 concerning the same issue as the current complaint. Nero Holdings were made aware of this complaint. Copies of the complaint, a letter to Nero Holding and their response are attached at Annex G.

6 RATIONALE

6.1 As an objection has been received the Licensing Sub Committee must determine the application in accordance with Part VIIA, Highways Act 1980.

7 OTHER OPTIONS CONSIDERED

7.1 None

8 CONSULTATION

8.1 In accordance with current Bath & North East Somerset Council policy, the Licensing Service consulted with Avon and Somerset Police, the Council's

Highways Team, Property Services, Environmental Services, Development Control, Ward Councillors and adjacent premises.

- 8.2 This report has not been sent to the Trades Union because they would have no involvement in this application.

9 RISK MANAGEMENT

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

10 ADVICE SOUGHT

- 10.1 The Council's Monitoring Officer (Head of Legal & Democratic Services and Council Solicitor), section 151 Officer (Chief Financial Officer) and the Group manager Public Protection and health Improvement have had the opportunity to input to this report and have cleared it for publication.

Contact person	Andrew Tapper, Senior Licensing Officer Telephone: 01225 477533
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**

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

PERMISSION TO PLACE AMENITIES ON THE HIGHWAY

CAFFE NERO 11 OLD BOND STREET BATH BA1 1BP

I/We  NERO HOLDINGS.

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

To make the payment please call us on 01225 477556 and quote reference 17/00341/TABLE (NB there will be an additional charge of 2.5% for credit card payments).

- I/We have paid the fee as follows:

Application Fee	£251.00
Number of Tables <u>3</u> @ £67 each	£ <u>201.00</u>
£34 if any other items are used (e.g. planters, boundary markers etc.)	£.....
Please specify other items	
TOTAL FEE	£ <u>452.00</u>

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

Signed by the applicant(s) (type name in if sending by email)

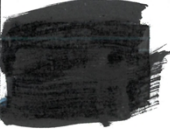

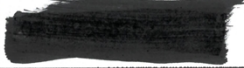
 Dated 08.2.17

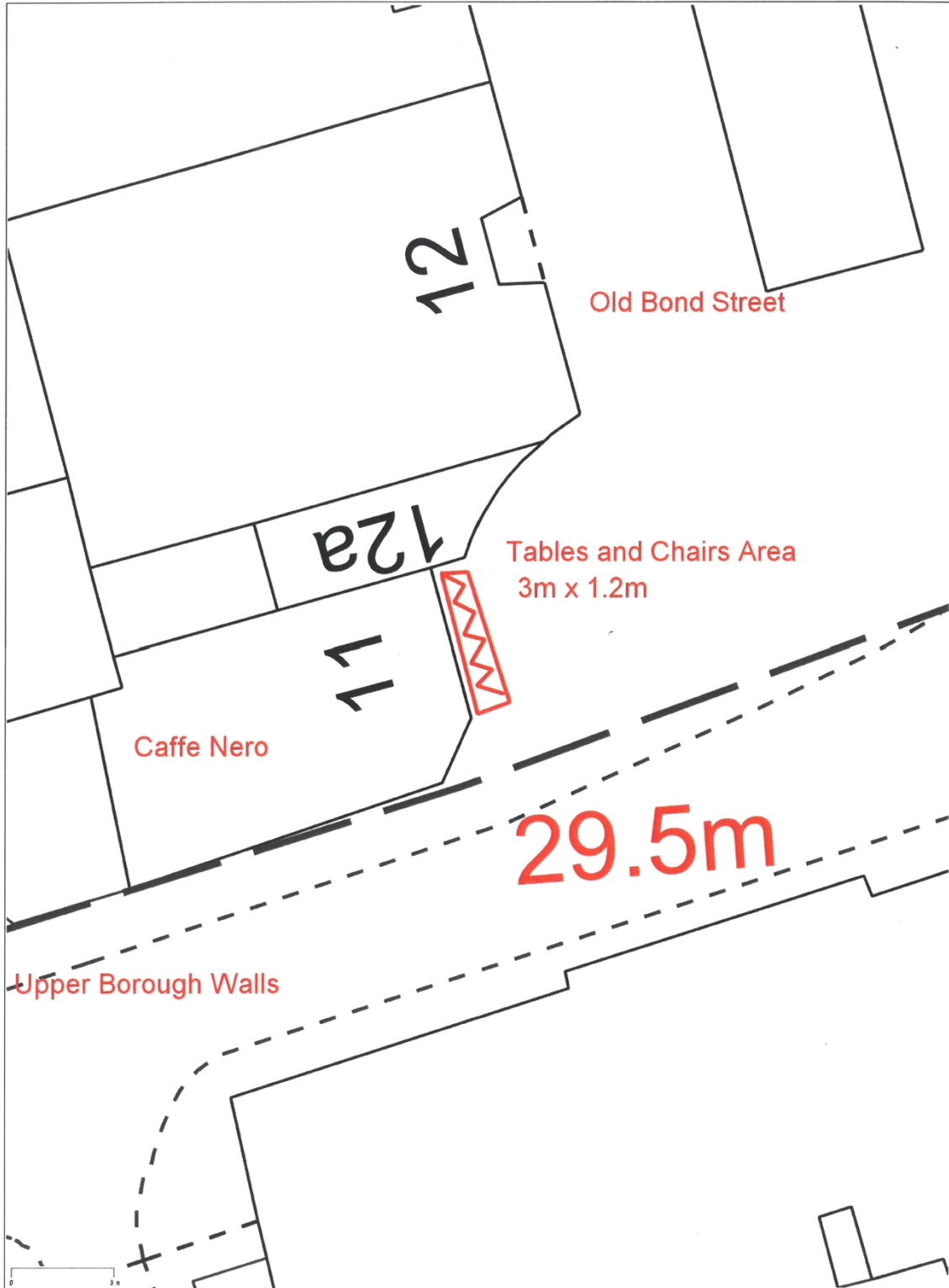
Please email the completed application to licensing@bathnes.gov.uk

APPLICATION - PERSONAL DETAILS REDACTED

**Bath & North East
Somerset Council**

Local Government (Miscellaneous Provisions) Act 1982
Part VIIA Highways Act 1980
Permission to Place Amenities on the Highway at Caffe Nero
11 Old Bond Street Bath BA1 1BP

1	Full name and address of each applicant	
2	Email address	
3	Contact telephone number	
4	Period of time for which the permit is required (maximum one year)	From: 1 April 2017 To: 31 March 2018
5	Size/Dimensions of area	3.m x 1.2 m
6	The Council must notify any "affected frontagers" of this application. Please provide details of the adjoining premises.	Christopher Barry, 12A Old Bond Street Bath BA1 1BP
7	Days of the week and hours of operation on those days	Every Day 07:00 - 21:00
8	Specific part of the premises proposed to be used	Front of premises
9	Alcohol permitted	No
10	If yes, please state your premises licence number	



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.

- 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).

Application Ref. 17/00341/TABLE

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

CAFFE NERO 11 OLD BOND STREET BATH BA1 1BP

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 and/or other items in or on that part of the highway specified above until:

31 March 2018

and at the following times:

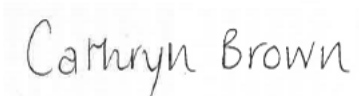
Every Day **07:00 - 21:00 hours**

Further information about the above application, including hours of operation, area of footpath or footway and other information, 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 by 4 July 2017.

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

Dated 4 July 2017



Cathryn Brown
Environmental Protection and Licensing Manager
Licensing Services
Bath & North East Somerset Council
Lewis House
Manvers Street
Bath BA1 1JG

Email: licensing@bathnes.gov.uk

OBJECTIONS – PERSONAL DETAILS REDACTED

[REDACTED]



09/06/2017

Environmental Information Officer
Ms Lauren Latta
Public Protection & Health Improvement
Lewis House, Manvers Street, Bath BA1 1JG



**Re: Local Government (Miscellaneous Provisions) Act 1982
Part V11A Highways Act 1980
Permission for Chairs and Other Items on the Highway at
Café Nero
11 Old Bond Street Bath BA1 1BP**

Dear Ms Latta

Thank you for your letter regarding the permission for tables and chairs at Café Nero, [REDACTED].
[REDACTED] Whilst we appreciate that you are in favour of promoting a Café society in Bath, the lack of tables and chairs
outside the café has been an absolute delight. No litter, no cigarette ends, no dirty tables [REDACTED]
[REDACTED]

There seems to be no effort on Café Nero's part to take charge of the area and after many complaints on our part we are
left to sweep and wash down the area ourselves in an attempt to keep it in order.

People urinate in the space at night and we find it incredible that there is no attempt to clean it before the Café opens.
Their customers are subjected to an area, which is a smelly health hazard.

There are very rarely ashtrays on the tables so people extinguish their cigarettes on the floor, which are just left all day.

We would be very grateful if you take into consideration our comments before making a decision.

Sincerely,

[REDACTED]
[REDACTED]

OBJECTIONS – PERSONAL DETAILS REDACTED

Photograph taken by objector 12/06/2017 at 6:41pm



Supporting statement from applicant

TO BE SUPPLIED

Previous complaint April 2016



Your ref;16/00366/TABLE

Environmental Information Officer
Bath & North East Somerset Council
Public Protection
Lewis House
Manvers Street
Bath BA1 1JG

Bath And North East
Somerset Council

12 APR 2016

8th April 2016

Received

Local Government (Miscellaneous Provisions) Act 1982
Part VIIA Highways Act 1980
Permission to Place Tables and Chairs and Other Items on the Highway at
Café Nero, 11 Old Bond Street, Bath BA1 1BP

We acknowledge receipt of your letter dated 23rd March 2016 regarding the above.

We should like to repeat once again our concerns regarding this Permission:

- 1 The tables outside Café Nero are not serviced. Dirty crockery and full ashtrays are left to mount up all day on the tables, floor and bench seating opposite.
- 2 The chairs and tables are not confined to their specified area and creep out across the pavement during the day, eventually often sprawling across the entrance to our premises, unlike the shop selling pasties opposite which has barriers containing the tabled area. This should be applied to the Café Nero area.
- 3 The pavement is left strewn with cigarette ends at the close of their business so that we are obliged to sweep up and often wash down their area which adversely affects the front of our premises.
- 4 All of the above presents a constant eye-sore in the centre of our City and we feel that permission should only be granted on the condition that the area is constantly, hygienically maintained by staff at Café Nero and that regular checks by yourselves are carried out to ascertain that this condition has been adhered to.

We trust that you will give your full attention to our valid and continued concerns.

Yours sincerely,

Christopher Barry Limited Old Bond Street Bath BA1 1BP Telephone 01225 464585
Email christopher@christopherbarry.co.uk www.christopherbarry.co.uk
Directors C B Richardson K Richardson Registered in England number 3127362

Letter dated 12th April 2016 to Nero Holdings re Complaint

Public Protection

Lewis House, Manvers Street, Bath BA1 1JG
www.bathnes.gov.uk

Date: 12 April 2016
Our ref: 16/00366/TABLE
Direct line: 01225 477531
Fax: 01225 477596
Email: licensing@bathnes.gov.uk



Dear [REDACTED]

**Local Government (Miscellaneous Provisions) Act 1982
Part VIIA Highways Act 1980. Permission to Place Tables and Chairs and Other Items
on the Highway at Caffe Nero. 11 Old Bond Street Bath BA1 1BP**

This letter is to make you aware that we have received a complaint regarding the use of the Tables and Chairs at your property in Old Bond Street, Bath.

The complaint comes in 3 parts:

1. That the Tables and Chairs are not serviced at regular intervals to ensure that the dirty crockery is removed in a timely fashion and ashtrays are emptied.
2. That the Tables and Chairs are not being confined to the specified area of the permit and are allowed to creep outside of the permitted area during the day.
3. That the pavement area of the permit is not being cleaned at the end of the day.

Whilst I do not have any direct evidence to show that this is happening I have no reason to dispute the complaint received is justified. All of the above issues are breaches of the conditions that are attached to the Permit that is issued.

Can I ask that you make the staff at the property aware of the complaint to ensure that the issues are complied with? As a result of the complaint our officers will be attend at periodical intervals to monitor the situation and if evidence is found that the conditions are being breached enforcement action may be taken and it could affect any future applications.

Yours sincerely

A J Tapper

Andrew Tapper
Senior Licensing

Response from Nero Holding re 2016 complaint

From: [REDACTED]
Sent: 12 April 2016 14:06
To: Andrew Tapper
Subject: RE: Complaint re Caffè Nero, Bath

Good afternoon Andrew

Thank you for making us aware of this complaint and I'm very sorry to hear that this is happening. I will forward on to the Area Manager concerned for immediate actions to be made.

[REDACTED]

A copy of your email has also been sent to [REDACTED].

Best Wishes

