



NOTICE OF MEETING

Licensing Panel

Thursday 11 October 2018, 2.00 pm

Council Chamber - Time Square, Market Street, Bracknell, RG12 1JD

To: LICENSING PANEL

Councillor Allen (Chairman), Councillors Tullett and Mrs McKenzie

cc: Substitute Members of the Panel

Councillors Mrs Angell, Dr Barnard, G Birch, Brossard, Brunel-Walker, Finch, Finnie, Ms Gaw, Leake, Ashman, Porter and Thompson

Gill Vickers
Executive Director: Delivery

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Telephone: 01344 352253
Email: lizzie.rich@bracknell-forest.gov.uk
Published: 2 October 2018



Licensing Panel
Thursday 11 October 2018, 2.00 pm
Council Chamber - Time Square, Market Street, Bracknell, RG12
1JD

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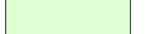




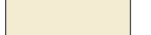
AGENDA

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Members are asked to declare any disclosable pecuniary or affected interests in respect of any matter to be considered at this meeting.	
Any Member with a Disclosable Pecuniary Interest in a matter should withdraw from the meeting when the matter is under consideration and should notify the Democratic Services Officer in attendance that they are withdrawing as they have such an interest. If the Disclosable Pecuniary Interest is not entered on the register of Members interests the Monitoring Officer must be notified of the interest within 28 days.	
Any Member with an affected Interest in a matter must disclose the interest to the meeting. There is no requirement to withdraw from the meeting when the interest is only an affected interest, but the Monitoring Officer should be notified of the interest, if not previously notified of it, within 28 days of the meeting.	
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Bracknell Town Centre Map



Legend

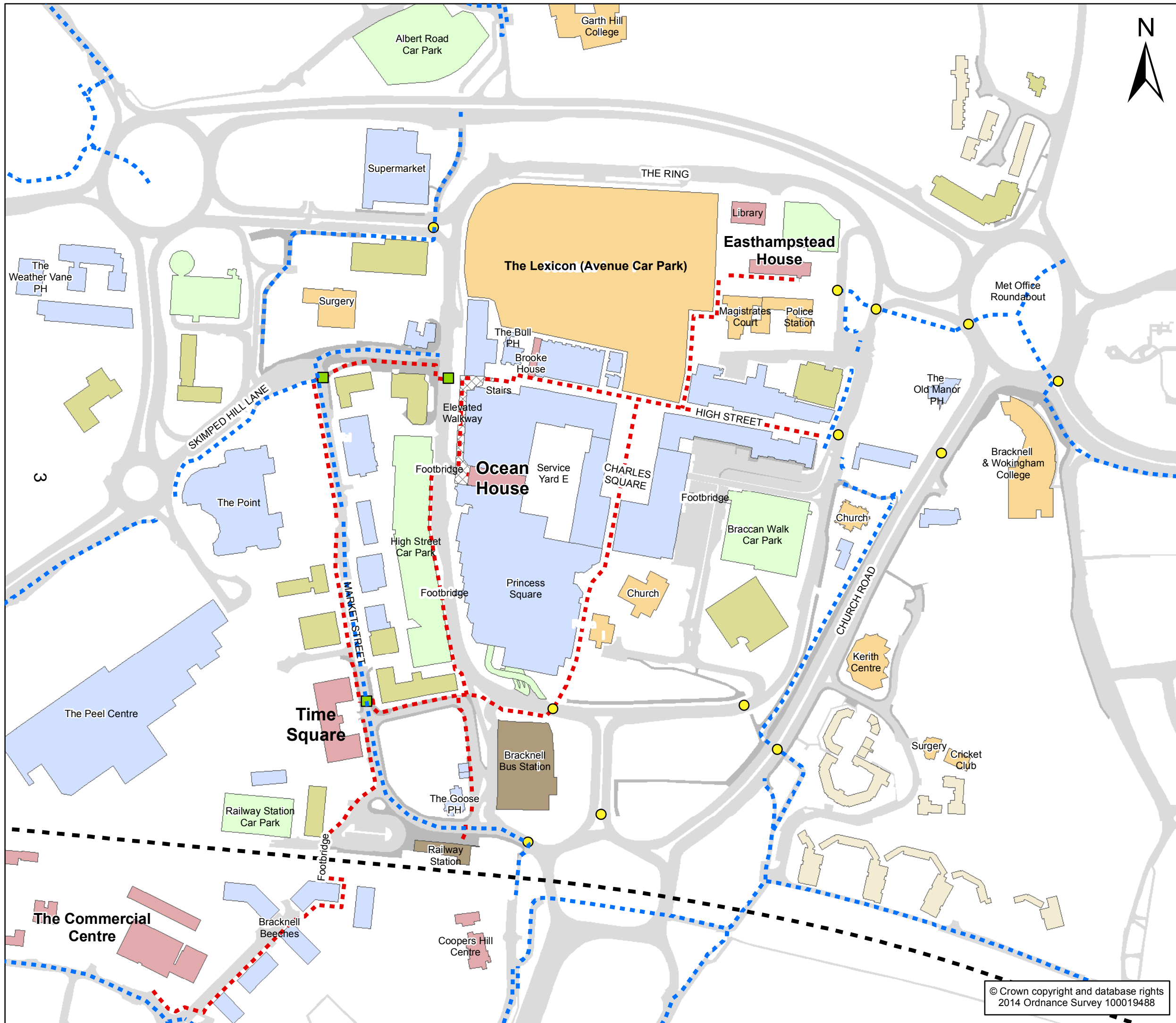
-  Subway
-  Zebra Crossing
-  Walk Route
-  Footpath/Cycleway
-  Railway
-  Council Buildings
-  Places of Interest
-  Car Parks
-  Elevated Walkway
-  Public Transport
-  Offices
-  Commercial
-  Residential

0 50 100 150 Metres




Map Produced June 2014


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Agenda Item 1

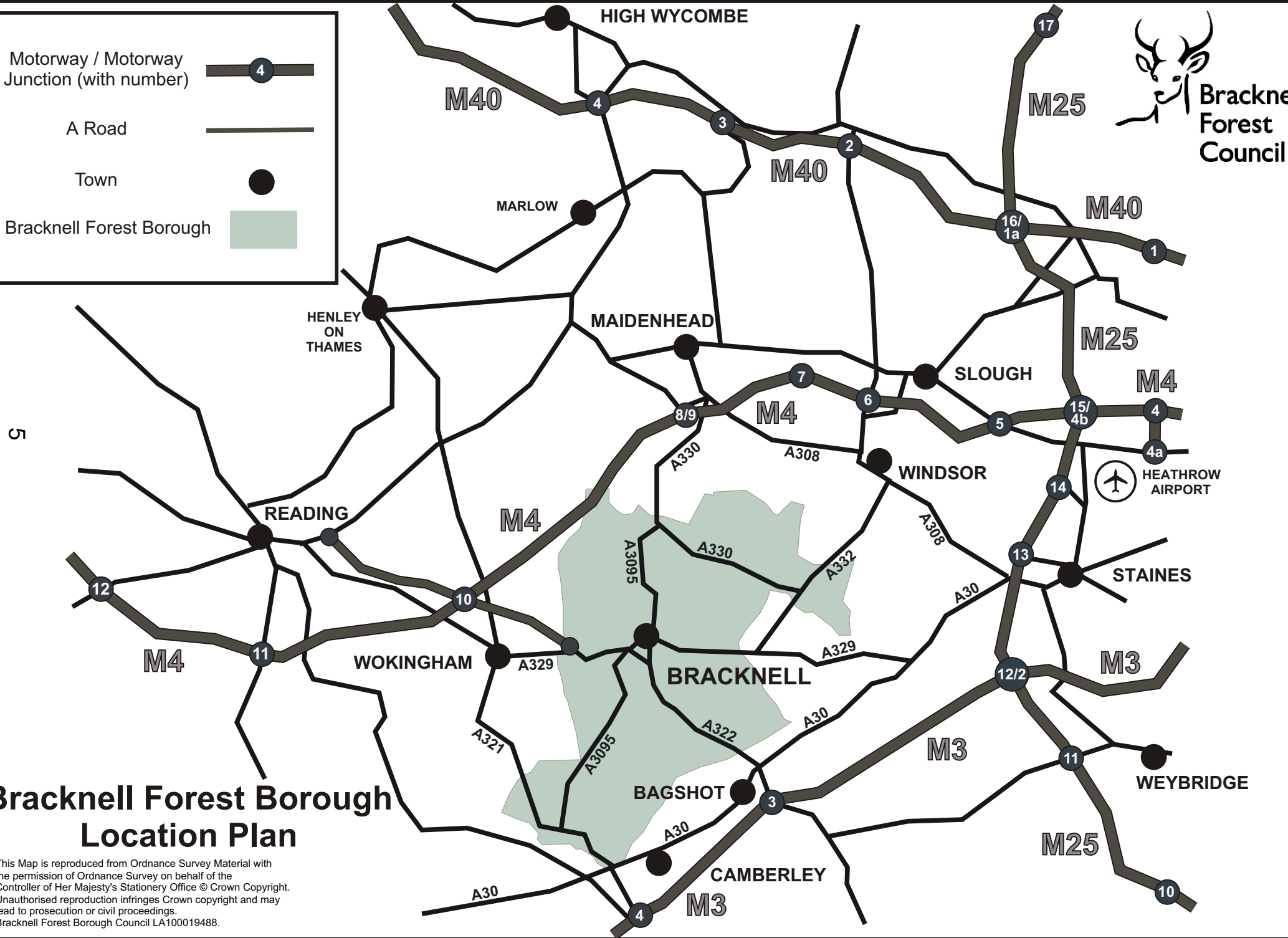
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Motorway / Motorway Junction (with number) 

A Road 

Town 

Bracknell Forest Borough 



Bracknell Forest Borough Location Plan

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INFORMATION AND THE PROCEDURE FOR HEARINGS OF THE LICENSING PANEL

The following document provides information and outlines the procedure taken for hearings by the Licensing Panel, when considering applications.

1. REQUIREMENTS FOR THE HEARING

- 1.1 The applicant will normally be required to attend the meeting in person. They will be entitled to be represented by a solicitor or counsel or by any other individual provided that the name of any such person is given to the Licensing Officer 48 hours in advance of the hearing.
- 1.2 Written notification of the intended proceedings will be given to the applicant not less than ten clear working days before the meeting. This notification will give details of the procedure to be followed at the hearing and shall advise applicants of their right to be represented.
- 1.3 Any documents to be produced at the hearing by the Public Protection Partnership representative shall be sent so as to reach the applicant by no later than 48 hours before the hearing. A copy of these documents shall at the same time be given to Democratic Services to distribute to members of the Panel.
- 1.4 Any documents to be produced at the hearing by the applicant shall be sent to the Licensing Officer by no later than 48 hours before the hearing. A copy of these documents shall at the same time be sent to Democratic Services to distribute to members of the Panel.
- 1.5 At the discretion of the Panel any or all of the requirements set out in paragraphs 1.3 to 1.4 above may be waived, provided that the Panel is satisfied that the interests of the applicant or any objector have not been prejudiced.
- 1.6 Financial costs incurred by either party in the hearing must be met in full by those parties and no awards for costs will be made to either party regardless of the outcome of the hearing.
- 1.7 The public will be allowed access, except if "Confidential Information" as defined by Section 100A of the Local Government Act 1972 is likely to be disclosed (in which case the public must be excluded) or, if "Exempt Information" falling within Schedule 12A of the Local Government Act 1972 is likely to be disclosed in which case the Panel may decide to exclude the public.

2. ORDER OF THE HEARING

- 2.1 Hearings shall be conducted as follows:
 - (a) The Chairman will open the proceedings by stating the nature of the matter which is to be considered and will welcome the parties, introduce them and confirm the roles of those present.
 - (b) The Chairman will ask the officers to confirm whether or not the formal requirements in respect of the matter to be considered have been complied with.
 - (c) The applicant will be asked if there is any reason for the case to be adjourned. An adjournment will only normally be granted if unforeseeable circumstances can be demonstrated which would be prejudicial to a fair hearing if it was heard at that time.

- (d) The Chairman shall first call upon the Public Protection Partnership representative to put forward their case.
 - (e) If satisfied as to the formal requirements, the Panel will consider the merits of the application or proposed suspension/revocation and the report of the officer. The Panel may ask the Public Protection Partnership representative for clarification of any points.
 - (f) The applicant shall have an opportunity to put questions to the Public Protection Partnership representative.
 - (g) The Chairman will then invite (if any) interested parties who have made representations to speak. The Panel may ask interested parties questions and points of clarification.
 - (h) The Chairman will then invite the applicant or licence holder to make any representations.
 - (i) The Chairman, members of the Panel and the Public Protection Partnership representative may ask the applicant questions and points of clarification. Having heard the applicant's statement, any Responsible Authorities in attendance will be given the opportunity to respond.
 - (j) An opportunity shall be given to the Public Protection Partnership representative and the applicant, in that order, to sum up their case (but not to add any new facts).
 - (k) The Panel members, the representative from Legal Services and Clerk to the Panel shall withdraw. Officers present do not take part in the decision making but will provide legal and procedural advice and record the decision.
 - (l) The members of the Panel consider their decision. The applicant or his/her representative (if any) and any officer present is asked to remain in attendance and if any further clarification or information is required from the applicant or licence holder or any officer, this will be sought by the clerk.
- 2.2 The decision of the Panel shall be notified to the applicant and her/his representative (if any) within two working days following the meeting. In most cases, a verbal decision will be given on the day of the hearing.

3. ROLES OF THOSE AT THE HEARING

- 3.1 The Public Protection Partnership representative is present at the hearing to present the professional officer's case for refusal, suspension or revocation of street trading consent. They are also present to challenge points put forward by the applicant.
- 3.2 Members of the Panel are present to consider and determine an application, or to consider if consent should be suspended or revoked. In doing so, they will follow the above procedure.
- 3.3 The representative from Legal Services is present to provide legal and procedural advice to the members of the Panel and to assist in the clarification of any issues which might arise.
- 3.4 The representative from Democratic Services is present to provide procedural advice to members of the Panel and to record the decision.

Address for Correspondence:

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LICENSING PANEL 11 OCTOBER 2018

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 HATICE ANIL BUNKER, T/A A&A PLUS, BULL LANE, BRACKNELL

REVIEW OF STREET TRADING CONSENT

1 LEGAL

- 1.1. Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 contains provisions enabling local authorities to control street trading by designating streets as Licence Streets, Consent Streets or Prohibited Streets.
- 1.2 Street trading is only permitted on Licence or Consent Streets if the Council has given permission by way of a Licence or Consent. Permission cannot be given to trade in Prohibited Streets. Street trading is not controlled in streets that have not been designated by the Council.
- 1.3 The Council has designated all streets and any land within 150 metres of the highway within the Borough as Consent Streets.
- 1.4 The Council's policy for determination of Street Trading Consent applications is attached at **Annex A**.
- 1.5 Section 7(10) of schedule 4 of the above Act authorises the Licensing Authority to revoke a consent at any time.

2 BACKGROUND

- 2.1 A street trading consent has been held by Hatice Anil Bunker for trading on Bull Lane, Bracknell, since 3 October 2017. The pitch is known as A&A Plus.
- 2.2 The consent was renewed in November 2017 and May 2018, with the current consent running to 1 November 2018. A copy of the current consent and conditions are attached at **Annex B**. A map showing the location of the trading site is attached at **Annex C**.
- 2.3 An application was made in January 2018 for a premises licence to authorise late night refreshment under the Licensing Act 2003 until midnight Sunday to Thursday, and until 1am Friday and Saturday. This application was refused by a panel of the Licensing & Safety Committee in February 2018 due to concerns over noise/public nuisance issues. A copy of the decision letter confirming that decision is attached at **Annex D**.

3 COMPLAINT RECEIVED

- 3.1 The licensing department has been in conversation with a local resident in relation to the trader since the consent was first granted in October 2017, with the resident alleging disturbance as a result of the activities of the trader known as A&A Plus. The complainant was advised to keep diary sheets detailing the disturbances so their nature could be identified.

- 3.2 Subsequently the resident attended a meeting at the Council offices on 5 July 2018 along with their local Ward Member, to discuss the trader and what steps could be taken to resolve the disturbances that have been alleged.
- 3.3 Thereafter a letter was received from the resident, detailing the disturbances and supplying diary sheets. A copy of this letter is attached at **Annex E**.
- 3.4 Diary sheets showing the nature, dates and times of disturbances are attached at **Annex F**. These diaries cover the period 13 May 2018 to 21 August 2018.
- 3.5 The evidence supplied has led officers to question the continued suitability of this site for street trading, and therefore this hearing has been arranged to determine whether the street trading consent shall be revoked.

4 CONSULTATION

- 4.1 Further to the receipt of the letter mentioned at section 3.3, a consultation was carried out, with the bodies mentioned at section 2.2 of the Council's policy. This consultation took place between 23 July 2018 and 20 August 2018.
- 4.2 One further representation was received during this period, also from a local resident. A copy of this representation is attached at **Annex G**.

5 SUPPORTING EVIDENCE

- 5.1 In addition to the diary sheets, the resident has recorded video evidence capturing examples of the issues they have encountered. Whilst the clips cannot be attached as annexes, they will be circulated to the panel and the consent holder in advance of the hearing.

6 COMMITTEE OPTIONS

- 6.1 Under paragraph 7(10) of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, the Council may revoke a consent at any time. Therefore, the Panel have total discretion on whether the consent shall be revoked, or not. Should the Panel determine not to revoke the consent, additional conditions may be imposed should the Panel deem them to be required to mitigate any issues that arise from the siting of the trader.
- 6.2 There is no statutory right of appeal against the Council's decision, whether that decision is to revoke, or not to revoke, the consent. Any decision could be the subject of a judicial review which would result in legal fees to defend the review and further costs which we would seek to recover if the review was unsuccessful. In the event of a successful review the Council may also have to pay the other party's costs.

Background Papers

Local Government (Miscellaneous Provisions) Act 1982

Contact for further information

Mr Charlie Fletcher

01344 352000, charlie.fletcher@bracknell-forest.gov.uk

**BRACKNELL FOREST COUNCIL
POLICY FOR DETERMINATION OF STREET TRADING CONSENTS**

1. Guiding Principle

- 1.1 Street Trading Consents are a means of enabling street trading to take place on or near a highway where it is appropriate to do so.
- 1.2 In determining appropriateness, officers are to have due regard to, in particular (but not at the exclusion of others), the following either individually or collectively:
- (i) the likely impact on the existing highway users either as a result of the use of the road by the trader or by the trader's customers
 - (ii) the location relative to any residents or businesses likely to be affected by the use of the site
 - (iii) the nature of the trade
 - (iv) the trading times
 - (v) appearance
 - (vi) impact upon street scene
- 1.3 Clearly there can be a location "suitable" for use at night but not during the day for example. Some traders are by their nature more likely to give rise to odours than others. Sites close to residential or office blocks are more likely to be sensitive sites because of the visual and potential nuisance impact.
- 1.4 In order to avoid any one trader developing a monopoly, the maximum number of Consents that a trader or business shall be able to use at any one time in the Borough of Bracknell Forest shall be three.

2. Officer Role

- 2.1 The role of the licensing officer is to make an initial assessment of the potential suitability of the site.
- 2.2 Only if officers are of the opinion as regards the potential suitability of the site, they should consult as follows (**NB see also the requirements for the Town Centre in section 4**).

(i) Highways Network Management	The likely impact upon the highway both in respect of the use and the customers.
(ii) Development Control	The considered view as regards the visual impact upon the street scene.
(iii) Environmental Health (Commercial and Environmental Protection)	The suitability of the vehicle/stall/trader and any likely environmental impacts on other nearby land users
(iv) Ward Members	An informal view as regards the likely impact of the proposed use upon the local community (not required for the Town Centre)
(v) Thames Valley Police	The likely impact upon the road network, and the local community.

- 2.3 Upon receipt of any representations/expiry of the deadline for responses, officers must make a reasoned decision as to the way forward.
- 2.4 In the event that following consultation the application is refused or deemed withdrawn by officers, a sum of 50% of the application fee is payable as a refund.

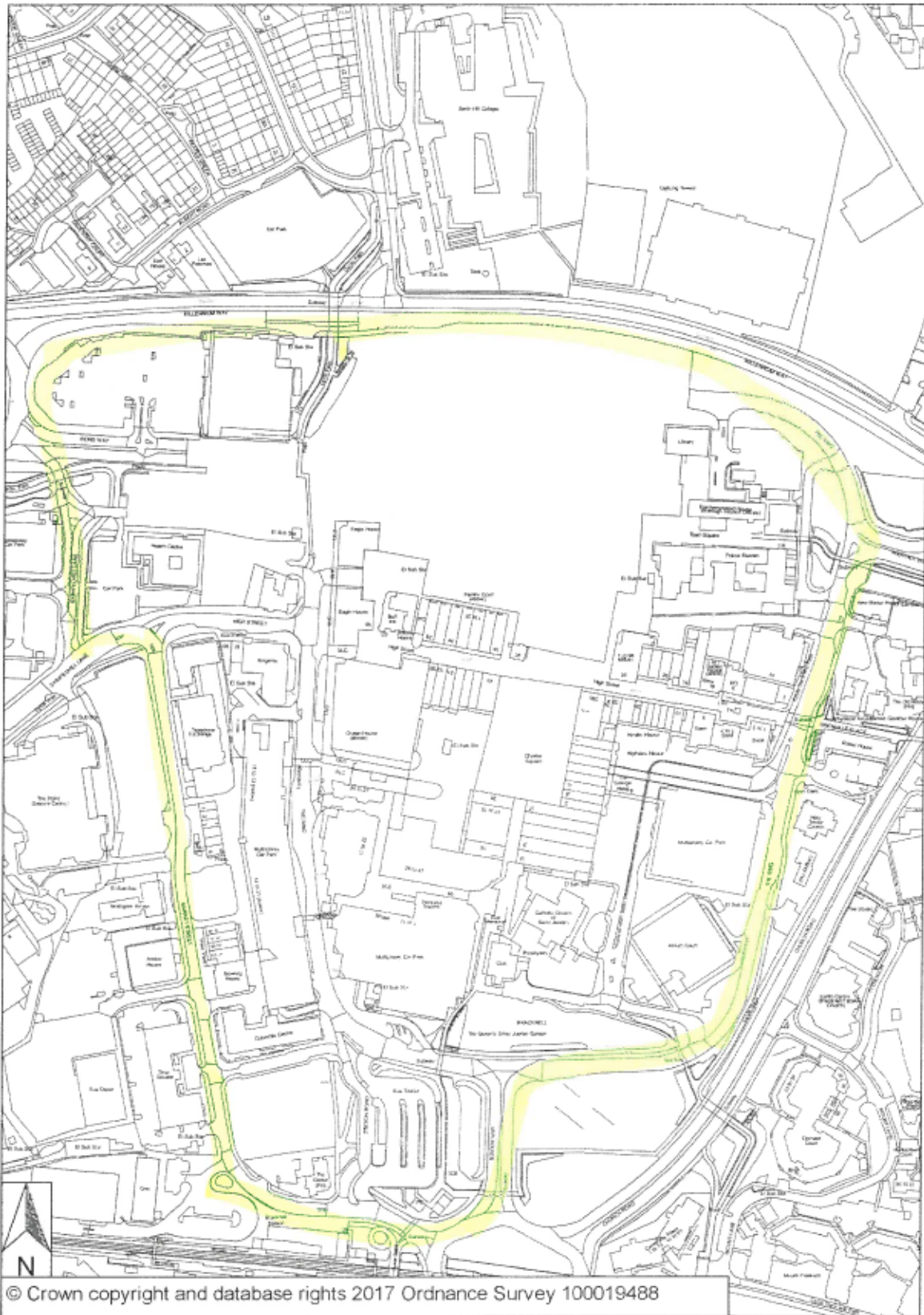
3. Trial Period and Appeals

- 3.1 The maximum period for a new site is one month. This enables the opportunity for review. Should the need arise during the trial, the Consent should be revoked and a pro-rata refund made to the Consent holder.
- 3.2 Where an officer is minded to refuse or revoke a Consent, it will be normal practice for the Consent holder/applicant to be advised and given the option for the matter to be determined by a Licensing Panel. Appeals shall be lodged within 14 days of notice otherwise the application shall be deemed withdrawn.
- 3.3 Where an appeal is lodged the appellant has a right to continue to trade as long as the appropriate fee has been paid for the trading period. This does not apply in respect of an application for a new Consent. If the application is refused by a Panel, no refund of the application fee is payable.
- 3.4 Where the need arises then the Council will consider seeking injunctions to stop unlawful trading.

4. Town Centre

- 4.1 The general presumption is **against** granting Consents within the Lexicon, Town Centre or on any of the adjoining road or public spaces (as per the attached plan).
- 4.2 Should an application be made it will need to be considered as above but in addition, the Town Centre Management Group must be consulted, regardless of land ownership.
- 4.3 The expectation in dealing with enquiries for street trading in the town centre is that the stall and the nature of trade gives added value to the total trading environment.

As revised and agreed by the Bracknell Forest Borough Council Licensing and Safety Committee
– Thursday 13th July 2017



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Consent No:LI/18/00453/STTRAD

STREET TRADING CONSENT

This Consent has been granted by Bracknell Forest Borough Council in pursuance of the provisions of the Local Government (Miscellaneous Provisions) Act 1982, Part III, Schedule 4, Paragraph 7 to:

Mrs Hatice Anil Bunker, trading as A+A Plus

to trade within the consent street at the location shown on the attached plan only:

Bull Lane (opposite Wickhill Car Park), Bracknell

Trading is only permitted during the following times:

Monday to Sunday from 17:00 – 23:00

The registered vehicle shall arrive no more than 15 minutes prior to the start of the permitted trading time, and vacate the site no later than 15 minutes after the end of the permitted trading time.

This Consent is in respect of the following vehicle:

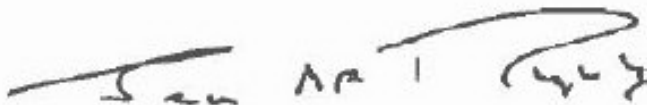
Van Registration: AT57 EOP

This Consent authorises the sale of the following goods only:

Kebabs, Chips, Burgers, Chicken, Sausages & Cold Drink

This Consent is subject to the attached conditions and shall, unless cancelled or revoked in the meantime, continue in force from 04.05.2018 to 01.11.2018.

This Consent must be displayed on the vehicle during trading.



.....
For Chief Officer: Environment and Public Protection
Date: 8th May 2018

**BRACKNELL FOREST BOROUGH COUNCIL
STREET TRADING CONSENT - STANDARD CONDITIONS**

Local Government (Miscellaneous Provisions) Act 1982

"The Council" means the Bracknell Forest Borough Council.

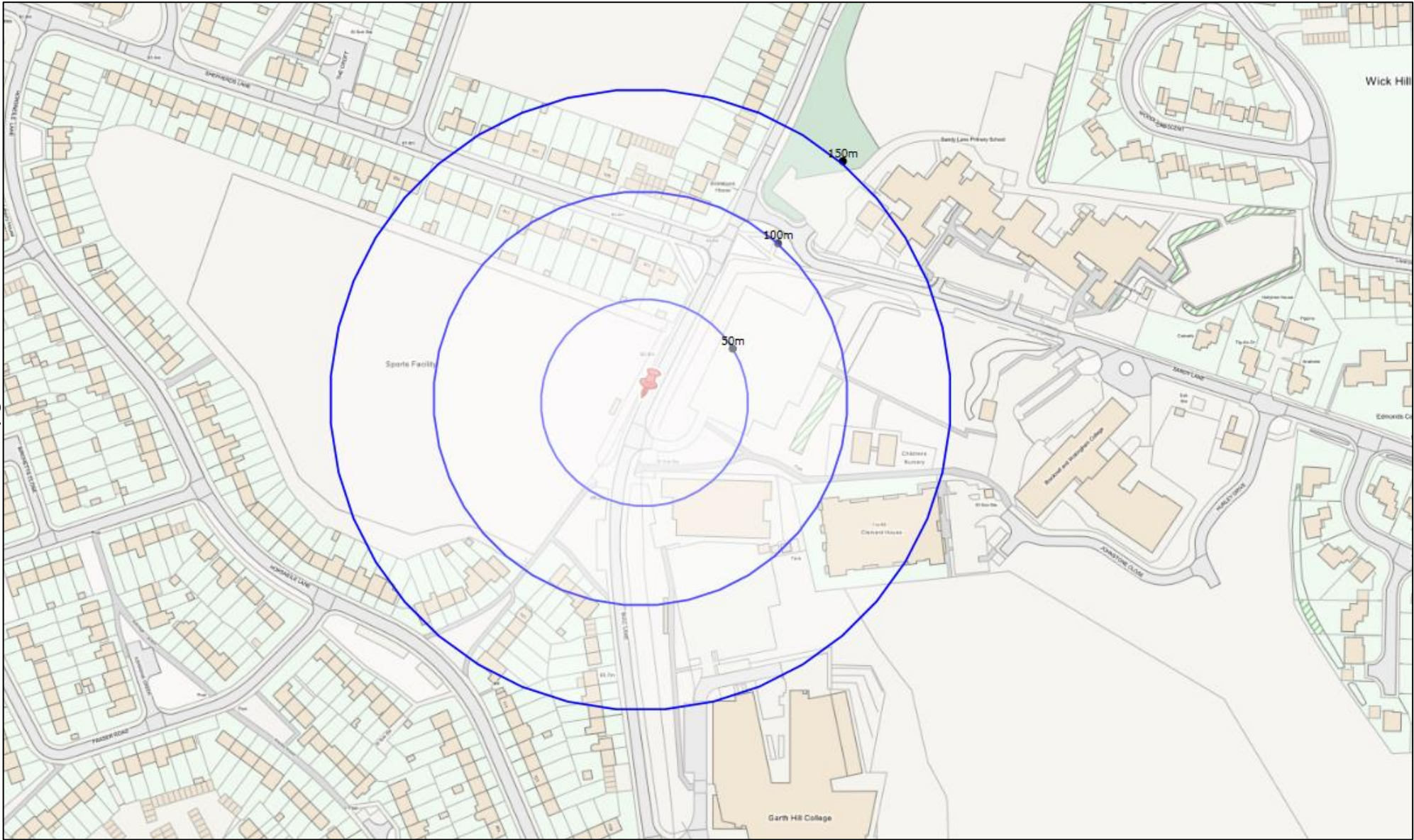
"Assistant" means any person working at the street trading vehicle, stall or trailer.

The following conditions apply in respect of all Street Trading Consents granted by the Council. The Council reserves the right to vary or modify these conditions or apply new conditions from time to time as it may in its absolute discretion think fit. The granting of a Consent does not imply approval under any other legislation or activity controlled by the Council.

- 1) These "Standard Conditions" may be supplemented or varied by any "Special Conditions" relating to a particular location as issued with the Consent.
- 2) At all times the Consent Holder and/or any Assistant shall comply with all statutes, statutory instruments and byelaws currently in force.
- 3) On land other than the highway, the permission of the landowner and any necessary Planning Permission shall have been obtained. Confirmation of such shall be provided to the Council prior to the commencement of trading.
- 4) The type, colour and dimensions of any vehicle, stall, trailer, cart or similar to be used under any Consent will be subject to approval by the Council. No change of any approved stall/vehicle or similar is permitted without prior agreement, in writing, from the Council.
- 5) The Consent Holder shall ensure that the stall/vehicle is positioned only on the Consent pitch of the Consent Street for which the Consent is held. The Consent pitch may only be changed mid-term of any Consent period with the agreement of the Council.
- 6) Whilst the granting of a Consent is specific to a particular location, the Council reserves the right to vary the same at any time.
- 7) If a Consent Holder or Assistant is requested to remove or reposition the stall/vehicle by a Council Officer or Police Officer he/she shall immediately comply with that request.
- 8) The hours of trading shall be only within the times specified on the Consent.
- 9) The Consent only specifies those hours during which trading may take place provided that all other legal requirements are satisfied. The Consent does not confer the right to station the stall/vehicle on the Consent pitch at any particular time(s).
- 10) A readily identifiable name shall be conspicuously displayed on the stall/vehicle.
- 11) A copy of the Consent shall be displayed conspicuously on the stall/vehicle and a copy of the "Standard Conditions" and any "Special Conditions" which apply to that Consent shall be carried by whoever is operating the stall/vehicle when trading and shall be produced when requested by any officer of the Council or a Police Officer.
- 12) The Consent Holder shall have and maintain a valid insurance policy against public liability and third party risks. The minimum insurance cover shall be £1,000,000 and shall include cover for any risks arising from the use of the Consent Holder's vehicle, or stall and any additional equipment under his/her control such as generators, etc.
- 13) The Consent Holder may terminate the Consent by written notice to the Council. A refund of the fee will be payable on pro-rata basis calculated to the nearest full week but the Council shall be entitled to retain the first £50 of any fee to be returned to cover administration costs. No refunds are payable if a Consent is suspended or revoked.
- 14) The Consent is personal to the Consent Holder and is not transferable except in the case of the death of the Consent Holder when the Consent may be transferred, by agreement with the Council, to a member of the Consent Holder's immediate family.

- 15) The fee for a Consent shall be paid in advance. Failure to renew the consent prior to the expiry date may lead to a Consent for the pitch being issued to another applicant.
- 16) The Consent Holder and/or any Assistant shall not sell or offer or expose for sale any goods or articles other than those described within the terms of the Consent.
- 17) The Consent Holder shall not place any advertising signs, boards or notices within the area for which the Consent Holder holds a Consent.
- 18) The Consent Holder, any Assistant or their business shall not be the cause of any nuisance or undue disturbance to any other user of the highway, or the occupier of any land or building.
- 19) The Consent Holder and/or any Assistant shall, on all occasions when carrying on business, conduct themselves in a civil and orderly manner.
- 20) The Consent Holder's stall/vehicle shall be kept in a clean, safe and well maintained condition.
- 21) No waste water or other waste material shall be discharged on to the highway or any adjacent property.
- 22) At least one refuse container shall be provided by the Consent Holder and placed on the pavement near to the stall/vehicle and be available for use by customers. A notice shall also be displayed requesting customers to deposit litter in a waste container.
- 23) The Consent Holder shall ensure that all waste produced, including waste oil, is disposed of in accordance with the Duty of Care under the Environmental Protection Act 1990. All waste must be disposed of via a Licensed Waste Carrier or direct to a Licensed Waste Disposal facility, and records must be retained for at least 2 years.
- 24) The Consent Holder shall ensure that the immediate area in the vicinity of the stall/vehicle is kept clear at all times of all litter originating from their trade and from customers and in particular, shall leave the site clear of such refuse at the completion of trading.
- 25) Adequate precautions shall be taken by the Consent Holder to prevent the risk of an outbreak of fire at the stall/vehicle. Where a power source or heating appliance is present, e.g. a generator or bottled gas container, then a suitable fire extinguisher shall be provided.
- 26) The Consent Holder shall ensure that all heat generating equipment is not operational during any vehicle movements, and the fuel supply to such equipment is switched off at the source. During movement, operation and storage all gas cylinders will be restrained in an upright position within a locked compartment which is ventilated at both high and low levels. The compartment will be clearly labelled "Extremely Flammable LPG" and will provide a minimum of 30 minute fire resistance.'
- 27) All persons handling food shall have a basic food hygiene certificate. It is recommended that refresher training is attended every 3 years. Where an officer authorised under the Food Safety Act 1990 is of the view that a staff member is demonstrating a level of knowledge or competence below the required level that person may be required to attend a basic food hygiene course. Failure to comply with this requirement within a reasonable period will result in a breach of this condition.
- 28) If the Consent Holder is selling food or drink the stall/vehicle shall be registered with the local authority where it is normally kept under the provisions of the Food Premises (Registration) Regulations 1991.
- 29) If a Consent Holder fails to comply with any of the "Standard Conditions" or "Special Conditions" attached to the Consent he/she will risk having the Consent revoked and being prosecuted.

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Location of A&A Plus, Bull Lane, Bracknell

Date: 28/09/2018

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Mrs H A Bunker
[REDACTED]

Date 23 February 2018

Dear Mrs Bunker,

Licensing Panel Decision: A&A Plus, Bull Lane, Bracknell

Following the hearing of the application for a New Premises Licence in respect of the above premises by the Licensing Panel on 21 February 2018, I write to formally advise you of the Panel's decision.

The Panel carefully considered all the information presented, both written and oral, from:

- the Licensing Officer who outlined the issues;
- the Applicant,
- the Interested Parties, including the interested parties who submitted written representations but did not attend. The panel also filtered out the irrelevant parts of the written representations as indicated they should by the presenting Licensing Officer and those were disregarded.

The Panel considered the reference to the appropriate Licensing Objectives, the Council's own Licensing Policy and the Secretary of State's guidance. At the conclusion of the proceedings all participants present confirmed that they had been given the opportunity to say all they wished to say.

The Panel noted that there had been no representations made by the Police, or any of the other Responsible Authorities. The Panel bore in mind the promotion of the four licensing objectives, the relevant objectives in this case being the potential for noise and smell nuisance in a residential area. These come under the specific heading of prevention of public nuisance. The Panel also considered crime and disorder but concluded that there was no link between the street trading activities of the applicant and crime and disorder. There may well be crime and disorder in the area but it was not directly attributable to the street trading by Mrs Bunker.

The Panel decided that granting the licence would have an adverse impact on the promotion of the licensing objectives, in particular the public nuisance associated with the smell from cooking and noise nuisance associated with the current street trading activities. As there was unacceptable noise levels already existing the Panel saw no way that by allowing trading under premises licence and late night refreshment, it would be anything other than extending the noise later into the night. The Licensing Panel agreed that they would not grant the New Premises Licence or allow the late night refreshment activity in Bull Lane.

Reasons

The Panel heard the account of residents and objectors, and were convinced that there was an existing noise nuisance caused by the premises through both the generator and noise of cars and people using the premises. The Panel found that people pulling up, waiting and pulling away again after they had collected their order was already a cause of noise nuisance in a residential area. Even though a new generator had been purchased on the 16 February 2018, the Panel felt that not enough time had been given for the residents to identify whether this made a difference to the noise or not. In any event the panel concluded that the cause of noise was from a number of sources: cars, people talking and the noise from the generator. The panel heard representations about the purchase of a Honda generator. However, that was only purchased after the applicant had made their application for a premises licence and late night refreshment and after objections to the application had been received. The Applicant should have recognised the noise it generated and showed insensitivity to the noise given that she has been trading in a residential area since October 2017.

The way the evidence of noise was presented was not convincing. The applicant had provided the panel with You Tube videos of the noise. However, those are taken in the open air or from a parked vehicle. Such a method does not recognise that in the evening the ambient background noise level reduces and for people in their homes and particularly children who go to bed well before 11pm external noise is heightened and becomes more acute and disruptive than to people out in the community, where the recordings were taken.

It was also the view of the Panel that there should be no presumption that people should tolerate noise of any level up until 11pm. Early risers, school children and people who have to get up for work are entitled to quiet enjoyment of their homes at all times. The Panel saw written evidence that people could not get to sleep until the trading ceased. It was the opinion of the panel that the current place of trading poses a real conflict between the business activities of the applicant and the rights of the residents in a residential area to have quiet enjoyment of their homes. Had this been a contested street trading application it is possible that it would not have been granted by this Panel. This was not a reflection on the Applicant, who the Panel believe will do all she can to reduce disturbance to residents. However it was very difficult to set up a street trading concern in a residential area which trades in the evening and up until an hour before midnight without disturbing the quiet enjoyment of the local residents homes.

The Panel also believed that there was a strong smell of food cooking coming from premise, as the premises was in a residential area this was deterring residents nearby from having their windows or doors open. The Panel agreed that the noise nuisance and food smell would be exacerbated by extending the opening hours of the premises due to its residential location. The Panel did question the granting of the licence, leaving it to residents to possibly call a review.

However, the Panel felt there was already existing clear evidence that the trader who had been trading under a street trading consent since October 2017 was already causing noise nuisance and public nuisance due to the smell of cooking. By granting a Licensing Act Premises Licence to provide late night refreshments would only exacerbate an already existing public nuisance and the only reasonable decision was to refuse the licence.

The Panel considered the issue of litter nearby but were not convinced that this was entirely as a result of the Premises. Issues regarding Anti Social Behaviour were raised in the written and oral submissions by the interested parties, but the Panel felt that this was also not directly linked to the premises. Also no representations had been received by the Police with regards to this or any of the four licensing objectives.

RESOURCES

- 2 -

In summary the Panel were convinced that an already existing noise and smell nuisance problem would be exacerbated by the extension of opening hours at A&A Plus, Bull Lane. Full reasons have been set out above.

The Panel's decision is binding upon you and the Licensing Authority. If you are dissatisfied with the decision of the Licensing Panel in this case, you may appeal against the decision to the Reading Magistrates Court who process all applications for the East Berkshire area.

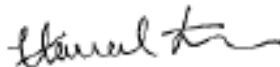
The address for the administrative office for issuing appeals for the Berkshire Court is:

Reading Magistrates Court
Civic Centre
Castle Street
Reading
Berkshire
RG1 7TQ

The appeal must be lodged within 21 days from the date on which you were notified by the Licensing Authority of its decision in writing. Under the rules we calculate that your 21 days runs from Friday 23rd of February 2018. There is a fee to accompany the appeal and the licensing authority will only accept an appeal as lodged, once evidence is provided by you or your representative that both the appeal papers have been lodged with the court by the due date and the Court issue fee has been paid in full.

If you have any questions, please do not hesitate to contact me.

Yours sincerely



Hannah Stevenson
Democratic Services Officer
For Head of Democratic and Registration Services
01344 352308
Email: Hannah.stevenson@bracknell-forest.gov.uk

cc: Interested Parties

Charlie Fletcher, Licensing Officer, Bracknell Forest Council

Councillor Allen
Councillor Brossard
Councillor Mrs McKenzie

RESOURCES

- 3 -

Bracknell Forest Council, Easthampstead House, Town Square, Bracknell RG12 1AQ
T: 01344 352000 F: 01344 353251 Minicom: 01344 352045 www.bracknell-forest.gov.uk

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Charlie Fletcher
Licensing Officer
Bracknell Forest Council

████████████████████
██████████ Shepherds Lane
Bracknell
RG42 ██████████

19th July 2018

Dear Charlie

Further to our meeting with yourself and Tina McKenzie-Boyle on 5th July 2018 we would like to formally request that the street trader A&A Plus Kebabs who have been granted a Street Trading Consent to trade along Bull Lane in Bracknell have their Consent revoked and removed from this location. The reasons for this being:

1. Constant disturbances every day from noisy customers. This being in the form of loud conversations and raucous laughing whilst ordering and waiting for their food orders. Customers have to shout to be heard above the trader's generator. The traders themselves can also be heard conversing with each other in irate argumentative shouting including late at night which we believe would contravene Street Trading Consent point 19). On one occasion the trader's family, children, possibly having been brought to the van by another family member, were witnessed screaming and shouting at 22.40 hrs again we believe contravening Street Trading Consent point 19).
2. Constant disturbance every day of cars coming and going banging their doors and on numerous occasions car horns being sounded on departure or passing by the trader directed at customers waiting at the van.
3. Constant disturbances from the trader's fridge/cupboard doors being banged shut and the banging of cooking utensils on the hotplate whilst preparing food orders. Constant smell of nauseating greasy cooking smells throughout their trading time 17.00-23.00 hrs. When packing up for departure at 23.00 hrs, and later on a regular basis, all doors are banged shut to secure the van creating a disturbance late at night.
4. In the Street Trading Consent regarding location we believe Bracknell Forest Borough Council have made a serious oversight regarding this trader. The Consent states *trading as A&A Plus to trade within the consent street at the location shown on the attached plan only: Bull Lane (opposite Wick Hill Car Park) Bracknell*. The oversight is that the parking bay in which this trader pitches extends along the full length of the car park which is parallel to our property. The trader already regularly pitches up closer and closer to our property due to parked cars in the parking bay. The Consent effectively gives them the freedom to pitch up anywhere in the parking bay opposite the car park right alongside our house/garden. The trader has no respect for our privacy or the noise nuisance their trading encourages. We regularly witness them leaving after 23.15 around 23.20/23.25 after making a lot of noise banging the vans serving hatch/doors. The generator can also be heard and when shutting it

down causes a loud whistling sound. This we believe effectively breaks the Street Trading Consent in point 18).

Due to the constant disturbances every day we cannot sit and relax in our garden without listening to customers and traders raising their voices to converse with each other. The constant banging of cupboard/fridge doors and cooking utensils banging is annoying and unsettling. There have been groups of youngsters at the trader late in the evening using foul language which is threatening especially as they leave the trader passing our property. Some are obviously drunk due to the language and the shouting.

We are regularly forced indoors due to the noise and smell of cooking. Laundry has to be taken indoors before 17.00hrs or all our clean clothes will smell of greasy food. The noise is intensified in our bedroom and bathroom. Unless we close our windows and doors our whole house is flooded with nauseating greasy cooking smells.

We have invested a lot in our house and our garden but now feel from 17.00-23.00 hrs we are denied the enjoyment of our own home. We cannot relax or feel at peace due to the constant disturbances.

We have also had a bag of food thrown on our lower roof for which we have photographs and is highly likely to be the produce from the trader. We have never experienced this prior to the trader being in Bull Lane and will inevitably encourage unwanted vermin.

We understand that the trader selected the site along Bull Lane with little regard as to the proximity to our house and their only concern being to maximise trade. The Council also exercised little regard for us as residents when granting the Street Trading Consent which we would also like to add was granted without any consultation with residents. The trader may argue that they have a large following of customers which is great but the customers all walk/drive away off home but we have to endure these disturbances every day for six hours, or more!

We have completed a lengthy Nuisance Record Form and examples of these disturbances have been recorded and will be submitted as evidence if/when required to do so.

Also, of note the traders request to extend their New Premises Licence for late night trading 23.00-01.00 hrs was revoked earlier this year 23/2/2018. Within the letter revoking this licence *the Panel bore in mind the promotion of the four licensing objectives, the relevant objectives being the potential for noise and smell nuisance in a residential area* . The Panel went on to state *that granting this licence would have an adverse impact on the promotion of the licensing objectives, in particular the public nuisance associated with the smell from cooking and noise nuisance associated with the current street trading activities.* The Panel also stated *that as there was unacceptable noise levels already existing the Panel saw no way that by allowing trading it would be anything other than extending the noise later into the night.* This statement acknowledges that the level of public nuisance associated with this trader already existed and given the Nuisance Record Form and recorded evidence we feel this is proof enough that the Consent in its entirety should now be revoked and the trader moved to a more appropriate site away from residential housing. The proximity of this trader is actually within 50 metres, and less on a regular basis, from our property

and the cooking smell and noise nuisance then has an even more devastating impact on our daily lives.

The judgements given under Reasons within this letter outlines exactly why this Consent should not have been given in the first place.

Following our meeting on 5th July 2018 we understand that with the receipt of our letter of complaint a Panel will be convened to review these issues and the Consent granted by the Council for A&A Plus Kebabs to trade in Bull Lane given the high level of disturbances and close proximity to our property. We understand that due to the timescale involved organising such a meeting and due to members availability, this may take some weeks to organise. In the mean time we will continue to record the disturbances for evidence.

Yours sincerely

A solid black rectangular box used to redact the signature of the sender.

Copy: Mrs Tina McKenzie-Boyle

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NUISANCE RECORD FORM



You have been supplied with this form in connection with a nuisance investigation by the Council in order to gather precise details about the effects on you. The form should normally be completed over a period of not less than 14 consecutive days. It must be truthful and accurate. It could be referred to in any subsequent legal proceedings.

The notes are only to relate to the instances when you feel that there is an **unreasonable and substantial interference** with property, or its use or enjoyment. If during the period there are days where there is no such interference, this should also be noted. When completing this form, any continuation sheets and any other information should be returned to the address on the headed paper attached.

Your name:

Address:

Tel numbers: Work:

Address to which the complaint refers: 45 BULL LANE

Premises Name: A&A PLUS KEBABS

Date	Time began	Time ended	Details of the activity	Comments (eg: effect, severity etc)	Initials
13/5/2018	17.00	22.40	Overwhelming smell of nauseating greasy cooking smells on and off all night filling our garden and house. Raised voices of customers trying to have a conversation/order food due to the noise of the generator	Had to stay in doors and shut the windows. Denied enjoying the evening air.	JLC
18/5/2018		23.25	Trader still on premises packing/packed up	Came home and passed them still parked in their trading position at 23.25	JLC/GC
22/5/2018	17.00	22.30	Nauseating smell of greasy cooking on and off all evening. Tried to sit outside in our garden but could hear every conversation of customers along with banging of fridge/cupboard doors. Passing cars sounded their horns on two occasions.	Sat outside on and off during quiet periods which never last for long.	JLC/GC
1/6/2018	17.00	22.45	Had to shut all windows due to nauseating greasy cooking smells on and off all night which flooded our lounge even with the doors shut. When we briefly sat out in our garden we had to go back indoors due to the noise of raised voices	Struggled to smell our own meal and by the end of the evening we both felt nauseous from the awful smell of greasy cooking.	JLC/GC

			chatting to vendors as they have to shout above the sound of the generator		
10/6/2018	21.30	22.15	Group of lads all raising voices swearing and laughing, very unpleasant. Cars passing sounding horns (on two occasions) as they most probably new the customers. (Video evidence)	Felt threatened and vulnerable as we didn't know what would happen when they all passed our fence. They carried on shouting when they left the trader.	JLC/G C
11/6/2018	21.40	21.55	Rowdy conversations (video taken) passed our fence shouting obviously drunk. (Video evidence)	Felt threatened and vulnerable.	JLC/G C
11/6/2018	22.00	22.25	Rowdy conversations (see video) of group of lads playing own music. Raised voices whilst ordering food and talking to each other. Walked passed our fence music still playing.	Felt threatened and very unhappy sitting in the garden.	JLC/G C
13/6/18	22.30		Car horn sounds as passing trader and customers.	In garden. Very annoying	JLC/G C

I certify that all the information above is a true record of events witnessed by me.

Signed: ..

Date: ...5/7/18.....

✓

Date	Time began	Time ended	Details of the activity	Comments (eg: effect, severity etc)	Initials
14/6/2018	17.45		Car horn passing trader and customers	In garden. Very annoying	JLC/G C
16/06/2018			Witnessed trader had moved closer to our property by approximately three cars length (see pictures)	Noise and cooking smells intensified due to close proximity.	JLC/G C
18/06/2018	21.25, 21.50	22.25	Raised voices ordering food and chatting. Video evidence	No peace. Constant raised voices, laughing and at times screaming	JLC/G C
19/06/2018	21.20		Couldn't sit in garden due to nauseating greasy cooking smells plus the trader was parked closer to our property by one car space. See picture	Not able to sit and enjoy the night air. We are being denied our right to enjoy our own space	JLC/G C
20/06/2018	19.55, 21.00, 22.25		Car horns sounded each time as passing trader & customers	Very annoying.	JLC/G C
	20.15		Loud conversation with trader and ordering food.	No peace. Can't enjoy the evening.	JLC/G C
21/06/2018	18.00 and 19.00		Raised voices with trader and ordering food. To add to all of this there was antisocial activities in the car park with a moped/motorbike racing round with raised voices (video evidence of both trader and antisocial behaviour).	Very unsettling, couldn't relax. Feeling very depressed we can't enjoy one evening of relative peace.	JLC/G C
26/06/2018	20.15		Trader had moved one car space closer to our property. Traders in their work vans visiting on way home to get food. Cars/Vans coming and going, vehicle doors banging. Video evidence	Increased noise of raised voices and car/van doors banging and cars/vans arriving and leaving. No peace.	JLC/G C
28/6/2018	17.10		Car horn sounds on three separate occasions as they passed the trader/customers. Video evidence of noise but not car horns.	Very annoying. Can't relax, so noisy	JLC/G C
			When traders pack up they bang cupboard/fridge, counter doors.	Very loud as this happens after 23.00hrs every night	JLC/G C

				and quite often after 11.15.	
31/03 /2018	21.32		Video from bedroom window of trader parked closer to our property having a very loud discussion with his colleague.	Annoying and disturbed us	JLC/G C
3/6, 24/6, 2/7,			Video evidence of numerous other evenings recording noise nuisance.		
			This being a street food trader these activities do not stop and will more than likely increase. They continue on a daily basis from 17.00 – 23.20. It was an ill-considered decision to decide to place this trader within 50 metres (and on many other occasions closer) of our property. This has interfered with and devastated our home life. As you can see from the incidents above and video evidence this trader is attracting more and more unsavoury customers.	WASHING HAS TO BE IN BEFORE 5-00PM OR SMELLS OF GREASEY COOKING.	
			Note: When looking up this trader on Google they have set up a very detailed (close up) aerial view of their location but it zooms into our property in great detail instead of their position. We were not consulted about this and strongly object to this being set up in this manner.		
4/7	18-30 6 21-30		TRADER RANTING AT WORK COLLEAGUE	TRYING ENJOY OUTDOOR MEAL WHICH WAS RUINED.	
"	22-30		CAR PASSES SOUNDS HORN SIX TIMES.	FURTHER ANNOYANCE WHILE OUTDOORS.	

I certify that all the information above is a true record of events witnessed by me.

Signed:

Date: 5/7/18,

NUISANCE RECORD FORM



You have been supplied with this form in connection with a nuisance investigation by the Council in order to gather precise details about the effects on you. The form should normally be completed over a period of not less than 14 consecutive days. It must be truthful and accurate. It could be referred to in any subsequent legal proceedings.

The notes are only to relate to the instances when you feel that there is an **unreasonable and substantial interference** with property, or its use or enjoyment. If during the period there are days where there is no such interference, this should also be noted. When completing this form, any continuation sheets and any other information should be returned to the address on the headed paper attached.

Your name:

Address:

Tel numbers: Home: Work:

Address to which the complaint refers: BULL LANE

Premises Name: A&A Plus Kebabs.....

Date	Time began	Time ended	Details of the activity	Comments (eg: effect, severity etc)	Initials
16/7	20.30		Loud conversation, could hear the noise from our bathroom and bedroom windows		
19/7	18.50 19.15 19.45 19.50 21.20 22.00 22.15 22.40 22.50	19.30	Car doors banging, loud conversation Loud conversation then car doors banging shut Loud conversation Loud conversation. Traders cupboard doors banging preparing food Strong unpleasant cooking smell Loud conversation Loud conversation Cupboard doors banging Loud conversation between traders in van and banging cupboard doors	Sitting in conservatory having our evening meal. Noise very disruptive to our enjoyment. Tried to sit in our garden but had to go indoors and shut the window as cooking smell was flooding the garden and house	
20/7	17.30 21.40	22.00	Overwhelming smell of cooking flooding the garden and house. Man having conversation with Trader but shouting to be heard over their generator or cooking.	Finally sat outside but mans voice really loud. Started to rain so went in doors.	
21/7	18.40 19.10 19.30 19.45 20.20		Loud conversation. Loud conversation Loud conversation Trader ranting at someone Loud conversation. Customer shouts see you later, car leaves and sounds horn once.	Loud conversation disturbing	

	20.49 21.10 21.40 21.45 22.01 22.32 22.48		Group of youngsters shouting between each other and ordering food. Witnessed this group passing our house with yellow polystyrene containers eating chips. Loud conversation Passing car sounds horn twice. Loud conversation and laughing. Loud conversation. Passing car sounds horn once. Loud conversation cupboard doors banging.	and car horn sounding made us jump. Example video sent to Charlie	
22/7	18.40 19.05 19.50 20.05 22.56	22.20	Loud conversation. Cooking utensils clacking. Loud conversation, car doors banging. Loud conversation, loud bang (cupboard door banging shut) Loud conversation, cupboard doors banging, clacking of cooking utensils. Cupboard doors banging.		
23/7	21.05 22.26 22.45	22.35	Passing car sounds horn three times Loud conversation and banging of cupboard doors. Cooking utensils clacking		
24/7	17.00 19.25 20.08 21.40 22.08		Passing car sounds horn Strong smell of cooking on and off all night. Passing car sounds horn twice Loud conversation Loud conversation		
25/7	17.00 22.35 22.45		Passing car sounds horn twice. Loud conversation Very loud conversation, smell of cooking and cupboard doors banging	Weather very hot and wanted to sit in garden but smell of cooking was overwhelming so went in doors. Sat outside late evening	
26/7	17.15 21.02 21.14 21.46 21.59 22.46		Smell of cooking. Loud conversation Smell of cooking – suffocating! Loud conversation and strong smell of cooking Passing car sounds horn once Loud conversation – customer said “you’re not allowed to close yet”. Cupboard doors banging		
28/7	17.10 20.25		Shouting which could be heard from our bedroom and bathroom windows. Loud conversation and raucous		

			laughing, strong cooking smells		
31/7	21.00		Strong smell of cooking on and off all night. Loud conversation		
1/8	17.00 17.08		Loud conversation Passing car sounds horn twice	House full of the smell of cooking – AWFUL!	
2/8	17.00 19.37 21.45 22.00 22.25	10.35	Car doors banging, loud conversation Passing car sounds horn Loud conversation and car doors banging Loud conversation, customer shouts "see you later", car doors bang and customer drives off Car pulls up with music playing loud, doors slam shut. Loud conversation and clacking of cooking utensils. Customer leaves, loud music starts, car doors slam and leaves.		
3/8	21.34 22.10 22.20 22.44		Car doors banging, loud conversation, cooking utensils clacking Loud bang from van (cupboard door ?) Loud conversation, cupboard doors banging Thumping and banging from van packing up		
4/8	15.20 20.55 22.45 23.01		Passing car sounds horn Loud conversation Loud conversation, clacking of cooking utensils Loud raucous conversation, customers left van shouting and laughing passed our fence	Very disruptive	
7/8	17.30 21.20 22.10 22.50		Customer shouting to someone else along the back of our fence asking them what they wanted to order. Smell of cooking. Passing car sounds horn once Very loud conversation, clacking of cooking utensils and banging cupboard doors Loud conversation from late customer!		
11/8	18.20		Strong smell of cooking on and off all night.	Smell of cooking flooded house and couldn't ventilate bathroom naturally as had to shut windows, worse on damp days	
12/8	18.00 21.30		Strong smell of cooking Strong smell of cooking	Had to shut conservatory doors and windows so we could eat our evening meal without the smell of greasy cooking. Very upsetting. Garden full of the smell	
14/8	20.50		Very loud conversation & laughing	Could be heard in our conservatory with just the roof vent open. Customers at	

				van very noisy with someone constantly bouncing a ball and then very noisy passing our fence	
19/8	18.50 22.00 22.14 22.40 22.52	22.30	Loud conversation Loud conversation, children in the van shouting, clacking of cooking utensils Loud conversation, children shouting and cupboard doors banging Loud conversation, clacking of cooking utensils Banging of cupboards	Customers often drive away from van, turn around at the junction of Shepherds Lane and come back past van to leave.	
20/8	17.00 21.20 22.00 22.47	17.30	Loud conversation Loud conversation Car pulls up by van, four car doors bang shut, customer is heard giving order and then starts shouting and swearing at someone. We gathered from this it was his friends leaving not wanting any food as when he left only one car door slammed and then he left. Cupboard doors banging	Example video sent to Charlie	
21/8	20.40 21.55 22.03 22.20 22.37 10.45		Loud conversation (shouting) Loud conversation, clacking of cooking utensils, Traders children shouting? (recognise voice) Cooking utensils clacking and child shouting Clacking of cooking utensils Loud conversation Loud conversation, clacking of cooking utensils		

PLEASE NOTE THAT COOKING SMELLS ARE CONSTANT BUT PARTICULARLY BAD WHEN LOGGED ON THIS DIARY SHEET. THIS IS NOT DEPENDENT ON WIND DIRECTION AS WIND SWIRLS AROUND THIS AREA SO NO RESPIRE FROM COOKING SMELLS AT ANY TIME.

Note: On 2/8 my husband and I met with Charlie Fletcher and Tina McKenzie-Boyle to discuss the noise and smell of cooking emanating from the A&A Plus Kebab van. We played an example of the noise disturbances through our sound bar which produced an accurate representation of the noise levels. Charlie then informed A&A Plus Kebabs of our complaint by letter. Sometime following receipt of this letter, my neighbour asked me if the Kebab van owner (Mrs Bunker) had spoken to us about cooking smells, which she had not. My neighbour said that Mrs Bunker had approached her whilst she was in her front garden asking if she had any complaints about the smell of cooking. My neighbour told us that she replied that she could not comment as she rarely sat in her garden. I have purposely not involved my neighbour at all in this matter as she is seriously ill and has more important things to worry about. However, I did wonder what would have happened had Mrs Bunker spoken to me.

I certify that all the information above is a true record of events witnessed by me.

Signed: Date: 17/9/2018

From: [REDACTED]
Sent: 14 August 2018 23:00
To: Charlie Fletcher
Subject: New complaint BULL lane street vendors

Dear Charlie, as promised please find my complaint- to date and post the extension refusal of the street trader. There was no noise until the generator noise started over 2 months ago! Now you can be clear this sounds like petroleum lawn mower. You would know this as I am sure by now that you have investigated the matter yourself! So the noise is effecting the neighbors too. Next the other issues include the narrowing of the lanes one lane taken over completely! This leads to near misses from both oncoming and outgoing traffic. The street vendor had attracted a lot of business which is good and this has included the police whom are seeking information and rest! Also this had attracted joy riders whom use the the old college nursery car park next to the parked street trader as a race track and this has added to the noise !! So we have drenching tyres and generators noice!! We have nothing against the street trader . We only ask if you relocate them perhaps down by the park or up sandy lane!! I thank you for looking into this matter it is gone beyond acceptable and something needs to be done. I mean this area had changed from being a quite residential ares to s boisterous street.

I have exhausted my efforts to date as we have to endure this noise and the added issues look forward to seeing them relocated this had to be actiioned ASAP kind regards
[REDACTED] bull lane bracknell rg42 [REDACTED] Berkshire

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