

Licensing Committee

Friday, 4th July, 2014

2.30 - 4.25 pm

Attendees	
Councillors:	Roger Whyborn (Chair), Diggory Seacome (Vice-Chair), Andrew Chard, Anne Regan, Wendy Flynn, Rob Reid, Pat Thornton, Jon Walklett and Adam Lillywhite
Also in attendance:	Vikki Fennell and Louis Krog

Minutes

1. APOLOGIES

Apologies were received from Councillor Garth Barnes.

2. DECLARATIONS OF INTEREST

None declared.

3. PUBLIC QUESTIONS

None received.

4. MINUTES OF MEETING HELD ON

Resolved that the minutes of the meeting held on 25 April 2014 be agreed and signed as a true record.

5. MINUTES OF SUB COMMITTEE MEETINGS

None.

6. APPLICATION TO PLACE AN OBJECT ON THE HIGHWAY - TABLE AND CHAIRS

Louis Krog, Licensing and Business Support Team Leader, introduced the report as circulated with the agenda. An application had been received from Mr Mannan in respect of Coffee& Co, 7 Montpellier Terrace, Cheltenham to place 4 tables and 8 chairs on the pavement directly outside the premises.

If granted the tables and chairs would be placed outside from 07.30 to 23.59 on Monday to Sunday.

Appendix A of the report provided a plan of the layout of the premises, showing the position of the tables and chairs.

Appendix B of the report included a map showing the location of the premises in relation to the objectors' properties.

The officer advised Members that no objections had been received from the consultees but two residents had submitted objections which were attached to Appendix C of the report.

The objections related to the potential for the use of tables and chairs at this location to cause a noise nuisance, an obstruction to the public, a hazard to traffic and the public and the potential over-development of the area due to other nearby tables and chairs.

The officer reminded Members that they had previously granted permission for 4 tables and 8 chairs at this location, but this permission had expired. He advised them that they must deal with this new application on its own merits.

In response to questions from Members the officer made the following responses:

- the only change to the original application was the later start time of half an hour in the morning.
- although licensing officers consulted with planning officers he advised that the licensing and planning processes were entirely separate. Any objections to the planning application for these premises would be considered by the Planning Committee.

Miss Badat attended the Committee and spoke in support of the application. She confirmed that the application was for table and chairs on the highway and there was no change in any other activity. They did not intend to sell a great deal of wines or stay open late so she was confident that they would not disturb local residents.

In response to a question from a Member she confirmed that the business was not planning to use the tables and chairs after 9 p.m. but this permission, if granted, would be in line with their liquor licence.

A Member highlighted that the tables and chairs were sometimes used by the Thai Brasserie next door after the business had closed. The applicant advised that this was also her business. She said that this should not have been happening and gave her apologies and agreed to advise staff that this should not happen.

Members were advised they had two recommendations to determine as follows;

1. The application be approved because Members feel the application is compatible with the current street scene policy, or.
2. The application be refused as the application falls outside the provision of the current street scene policy.

Upon a vote it was unanimously

RESOLVED that the application be approved because Members feel the application is compatible with the current street scene policy.

7. CONDITIONS FOR TABLES AND CHAIRS CONSENT AMENDMENTS

Louis Krog, Licensing and Business Support Team Leader introduced the report as circulated with the agenda. Cheltenham Borough Council had entered into agreement with Gloucestershire Highways to control the provision of tables and chairs locally.

The officer said that Section 115F of the Highways Act 1980 empowers the Council to impose conditions on permissions for tables and chairs to be placed on the highway.

The Council's "Conditions of Permission to Place Tables & Chairs on the Highway" were outlined in Appendix G of the current policy on measures to control street scene activities in Cheltenham.

The officer advised Members that the report sought permission from the Committee to make minor amendments to a number of conditions. These were technical changes rather than policy changes for immediate implementation.

A Member referred to the duty to clean the highway in respect of any permission granted as set out in paragraph 2.5 and requested that responsibility for the specification be allocated to a specific post. It was agreed that this should be the Director of Environment and Regulatory Services.

With this amendment, upon a vote it was unanimously

RESOLVED that the proposed amendments of the conditions outlined in paragraph 2.5 of the report be approved.

8. TATTOO HYGIENE RATING SCHEME

Sara Ball, Senior Environmental Health Officer, introduced the report as circulated with the agenda. The report sought Members to adopt The Tattoo Hygiene Rating Scheme as outlined in paragraph 1.2 of the report.

The officer stated that to ensure that infection control arrangements are adequate and effectively carried out, persons carrying out tattooing must be registered with Cheltenham Borough Council, under the Local Government (Miscellaneous Provisions) Act 1982.

The proposed rating scheme would complement the existing registration requirements but would inform the public about the hygiene standards in the premises and drive up standards across the industry. It would also reduce the risk of incidence of infection at the premises.

She added that the Cabinet Member Built Environment had already approved the fees subject to approval of the scheme by this committee. If approved by all the councils the launch was planned across Gloucestershire on 15 July 2014.

In response to questions from Members, the officer made the following responses:

- she confirmed that all such premises had been visited by officers on two occasions to discuss the scheme. This visit had been to offer education and advice and there was also information on the council's website.
- Following an inspection there would be a sign on the door of the premises indicating the score. The scores would also be available on the council's website for the public to view.
- A Member had asked whether small businesses could afford to be inspected under the scheme. The officer advised that tattooing was a growing industry and a successful market sector. Generally businesses

supported additional regulation as they were keen to drive out businesses with poor standards.

- Asked how the council would clamp down on illegal operators, the officer explained that there was a number of pieces of legislation that could be applied. Some relied on the police for enforcement such as the tattooing of minors.
- A Member suggested that there should be a rating for 'Failure' if the premises were not up to standard. In response the officer advised that all premises would have to meet a minimum standard and there was public health legislation which could be used if the premises were not satisfying infection control procedures. As the scheme was a national one, there was not really an option to change its conditions for an individual council. A score of 1 was the minimum standard required to comply with local bylaws.

Upon a vote it was

RESOLVED that, subject to Cabinet Member approval of the fees, the Tattoo Hygiene Rating Scheme (THRS), as outlined in the report, be adopted in Cheltenham Borough Council's district.

Voting: For 8 with 1 abstention

9. RENEWAL OF STREET TRADING CONSENT

Louis Krog, Licensing and Business Support Team Leader introduced the report as circulated with the agenda. An application for the renewal of a street trading consent had been received from Mr Mark Morris in respect of his flower stall located on the Promenade at the junction with Ormond Place.

The officer reminded Members that they had considered this request in April and that there had been a written undertaking by Mr Morris and the relevant objectors to try and resolve the issues that had led to the objections being raised. A compromise could not be reached and as a result the objectors had again raised objection to the renewal which were set out in the report.

He referred Members to the additional documentation supplied by Mr Morris which had been circulated at the start of the meeting. This documentation included reference to a petition signed by over 760 local people which had been supplied to Mr Krog. It also included a statement from the applicant that he had lowered the height of the flowers, turned the umbrella 90° and made the stall longer rather than wider so that there was a clear sight line straight through to the Regent Arcade. The officer reminded Members that in considering this matter they should be guided by the council policies and vote in the best interests of the Borough as a whole.

In response to questions from Members the officer made the following responses:

- he personally had not been involved in looking at alternative sites but he was aware that meetings had been held and various schemes considered.
- he confirmed that the objections were similar to the objections received against previous applications for renewal by Mr Morris. The difference in this case was that potential investment in the Regent Arcade appeared

to be dependent on the flower stall being removed.

The chair advised Members that it was in his discretion to allow objectors to speak. Accordingly he advised that Mr Howard Barber would be speaking on behalf of the objectors for a maximum of three minutes. Mr Barber advised that he worked for the council as a public space designer and he was speaking impartially in his professional position.

A Member asked whether Mr Barber had a potential conflict of interest since the council had an interest in the Regent Arcade. The chair responded that Mr Barber was speaking to summarise the objectors' position from a public space design viewpoint and therefore this was not a valid objection.

Mr Barber advised that he had done a lot of work looking at alternative options and had discussed these with Mr Morris. As the Promenade was 29 m wide, he felt it could easily accommodate the flower stall but Mr Morris had not been prepared to trial any alternative options. He acknowledged that the flower stall was a positive element of the street scene which he supported but he felt it compromised the street design in its current position.

Mr Morris was invited to speak in support of this application. He highlighted the petition and referred to many comments he had received in the local media and social media both positive and negative. He indicated that a flower stall had been in the same position for 80 years which was considerably longer than the Regent Arcade had been in place. Over the last 8 years his policy had always been to try and find solutions to any difficulties or objections. For example he had changed the colour scheme of the umbrellas to match that of Beards the jewellers. He was not aware that 'trials had failed' as had been reported to this meeting.

Mr Morris advised that there were a number of reasons why the suggested site in the Promenade was not suitable and would be damaging to his business. These were set out in the letter he had circulated on page 2 of the additional information.

A Member referred to page 57/58 of the report and asked why Mr Morris had experimented with the stall but had abandoned the trial after only a few days. They asked whether he had been approached regarding trials of the Promenade site.

In response Mr Morris said he had arranged two meetings through his local councillor to discuss alternatives. He had been willing to trial a site in the Promenade providing the bike racks and the coffee stall were moved. He could not move any further up the Promenade as this would be damaging to his business. This had been demonstrated when the flower stall was moved on a temporary basis whilst the repaving work was being done and he had experienced a very considerable drop in turnover. The current position of his stall tied in with the footfall of people getting off the buses and turning right towards the Arcade.

A Member noted that he had turned the umbrella around by 90° and asked whether Mr Morris would keep it in that position. Another Member asked whether this could be made a condition of the renewal.

The officer advised that Members could make such a condition but they should be mindful that it must be achievable and there would be an expectation on officers to enforce it.

Mr Morris advised that he had to ensure the protection of his flower stock and his staff in adverse weather conditions. He had had to reposition the umbrella at the end of last year for this reason. He also had extra stock to protect at busy times such as Christmas, Mothers Day And Valentines Day. He advised that the umbrella had been designed to be the way it was currently positioned and he was prepared to instruct his staff that it should always be that way on a day in day out basis.

A Member referred to one objector who had commented that the stall was less tidy at the back and asked whether Mr Morris could do anything to improve this.

Mr Morris said he would be prepared to look at this. He didn't tend to keep flowers at the back of the stall as they would be vulnerable to bright sunlight in the mornings from the direction of the Regent Arcade. The 4 m by 3m he had requested did allow for extra cover and protection at the front and back of the stall.

Another Member asked whether Mr Morris could replace the water carriers with weights.

Mr Morris indicated that he had had discussions with Gloucestershire Highways and he had received a quote of £2000 for a more permanent fixture to weight the umbrella. If that was made a condition of the renewal he would satisfy it but it may take him up to six months to find the necessary funding.

Commenting on the application, a Member suggested that the current position was the worst possible place to have a flower stall as it was in a wind tunnel. The Promenade would be a much better position and asked whether the Regent Arcade could offer a pitch.

Mr Morris said in his view the Promenade was far more of a wind tunnel and his stall was more protected in its current position. There had never been a flower stall in the Regent Arcade and he considered the rent would be too prohibitive.

Members adjourned at 3.55 pm following a request by a Member that they could discuss the matter in private and the meeting reconvened at 4:25 p.m.

Members were advised that they had the following recommendations to determine:

1. The renewal application be granted because you consider the grant of this application does comply with the provision of the Street Scene policy and is in the best interest of the borough as a whole; or
2. The application be refused because it does not comply with the provision of the Street Scene policy as the proposed location is deemed unsuitable; or

3. Subject to resolution 1.7.1, the renewal application be granted subject to the express condition that it will be revoked once the improvement work is due to start.
4. Subject to resolution 1.7.3, delegate authority to the Licensing & Business Support Team Leader to draft the condition to be added to the consent.

The chair advised that Members were minded to grant the renewal but they wished to add some additional conditions and he went on to outline their rationale.

The committee accepted that there was a problem with sightlines if nothing was done but they believed a 3 m limit on the stall would be adequate to address the problem. The committee did not believe that the business of the borough would be compromised by the flower stall, in fact they felt the reverse in that the flower stall was an asset in that location which would be compromised if the renewal was not granted.

In response to a question from Mr Morris, the chair confirmed that they would allow a reasonable timeframe for the alternative weights to be put in place.

Upon a vote it was resolved that:

The renewal application be granted because the committee consider the grant of this application does comply with the provision of the Street Scene policy and is in the best interest of the borough as a whole subject to the following conditions;

- 1. The appearance of the rear of the stall (that being the side visible looking up Ormond Terrace towards the Promenade) be improved so that the back-of-house elements are less prominent – possibly enclosed by flower displays.**
- 2. The width of the flower stall will not exceed 3 metres to retain a 3 metre clearance either side, in order to benefit pedestrian movement and lines of sight and will not be subject to concession for any reason including bad weather or seasonal trade.**
- 3. The water containers currently used to secure the stall's canopy must be replaced with purpose built & suitable weights. The replacement of the water containers must be done in a reasonable time agreed in advance with the Licensing & Business Support Team Leader.**

Voting: For 8 with 1 abstention

10. ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION

11. APPLICATION FOR A PRIVATE HIRE LICENCE

Louis Krog, Licensing and Business Support Team Leader introduced the report which had been circulated to members as a late item.

He advised that an application for a Private Hire Vehicle licence had been submitted by Mr Robinson on 27 June 2014. The application was to licence a blue Jaguar X-Type SE, first registered on 29 September 2008. The age of the vehicle did not comply with the council's policy which requires that all new vehicles being licensed as Private Hire vehicles must be under five years old from the date of manufacture. For this reason the application had been referred to Committee for determination.

The officer advised that he had not seen the vehicle himself but he confirmed that it had passed all the relevant tests at the depot and was compliant with the council's mechanical and exterior and interior appearance tests. The mileage was as stated in the papers and was 88568 at most recent MOT.

The applicant was invited to speak in support of his application. He said he was not aware of the five-year rule when he had purchased the car 5-6 weeks ago. He confirmed that it was in outstanding condition and he circulated a number of photos which were viewed by Members of the committee. He explained that he operated an exclusive contract with GCHQ and the car would not be hired out to the general public. He was self-employed and was the sole worker in his business. He would not have the funds to purchase another vehicle so he urged members to grant the licence.

Members were advised that they had the following recommendations to determine:

1. The application be granted because the Committee considers there to be sufficient grounds to deviate from the adopted policy; or
2. The application be refused because the vehicle does not comply with the Council's adopted policy.

Upon a vote it was

Resolved that the application be granted because the Committee considers there to be sufficient grounds to deviate from the adopted policy

Voting; For 8, Against 1.

12. DATE OF NEXT MEETING

1 August 2014

Roger Whyborn
Chairman

