

Bath & North East Somerset Council

MEETING: **Licensing Sub Committee**

DATE: **Wednesday 27th June 2018**

AGENDA
ITEM
NUMBER

TITLE: **Application for permission to provide facilities on the highway for recreation/refreshment at Hands Tearoom, 1 Abbey Street, Bath BA1 1NN**

WARD: **Abbey**

AN OPEN PUBLIC ITEM

List of attachments to this report:

Annex A Application
Annex B Site Plan
Annex C Street trading Policy
Annex D Council's Standard Conditions
Annex E Highways Notice
Annex F Objection

1 THE ISSUE

- 1.1 An application has been received for permission to provide facilities on the highway in respect of Hands Tearoom, 1 Abbey Street, Bath BA1 1NN

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 £253.

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 Hands Tearoom, 1 Abbey Street, Bath BA1 1NN (Annex A).
- 5.2 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).
- 5.3 The Council's Street trading policy (Annex C) and Standard Conditions for permission to place tables and chairs on the highway are attached at (Annex D).
- 5.4 The size of the area applied for is 16 feet x 16 feet.
The times applied for are:

Monday to Saturday from 09:00 to 18:00 hours

Sunday from 10:30 to 17:30 hours
- 5.5 A notice was placed on the highway on 12th April 2018 (Annex E). The application was also placed on the Council's website.
- 5.6 An objection has been received from the highways department. The grounds for objection are that the location is a live carriageway and that vehicles drive on this area for access and deliveries (attached as Annex F).

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	Ian Nash - Licensing Officer Telephone: 01225 396719
Background papers	None
Please contact the report author if you need to access this report in an alternative format.	

Ian Nash

From: cis@bathnes.gov.uk on behalf of Online Form via Bathnes <cis@bathnes.gov.uk>
Sent: 08 April 2018 15:21
To: Licensing
Subject: Request for Tables and Chairs

An application to place tables and chairs (or other items) was submitted as follows:

Premises:

Hands tearoom
1 Abbey Street
Bath BA1 1NN

Applicant(s):

Mr and Mrs Swan

Email:

Phone:

Items: 4 tables
16 chairs

Size of Area: 16 feet x 16 feet

Part of Premises: In front of building on unused highway not pavement

Operating Times: Mon to Saturday 9 am to 6pm
Sunday 10.30am to 5.30pm

Alcohol Permitted: Yes

Adjoining premises: Nail bar 1 Abbey Street adjoining

Attachments:

Furniture:

<https://www.bathnes.gov.uk/sites/default/files/webform/8d2cad05-9e18-4a8d-9d8d-b322c34f7e35.png>

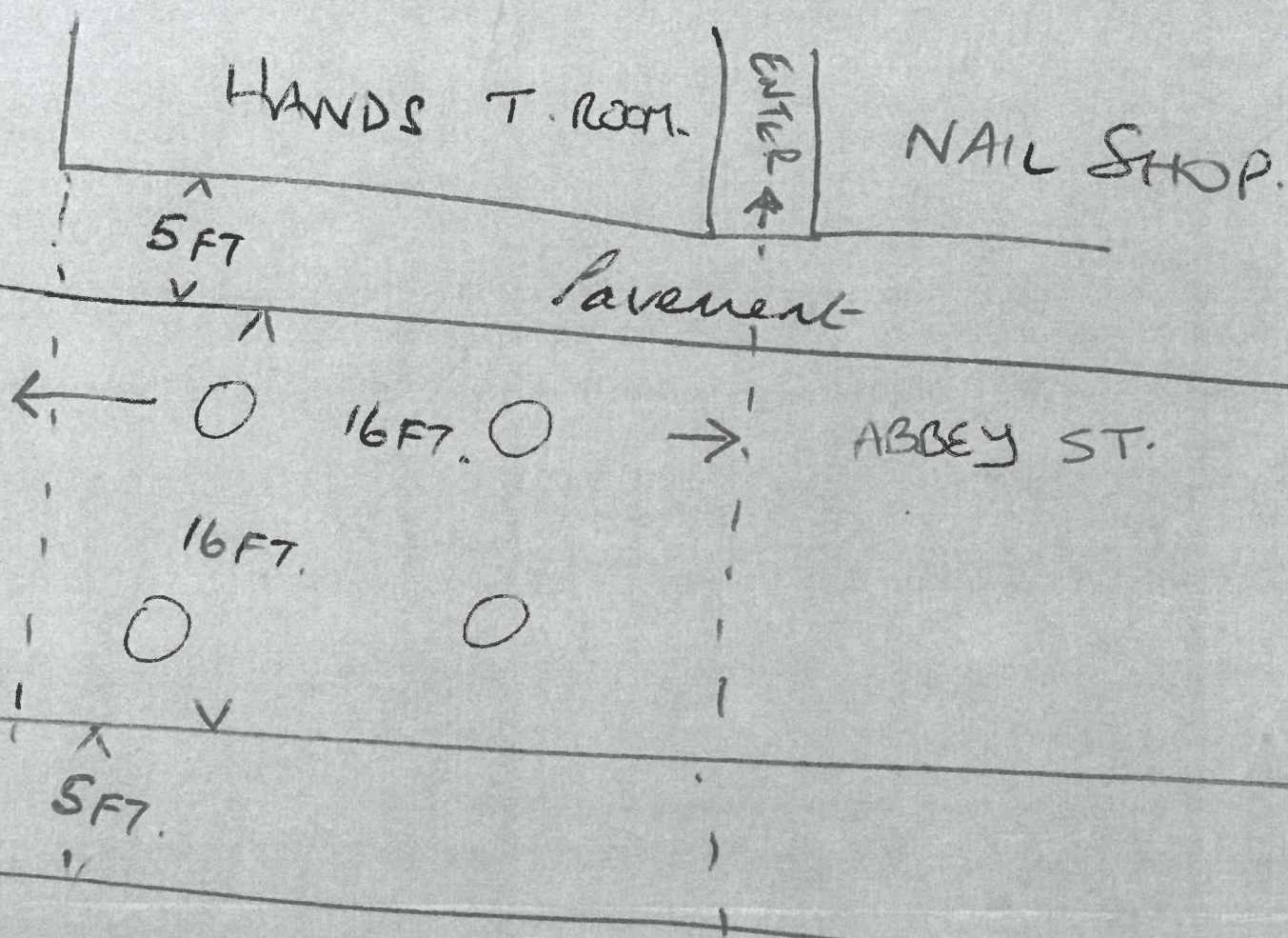
Site Plan:

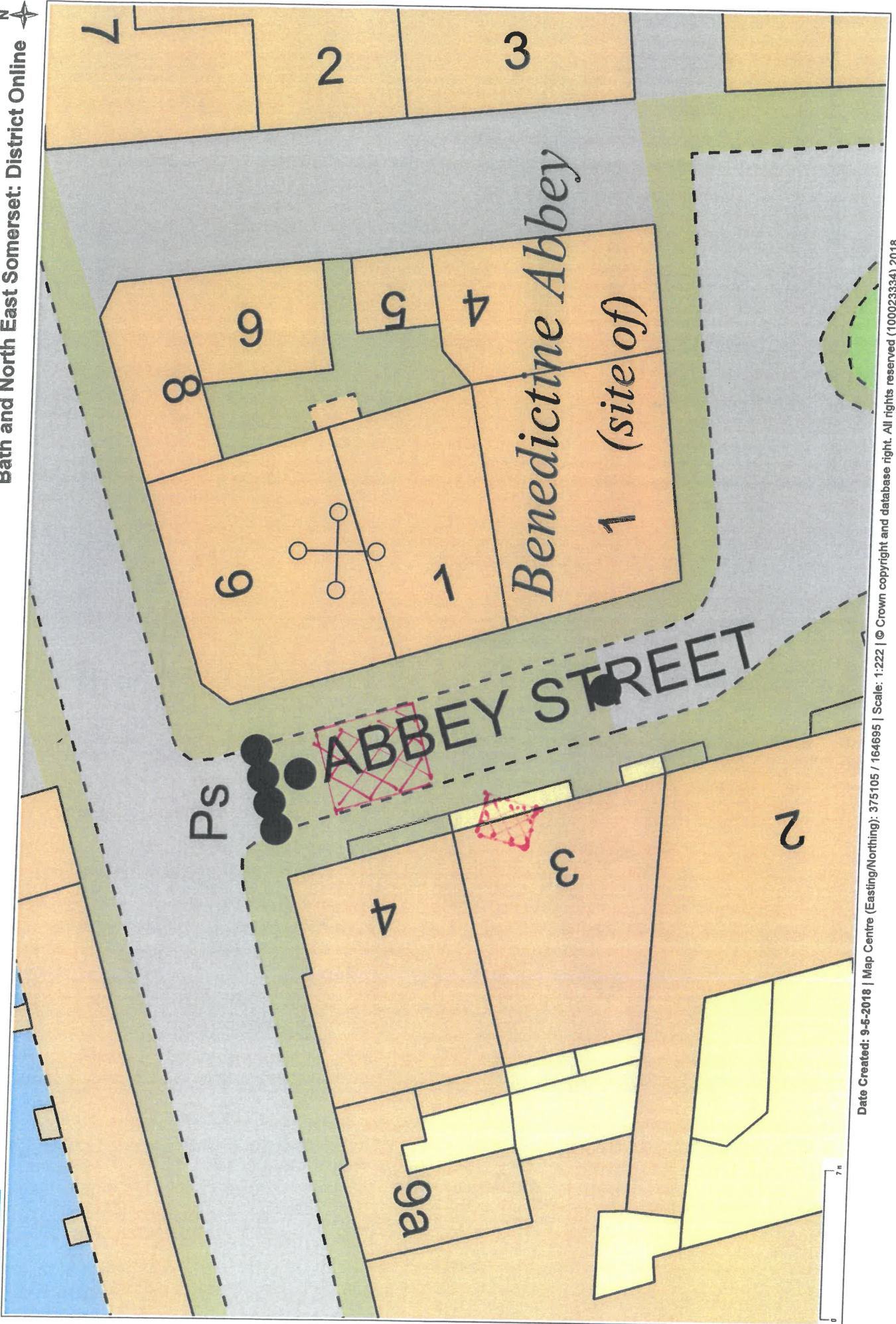
Declaration:

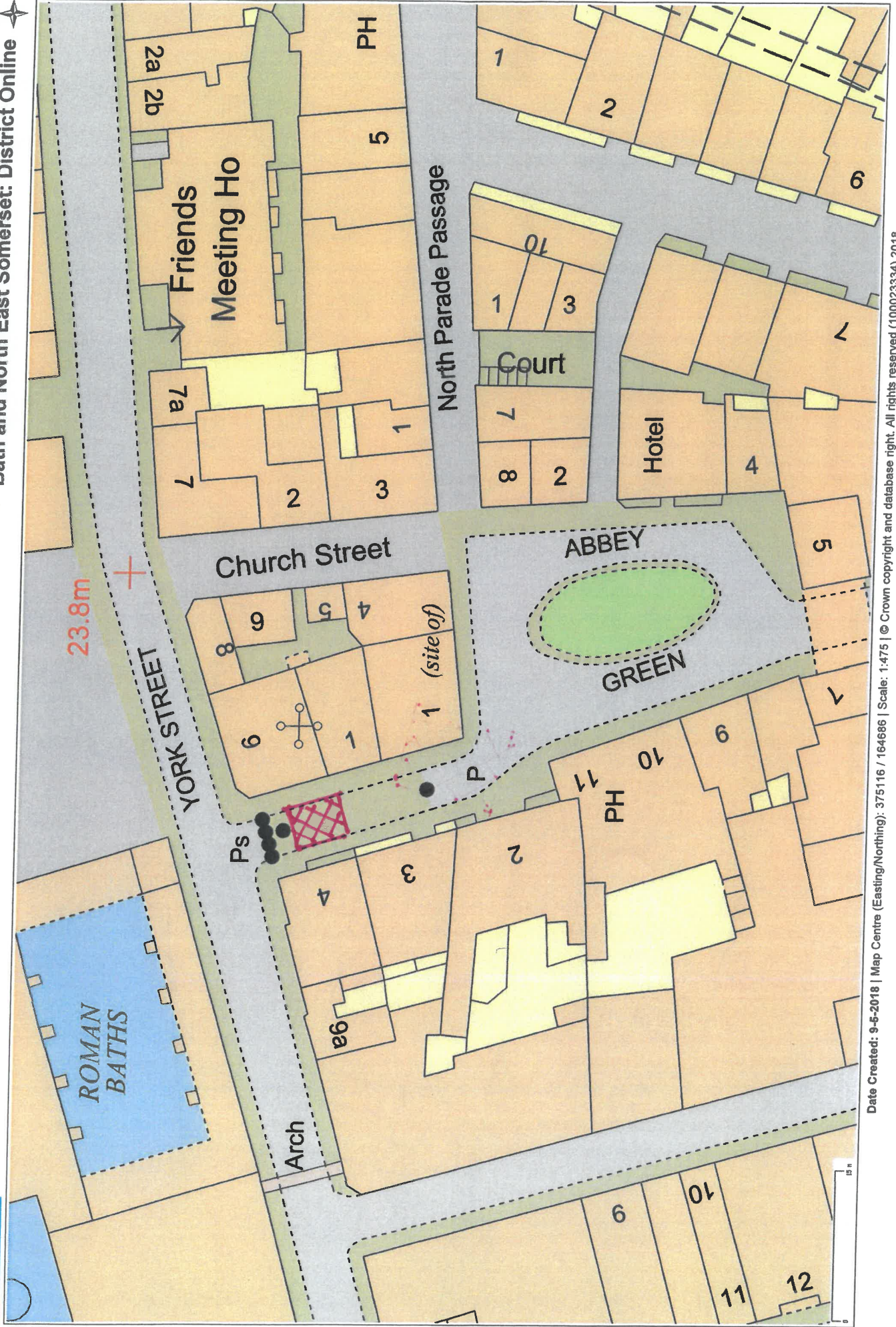
I understand that I also require planning permission to place tables and chairs etc. legally on the highway.
The information I have given in this application is true.

Submitted on Sunday, 8 April 2018 - 3:21pm

○ table







Street Trading Policy

1 Purpose

- 1.1 Bath and North East Somerset Council understands that street trading is important to both the local environment and local economy. Street trading can provide vibrancy and interest to the local environment and an opportunity for small businesses to establish themselves and grow.
- 1.2 The Council's vision for Bath and North East Somerset is to create a street trading environment which:
 - complements premises-based trading
 - is sensitive to the needs of residents
 - ensures that public spaces become active spaces
 - provides diversity and consumer choice;
 - seeks to enhance the character, ambience and safety of local environments
 - promotes healthy eating
 - provides local food

2 What is Street Trading?

- 2.1 Street trading means selling, exposing or offering for sale any article in a street. The term 'street' includes any road, footway or other area to which the public has access without payment.
- 2.2 The Council has adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 for the whole of its area and has designated all streets in the area as 'Consent Streets' for street trading purposes.
- 2.3 The effect of this designation is that street trading in any street is prohibited, subject to legal exemptions, without first obtaining a street trading consent from the Council.
- 2.4 Consents may also be issued to mobile artists who sketch or paint, sell their own work and move from location to location.
- 2.5 Street trading consents for buskers wishing to sell items associated with their performance (e.g. CD's) will be established
- 2.6 Consents may be issued to mobile vendors such as Ice Cream Traders to operate in specific locations outside of the central area of Bath.

3 Exemptions from the need to obtain a Consent

3.1 The Local Government (Miscellaneous Provisions) Act 1982 states that the following are exempt from the need to obtain Street Trading Consent:

- trading by a person acting as a pedlar under the authority of a pedlars' certificate granted under the Pedlars Act 1871
- anything done in a market or fair the right to hold which was acquired by virtue of a grant (including presumed grant) or acquired or established by virtue of an enactment or order
- trading in a trunk road picnic area
- trading as a news vendor
- conducting a public charitable collection
- trade carried out by roundsmen e.g. milkmen
- trade carried on at a petrol filling station, and
- trade carried on at premises used as a shop or in a street adjoining premises so used and as part of the business of the shop

4 Pitch assessment

4.1 The Council will maintain a map showing the location of street trading pitches. This map is available on the Council's web site at www.bathnes.gov.uk/services/business/street-trading

4.2 The Council may from time to time identify new pitches for street trading and will consider applications for new pitches. In determining whether to create a street trading pitch the Council will have regard to:

- an overriding public interest
- any effect on road safety, either arising from the siting of the pitch, or any loss of amenity caused by noise, traffic or smell
- existing Traffic Orders e.g. waiting restrictions
- any potential obstruction of pedestrian or vehicular access
- any obstruction to the safe passage of pedestrians; and
- the safe access and egress of customers and staff from the pitch and immediate vicinity
- any land owners permission which may be required from a private land owner or a relevant Council service e.g. Environmental Services (Open Spaces), Commercial Estates or Economic Regeneration

5 Application Process for a New Pitch

5.1 Before new pitches are created the Council will consult and seek written observations from:

- occupiers of premises immediately adjacent and opposite
- existing holders of street trading consents in the immediate area
- relevant ward councillors
- relevant parish or town councils
- Avon & Somerset Constabulary

- relevant Council Services including Development Control, Highways, Property Services, Environmental Services (Open Spaces), Commercial Estates, Trading Standards and Food Safety
- a relevant land owner
- any other stakeholder considered by the Council's Licensing Team to be relevant to the application

5.2 In addition to the above, public notices will be placed in a clearly visible location at the site of the proposed new pitch.

5.3 The Council will consider any responses received in relation to public notices and any objection from consultees will be assessed against the criteria in paras 1.2, 4.2 and Section 12 and may be referred to the appropriate Licensing Sub-Committee for determination.

5.4 Any proposed change to conditions attached to a consent will be in consultation with consent holders and others, as specified in 5.1 above, if relevant.

6 Application Process for an Existing Pitch

6.1 When an existing or new pitch becomes available, the Council will publish details of the vacancy, inviting applications for the pitch. The details will be published on the Council's website.

6.2 Applications will be determined by the Licensing Manager. If no suitable application is received then the pitch will be re-advertised.

6.3 In situations where there are competing applications then the Licensing Manager will decide the most appropriate applicant in consultation with the Service Manager. The pitch will be offered to the applicant whose proposal is considered the most suitable for the particular location.

7 Mobile Street Artists

7.1 Mobile street artist consents may be issued to persons who sketch or paint and sell their own work and move from location to location.

7.2 Applicants for mobile street artist consents must give a minimum notice period of 48 hours to the Licensing Team in relation to their application.

8 Mobile Traders

8.1 Any mobile trader e.g. ice cream vans, will require a street trading consent.

8.2 Before issuing a consent the Council will consult with relevant bodies, as specified in section 5.1, and will require details of the daily routes and times of the rounds.

9 Street Markets

9.1 The Council actively supports the provision of temporary street markets within the district and special consideration will be given to markets which are considered beneficial to the local area.

- 9.2 Applications for temporary street markets will be considered using the same criteria set out in Para 1.2 and in sections 4 and 5 of this policy.

10 Pitches for Buskers

- 10.1 The Council will issue Street Trading consents for use by buskers who wish to sell items associated with their performance (e.g. CD's).
- 10.2 Applications for pitches for buskers will be considered using the same criteria set out in Para 1.2 and sections 4 and 5 of this policy.

11 Pitches for Charitable Street Trading

- 11.1 The Council issues permits to enable charitable street trading. Charitable street trading must not be undertaken in any street or public place unless the Promoter has obtained a consent from the Council. The only exception to this is where the collection is exempt under schedule 4 of the 1982 Act (see section 3)
- 11.2 In relation to charitable street trading, the Council has a designated street trading pitch for this purpose at Kingston Parade, Bath. This pitch will be available to registered charities, or organisations demonstrating that they are a 'not-for-profit' organisation. Use of this pitch will be subject to the Council's standard street trading conditions.
- 11.3 The charity or organisation must obtain permission from the Principal Consent Holder responsible for the pitch at Kingston Parade whose details can be obtained from the Licensing Department.

12 Nature of Goods and Trading Hours

- 12.1 The nature of goods which may be sold from any pitch and the trading hours will be specified in the consultation process. Any subsequent application for a change in the nature or type of goods sold or the trading hours will require a further application and will be subject to the level of consultation as set out in section 5.1 above.
- 12.2 Until 1st April 2015, the Council will not normally grant a consent for the sale of goods or services which conflict with those provided by nearby shops or nearby street trading pitches. (After this date, changes to Schedule 4, Local Government [Miscellaneous Provisions] Act 1982 come into effect which promote open competition).
- 12.3 Goods will normally consist of craftwork, fresh flowers, fresh fruit and vegetables, ice cream or soft drinks. Other types of goods, including services, will be considered on a pitch by pitch basis and have particular regard to local needs, product diversity and balanced with other retailers in the immediate vicinity.
- 12.4 Street trading hours will normally mirror those of shops in the immediate vicinity. Extended trading hours will be determined on a pitch by pitch basis.
- 12.5 In the case of stalls selling hot food trading hours will be determined on a pitch by pitch basis.

12.6 Late night food traders operating after 11:00 pm will be subject to the requirements of the Licensing Act 2003 regarding the need for a Premises Licence. Greater consideration will be given to the impact on the night time environment and the possibility of crime and disorder on the streets as a result of the granting of a street trading consent.

13 Design and Appearance of Stall, Barrow, Van, Cart etc.

13.1 The design and appearance of the stall, barrow, van or cart etc. to be used must be agreed by the Council.

13.2 The Council has a preferred set of standards of design and appearance that they wish to achieve for all street trading pitches based in the central area of Bath.

- All new applicants will be required to use an approved design unless a suitable alternative is agreed
- All existing Consent Holders will be required to change to an approved design by 1st January 2017, or upgrade the whole or parts of their units, as appropriate

13.3 The condition of all pitches will be monitored regularly to ensure that the required standards are maintained.

13.4 All consent Holders trading in food products are required to be registered and inspected by the Council's Food Safety Team. Contact details of the Food Safety team can be found on the Council's website.

13.5 All consent Holders are required to comply with relevant health and safety regulations including those relating to electrical and gas safety.

14 Issue of Street Trading Consents

14.1 An application for a street trading consent or the renewal of such a consent shall be made, in writing, to the Council. Applications can be e-mailed to the Council at: licensing@bathnes.gov.uk.

14.2 Consents will not normally be issued for a period of less than six days per week, unless the applicant can provide an alternative scheme acceptable to the Council.

14.3 Where a consent has expired the pitch will become subject to paragraphs 14.4 and 14.5 below.

14.4 When an existing or new pitch becomes available, the Council will publish a notice inviting applications for the said pitch on its website.

14.5 Applications for an existing pitch will be determined by the Licensing Manager or other authority delegated by the Council. Each pitch will be offered to the applicant whose proposal is considered most suitable for the particular pitch. If no suitable application is received then the pitch will be re-advertised.

14.6 Any application received by a person less than 17 years of age will be considered by taking into account the provisions contained in the Children and Young Persons Act 1933 and the Children and Young Persons Protection at Work Regulations 1998.

14.7 An application for an existing pitch may be refused or revoked if the applicant is found to be unsuitable to hold the consent by reason of having been convicted of a relevant offence, or for any other reason.

14.8 The issue of a street trading consent will not normally be delayed where other approvals, permits, licences are required by other departments or statutes except in the case where advice is required from the Council's Food Safety and Health and Safety teams.

15 Fee Structure

15.1 The Council may charge such fees as it considers reasonable having regard to pitch location, the size of the Pitch, trading days, hours and the description of goods offered for sale.

15.2 The fees will be reviewed and set on an annual basis and any variation advertised by notice in a local newspaper.

15.3 Fees for consents must be paid in full in advance:

- in the case of Direct Debits, on a monthly basis
- all other methods, three months in advance

15.4 Failure to maintain payments as above may result in the consent not being renewed. Where a payment is not made by the due date the Council may charge an administration fee as determined by the Licensing Manager. This will include cheques or Direct Debit requests that are not honoured.

15.5 The Council cannot guarantee that pitches will be available every day and accepts no liability for the loss of earnings in relation to street trading consent holders or their employees.

15.6 In the event of roadworks, utility or service repairs and other genuine circumstances that affect the use of any pitch, the Licensing Manager will consider appropriate refunds on a case by case basis, provided a written request has been made by the consent holder.

16 Street Trading Consents for which fees are not payable

16.1 The Council will not require the payment of fees for the following street trading activities:

- fetes, carnivals or similar community based and run events
- non-commercial or charitable events
- farmers markets (producer-managed marketplace for local producers to sell their own produce direct to local people); and
- sale of articles by householders on land contiguous with their homes

17 Conditions and Enforcement

- 17.1 Standard conditions will be attached to every street trading consent detailing the holder's responsibilities to maintain public safety, avoid nuisance and generally preserve the amenity of the locality.
- 17.2 Specific conditions will also be attached such as the days and hours when street trading is permitted, the goods which may be sold and the size of the pitch.
- 17.3 Failure to comply with conditions may lead to revocation or non-renewal of a consent.
- 17.4 Persons trading without a consent and who are not exempt (see 3 above for examples) will be the subject of enforcement action in accordance with the Council's Enforcement Policy. Copies of the Enforcement Policy can be obtained from the Council's Licensing team or website.
- 17.5 The consent Holder is required to obtain and maintain their own Public Liability Insurance to a minimum of £5m. This will be required to be produced for inspection before any consent is issued and on demand when requested by an officer of the Council.

18 Equality

- 18.1 The Council is committed to equality of opportunity and believes that the diversity of the community is a major strength which contributes to the social and economic prosperity of the area.
- 18.2 The Council commits to ensure that no resident of, or visitor to, the area or other person associated with the Council is treated inequitably or in an unlawful or unjustifiably discriminatory manner.
- 18.3 The Council will take positive steps to stop any unfair/unlawful discrimination, and will carry out positive action where discrimination is found.

19 General

- 19.1 Through its tourism service and by other means, the Council will seek opportunities to promote street trading activities.
- 19.2 This policy will complement and inform other Council initiatives including those on street markets and the public realm.
- 19.3 This policy will be the subject of periodic monitoring and review.
- 19.4 This policy will inform the detailed conditions attached to every street trading consent.
- 19.5 This policy will be applied in a manner which is consistent with the Council's equalities policies.

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, accept 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.

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

HANDS TEA ROOMS 1 ABBEY STREET BATH BA1 1NN

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 2019

and at the following times:

**Monday to Saturday
Sunday**

**09:00 - 18:00
10:30 - 17:30 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 10 May 2018.

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 9 May 2018

Cathryn Brown

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

From: Christian Mead
Sent: 26 April 2018 11:22
To: Licensing
Cc: Highways
Subject: Fwd: Tables and chairs application - Hands Tea Room, Bath

Hi Lauren,

As requested, please take this email as a record for my objection to tables and chairs being placed outside Hans Tea Rooms, 1 Abby Street, Bath, BA1 1NN.

From a Highway perspective there are lots of Health and Safety issues here, the main point being

That this is a live carriageway and some vehicles drive on this area for access and deliveries

Please do not hesitate to contact me if you require any further information