

Licensing Sub-Committee - Miscellaneous

Wednesday, 3rd October, 2018

6.00 - 9.15 pm

Attendees	
Councillors:	David Willingham (Chair), Dennis Parsons (Vice-Chair), Mike Collins, Diggory Seacome and Simon Wheeler
Also in attendance:	Louis Krog and Vikki Fennell

Minutes

1. APOLOGIES

There were no apologies.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. MINUTES OF THE LAST MEETING

The minutes of the last meeting held on 24th April were signed as a correct record.

4. APPLICATION FOR RENEWAL OF A STREET TRADING CONSENT

The Licensing Officer introduced the report which had been circulated with the agenda. He explained that an application had been received for the renewal of a street trading consent from Mr Mark Morris to sell fresh cut flowers from a stall on the corner of Ormond Place and Promenade. He reported that a number of objections have been received in relation to this application and these were outlined in the accompanying background papers. There had also been a petition signed by a number of objectors and an e-petition on the council's website in support of Mr Morris's application. He advised that a meeting had been held with Mr Morris to discuss alternative locations for his stall, however, after careful consideration, Mr Morris decided he wished to stay at the current location and for the application to come before the sub-committee.

The Licensing officer advised that the sub-committee could:

- Approve the application because Members are satisfied that the location is suitable for the proposed trading, or
- Refuse the application because it does not comply with the provision of the adopted Street Trading Licensing Policy or for any other reason.

He wished to emphasise that it was not the sub-committees job to decide on an alternative location for Mr Morris but to determine the application before them

and also reiterated that they were not bound by the committee's previous decisions.

In response to Members questions, the Licensing Officer advised that:

- If the sub-committee were minded to refuse the application, they could suggest Mr Morris make a re-submission for an alternative location;
- Over the years they had received a handful of complaints about the stall and these were largely around the stall exceeding its permitted footprint. A written warning had been issued to Mr Morris in 2016. They had, however, received no complaints from members of the public;
- The application does comply with the provisions of the Council's adopted Street Trading Licensing Policy;
- The width of the site is 9 metres across and Mr Morris's stall occupies 3 metres in the centre, allowing 3 metres either side for pedestrians to get by;
- There had been several breaches of the licence in instances where the stall had exceeded its permitted size, however, these had been dealt with on a case by case basis and these breaches had caused no material harm;
- The licence was due to be renewed in August 2018.

Mr Morris was then invited to speak in support of his application. He explained that:

- He had been trading in this location for 11 years;
- He employed local people and sourced the majority of his flower's locally;
- Even with the scaffolding that was currently erected directly next to the stall, there was no issues with pedestrians getting past;
- With regards to the breach of the licence, he had received a call from the local authority about the complaint and subsequently ensured the stall was within the permitted 12-18sqm the next day. He advised that he now measured the site to ensure it complied with these limits;
- He showed the sub-committee a petition that had received 3000 signatures in support of his application.

Mr Morris offered the following responses to Members questions:

- He had never been made aware of any complaints received, other than when he received the phone call from the Council;
- He had never had any issues with people being unable to manoeuvre around the stall;
- The van he used was kept at a warehouse in Tewkesbury Road, and this was where the flowers were delivered to, he explained that during the day the van was used to make deliveries;
- Where possible, they made every attempt to ensure the van was out of the way of buses when they were loading and unloading;
- He used heavy weights and poles to secure the stall and these were discretely hidden away, he had tried to get permanent anchors in the paving but this had not been possible;
- He had had a discussion with Trapeze who were unhappy with the location of the stall several years ago but had not been approached directly since this incident 4-5 years ago;
- In response to complaints about the buses, he advised that this was part and parcel of being located in a Regency Town.

- Mr Morris explained that when some refurbishment had been taken place he had temporarily relocated to the prom and it had had a detrimental effect on his profits.

Councillor Chris Mason was then invited to speak in support of Mr Morris's application;

- He firstly wished to confirm that he had no interest in the Flower Man business but was acting in his capacity as a ward Councillor;
- He confirmed that he had raised this issue locally and had only received positive comments from members of the public about the stall;
- He felt that a mix of independent and large retailers was essential to Cheltenham's retail offering and what drew people to the area;
- He felt that it was a neat and colourful stall which was managed efficiently and actually drew people to the area, not act as a deterrent or a public nuisance;
- He failed to see how the stall would hamper future development to the Regent Arcade;
- He accepted that the licence had been breached on a handful of occasions but reasoned that these were minimal and had been rectified quickly by Mr Morris;
- He noted that the online petition had received 2487 responses in addition to the 3000 hand written signatures.

Councillor Klara Sudbury also wished to speak in support of the application. She explained that:

- She had always received a friendly and knowledgeable service from Mr Morris and his employees;
- She reiterated Councillor Mason's point that the area had a complete mix of small independent and large retailers as well as numerous cafes and restaurants and also felt this drew people to the area:
- The location was perfect for the stall as customers could purchase flowers on their way home before they get on the bus;
- The stall compliments nearby businesses such as the jewellers and chocolate shops as you could buy something for everyone along that stretch;
- She felt the stall added a colourful offering to the street scene and did not block the view to the Arcade which could clearly be seen through the back of the stall;
- She noted that the transport trials, the recent weather, Brexit and an increase in online shopping could all have had a potential effect on retailers and did not think Mr Morris's stall could be blamed for struggling businesses;
- She felt that the Council had a duty to support small traders.

Alex Rose the manager of Beards Jewellers, objecting to the application was invited to speak, he advised that:

- They were a small family run business which had been in operation for 200 years and they employed local people;

- Whilst they were delighted that the Flower Man had a presence in the town they did not feel that the location was appropriate and were asking that the licence be looked at in a different light;
- He accepted that in the majority of cases the foot flow was probably not hindered by the stall, however, when the licence was breached there were issues for wheelchairs etc. to get past;
- He noted that in the council's street trading policy, when considering applications for the grant or renewal of a consent the committee must consider whether the street trading activity represents a risk to the public from the point of view of obstruction, which he felt it did;
- He explained that shops in this area already paid high rates in an exceedingly difficult retail climate;
- They were asking for a minimal change of the location so that it did not impact upon local retailers
- Retailers had gone through a lot of grief as a result of the ordeal and had been portrayed badly in the media;
- He felt that the council were in breach of their street trading policy as they had a duty to sustain established shopkeepers in the town;
- He advised that whilst the relocation of the stall might not have a significant impact on their profit or loss they would not know unless it was trialed;
- He summarised that the key issues they had were with the obstruction to the highway and the sustainability of local businesses.

Mr Rose offered the following responses to Members questions:

- They had not changed their position with regards to the stall, but they had not been consulted when the previous licence had been issued and felt that their concerns had been ignored by the committee. The Licensing Officer advised that all consultation now happened through the BID, although it was understood that the BID were not in operation when the previous application had been made;
- They felt that the proposed development to the Regent Arcade would be a positive addition to the town and felt the stall could hinder this;
- He believed they were well informed as they had spoken with a number of local businesses, he did, however, accept that some businesses supported Mr Morris.

Before Members entered into debate, the Chair wished to remind the sub-committee that it was not a popularity competition, any decisions must be made on a sound legal basis and any considerations must be material.

In the debate that followed the Members noted the following if Morris were to relocate it could have an effect on other businesses. Most Members felt that they would be more concerned if Mr Morris were repeatedly breaching his licence, however, they felt satisfied that he dealt with any complaints promptly. Similarly, the previous complaints had not been deemed serious enough to be brought before the licensing committee. One Member noted that there was a lot of competition for jewellers in the town and felt that the Flower Man may actually encourage people to go into Beards, not act as a deterrent. They agreed that the stall enhanced the area rather than be detrimental to it. They reasoned that the main issues were with accessibility but felt satisfied that there was enough space either side for pedestrians to get past. They also needed to take into account the fact that the area was approved for selling flowers in the

street trading policy. The Chair also advised that the street trading policy was up for review and that all local businesses would be encouraged to take part in the consultation process.

However, one Member felt that as part of the Council's place strategy they had a duty to grow the retail sector and felt that psychology the stall did act as a barrier to the Regent Arcade. They also felt that the development of Regent Arcade was highly significant and this could hinder that. The Member formally proposed that the licence be extended for 2-3 months until an alternative location is found. However, the advice from the legal and licensing officers was that if Members were not satisfied with the location they should refuse the application as they had already tried to establish an alternative location.

The Members proceeded to vote on section 1.5.1 of the report to approve the application.

Upon a vote it was 4 in favour and 1 against.

Resolved That:

The application be approved because Members are satisfied that the location is suitable for the proposed trading.

5. APPLICATION FOR PERMISSION TO PLACE TABLES AND CHAIRS ON THE HIGHWAY

The Licensing Officer introduced the report which had been circulated with the agenda he explained that an application to place tables and chairs on the highway had been received from Mr Paul Stephens in respect of Aqua Vitae located at 10 Ormond Place, Cheltenham. He advised that the applicant wished to place 16 chairs and 8 tables on the highway during the day and 32 chairs and 10 tables during the evening/night. The day time layout would be from 08:30 – 18:30 and the evening layout from 18:30 – 03:00. He confirmed that a picture of the proposed structure was included at appendix A and a location plan at appendix B.

He informed the sub-committee that an objection to the application had been received and this was outlined in the background papers. Similarly, the licensing position and information in respect of the Highways Act 1980 which had been referenced in the objection were included at section 5 of the report.

He reminded Members that Members must be mindful of the Probity in licensing guide and in particular, must vote in the best interest of the Borough as a whole and not vote on the basis of local ward interests. They must also be aware of section 5.8 of the report with regards to emergency exits.

He reminded the sub-committee that they could:

- Grant the consent because the application is compatible with the current Street Scene Policy and the provisions of the Highways Act 1980, or
- Refuse the consent because the application falls outside the provisions of the current Street Scene Policy.

Following questioning from Members, the Licensing Officer advised that the sub-committee had the option to permit either just the day or just the night-time operation.

In attendance was the applicant, Mr Paul Stephens, the legal advisor for Aqua Vitae Mr Philip Jones, Scott Lahive the Manager of the Regent Arcade who was objecting to the application and Nick Harding the solicitor representing Canada Life and the Regent Arcade.

The Applicant Mr Paul Stephens was then invited to speak in support of his application. He advised that:

- He had purchased the premises 12 months ago with a silent business partner;
- When purchased, Aqua Vitae did have a licence to place table and chairs outside the premises;
- He reported that they had made an application for a day and night time set up and wished to emphasise that the night time arrangements would only be in place when the Arcade was closed, if it were open they would keep the day time set up;
- The windbreaks were to be used as a means of controlling customers and ensuring they were safe whilst on the premises;
- They attracted a more mature client base, from the age of 21 upwards;
- Their aim was to make the venue more cosmopolitan so people would also be able to have food and drinks outside during the day;
- The opticians immediately opposite Aqua Vitae did not have a problem with the application;
- The windbreaks would be easily moveable in the event of an emergency;
- They had extremely adequate door staff who were all SIA trained and could assist if there were any issues;
- They believed that the development in the Regents Arcade was fantastic and did not want to hinder that, they were more than willing to work with them to rectify any issues. They had reduced the table and chair size in an attempt to mitigate the Arcade's concerns;
- They wanted a seating area so there was somewhere for smokers to go;
- They had a close working relationship with the police and local authority, who had never had any issues with the establishment;
- They fully cleaned down the area at the end of every evening;

Following questions from Members, the Licensing Officer confirmed that historically the venue did have a licence for table and chairs but it didn't at present.

The applicant offered the following responses to Members questions:

- All table and chairs would be brought inside when they were not in use, there was space to either store them in Aqua Vitae or 21 Club which they also owned;
- They used a mix of polycarbonate plastic and ordinary glasses. They had 4-5 glass collectors on shift each night who cleared up any spillages or breakages immediately;
- At present, they opened on a Friday and Saturday from 18:00 - 02:30/03:30 and hoped to also open on a Thursday and offer a day time service;

- They had disabled access and customers could either enter through the single or double doors;
- The windbreaks were only about 3 metres in length and 1 metre high;
- Following concerns about access to the cycle rack, Mr Stephens advised that this would still be easily accessible; and the door staff could assist if necessary;
- If a process needed to be devised for the emergency exit from the Regent Arcade he would be more than happy to accommodate this;
- Following a suggestion that the timings of the day/night time layout be amended to fit with that of the Arcade, the applicant agreed he would be happy to work with them to try and find a solution;
- He advised that it took them 10 mins to set up the table, chairs and windbreaks;
- The table and chairs only slightly encroached on the concrete pillars which were either side of the Arcade doors;
- He advised that not having fixed fixtures gave them flexibility to take down the wind breaks if needed and allowed them to control the customers within that given area;
- He reported that the diagram of the set up was to scale.

Nick Harding the solicitor representing Canada Life and the Regent Arcade then spoke in objection to the application. He explained that:

- Under the Highways Act 1980, a local authority is prohibited from issuing its approval to a proposed highway obstruction where consent from frontagers has not been obtained. He strongly disputed the legal advice that the Regent Arcade were not a frontager:
- He felt it was clear that his client was a frontager to the area of Ormond Place as the tables were positioned directly in front of the property;
- The development works to the Arcade were due to be starting in the first quarter of 2019 and the cinema which forms a large part of the development was due to open within the next 12 months. He noted that should the tables and chairs licence be granted to the applicant, it would not expire prior to the redevelopment and opening of the new leisure unit.
- He explained that the cinema would be open a lot later than the shops would be and the table and chairs would provide an obstruction to customers to the leisure unit and may give the appearance that the Arcade is closed.

In response, the Council's legal officer explained that they had confirmed where the centre of the highway falls from Gloucestershire County Council and due to the nature of where the centre of the highways falls the objector's client cannot be viewed as a frontager in respect of the day time layout of the table and chairs as none of the objects lay between any part of the Regent Arcade and the centre of the highway. In relation to the evening layout, however, the objection would be relevant to the windbreaks between the Arcade and the centre of the highway. Following questions from Members, the Legal Officer confirmed that it was adopted highway and proceeded to hand round a copy of the highways register.

Members suggested that this was a red herring in any case as the applicant was only proposing to place the tables and chairs in front of the Arcade when it was closed. The objector noted that when the cinema was open which was

likely to be every day until 01:00 there would be little point in putting the evening structure up considering Aqua Vitae closed at 02:30.

Following Members questions, Mr Harding and Mr Lahive confirmed that:

- They did still object to the arrangements in front of the premises during the day when the Arcade was open;
- Following the new development there would be very few occasions when the Arcade would be closed, and as a result, the cinema would likely be open until midnight or later;
- They explained that the Arcade were working with the Council to provide a safe, well lit passage to the car park;
- They had no objection to the arrangements during the two race meets as the development of the Arcade would not have taken place then.

Mr Lahive, the Arcade Manager explained why he was objecting to the application:

- When the venue had been changed from retail to A3 use they were supportive as it did not impact upon their operation;
- As it was a particularly damaging time for retail they were having to diversify and as there had been no interest from retailers in the space in the basement they were looking to pursue leisure;
- He reported that Canada Life who owned the arcade also owned the Cavendish House building;
- They were hoping to complete the lease agreement with the cinema, however, this could not be done until they could guarantee access to the building;
- He felt that the night time arrangement gave the impression that the area was closed off;
- They had concerns that the passage between the tables and chairs was not wide enough considering the entrance was an emergency exit;
- They required a 4 metre passage which had to have a minimum space of 2 metres each side. The Licensing Officer confirmed that the space was 9 metres in width so in theory there was enough space for the required access;
- He felt that the space was too small for tables and chairs as on previous occasions the waiters had had difficult manoeuvring around the tables and people would often pull chairs up which would impede the entrance to the Arcade;
- The Arcade would be open every day, 7 days a week until 12:00/01:00 apart from on Christmas day.
- He confirmed that they had obtained figures from the cinema in the Brewery and it was suggested around 120 people could be leaving at any one time depending on the screening.

Mr Harding queried whether if they were able to veto the windbreaks they had the right to amend the evening layout. The Chair confirmed that as no formal consultation had taken place they were not able to do so.

Aqua Vitae's Legal Officer queried whether the Arcade had entered into a section 278 agreement with the local highway authority. The objector believed so, although, explained that the conversations with highways were ongoing.

The Applicant was then given his final right of reply. He explained that:

- He wanted a positive working relationship with his neighbours and was willing to work together to resolve any issues;
- There was a lot of competition with such establishments around the town and they were hindered by not being able to offer an outdoor service;
- He was willing to compromise on the footprint;
- He recognised that an exit strategy needed to be adopted and he would embrace additional training for his staff if it was deemed necessary;

The Licensing Officer also confirmed that the Regent Arcade should have its own evacuation procedures and should not rely on a third party procedures.

The Arcade's legal representative reiterated that the Highways Act states an application can only be granted if consent has been obtained from all frontagers and as the local authority had accepted that the Arcade was a frontager for the purpose of the night time set up due to the location of the windbreaks they should have the power to amend the evening layout if they were minded to grant it. The Council's Legal officer advised that due to the windbreaks they were unable to make a decision on the night time layout and would purely have to deliberate on the day time set up. The applicant would need to put in a fresh application with a revised layout for the evening.

In their debate that followed Members felt satisfied that the day seating arrangements were acceptable and that it would not encroach on the Arcade, providing that there was no creep in the footprint. If there were concerns that the table and chairs would get moved enforcement action could be taken. One Member suggested making the barriers immovable, although, the Licensing Officer advised that any permanent structures on the highway would need to be approved by the County Council and so they would not be able to condition it tonight. It was agreed that this could be explored further as part of ongoing consultation. They also felt satisfied that there was the required 4 metre pathway and as such no health and safety concerns. One Member noted that he had visited Aqua Vitae with the Licensing Officer, and had been impressed that they catered for an older clientele and felt that the establishment made a positive contribution to the night time economy. They did, however, feel it was important that due regard was given to the Arcade's position so as to not prejudice the planning application. Members agreed that a condition should be applied for additional cleaning to ensure the area was well maintained.

The Members then proceeded to vote, firstly on whether a condition should be applied for additional cleaning and litter provisions.

Upon a vote it was unanimously for.

Members then voted on section 1.4.1 which was amended to say 'grant *day* time consent because the application is compatible with the current Street Scene Policy and the provisions of the Highways Act 1980.

Upon a vote it was unanimously for.

Resolved that

Day time consent be granted because the application is compatible with the current Street Scene Policy and the provisions of the Highways Act 1980.

6. APPLICATION FOR A STREET TRADING CONSENT

The Licensing Officer introduced the report, he explained that an application had been made from Mr Paul Stephens for a street trading consent to sell hot dogs, burgers, chicken wraps and chips from a Gazebo. A picture of the gazebo was included at page 35 of the report and the location of the proposed trading unit at page 33. He confirmed that the proposed trading location is not one permitted by the licensing policy.

He reminded the sub-committee that they could:

- Approved the application because Members are satisfied that the location is suitable for the proposed trading, or
- Refuse the application because it does not comply with the provision of the adopted Street Trading Licensing Policy or for any other reason.

The applicant, Mr Paul Stephens, was invited to speak in support of his application. He explained that they had made an application for 3 potential dates, however, the 20th October was now irrelevant as they would not have time to publicise the event. He advised that the event would consist of music and the sale of food and drinks in the area outside Aqua Vitae. He explained they also provided food and drinks to the emergency services and street pastors as a gesture of good will. He confirmed that it was a temporary event and this would not be a recurring event. They had submitted a TEN for a similar event race week in March this year which the emergency services had all said was a positive event, he did, however, accept that at the event they had made an error by putting the bar in the entrance to the Arcade. This had, however, been rectified the following evening.

Following Members questions he explained that;

- The serving end would be if you were looking out from Trapeze towards the wedding shop;
- The only people who have access to the food and drink are in a cordoned zone which would be monitored by door staff;
- The tables and chairs would all be removed from the site and the set up would be taken off site every evening;
- Following concerns about the amount of litter which would accumulate after 8 hours, he advised that as a matter of course they have extra bins and an additional refuse bin behind the stage. They would also have between 52-58 staff each night during race week, 15 of whom would be glass collecting and emptying bins.

The objectors, Mr Scott Lahive the Manager of the Regent Arcade and Nick Harding the solicitor representing Canada Life and the Regent Arcade noted their key concerns as:

- Their concerns regarding the 1980's Highways Act still stood;

- They queried the need for an operation of this nature given the existing provisions in the vicinity;
- They feared for the potential nuisance it could cause from the overspill of customers out of the controlled area;
- They confirmed that as the application was from 7pm the arcade would still be open at that time;
- They were also concerned that it may set a precedent for future Temporary Events Notices.
- They had further concerns about smoking in the doorway and potential damage to the Arcade.

The Licensing Officer confirmed that Members could take the issue of 'need' into consideration when determining the application as this is a relevant consideration under the licensing policy.

The Legal representative reported that they had not discussed any conditions that could be applied with their clients. They confirmed that the Arcade was closed to the public from 18:30 onwards, although there was a team of 60 people on site until 11pm cleaning up and restocking.

In his final right of reply, the applicant explained that:

- They did have a kitchenette inside but this was located in the VIP area and they wanted to cater for all customers;
- They already had extensive cleaning processes in place;
- He had no problem with putting a barrier up to prevent people from damaging the Arcade;
- They attracted a number of VIP's to the venue which they felt showed the kind of establishment they were;
- He reiterated that it would not set a precedent because if the development of the Arcade were to happen it may not be viable;

In their debate, Members felt that whether there was a need for it was irrelevant and Aqua Vitae was an integral part of the night time economy. They felt the only reasonable objection was on the grounds of damage or harm to the Arcade happening but they couldn't see that happening and felt satisfied that the door staff were equipped to deal with any issues. Members felt that a couple of conditions should be applied regarding cleaning and access to the arcade entrance. The Chair reasoned that taking in to account the individual merits of the application and the fact it was a special one off event, which the policy allows for, they felt it would be acceptable to deviate from the policy and grant the application on this occasion.

The Members proceeded to vote on whether to apply conditions in relation to additional cleansing, provision for litter disposal arrangements and measures to keep customers away from the entrance of the Regent Arcade.

Upon a vote it was unanimously for.

They then voted on section 1.5.1 to approve, subject to the conditions above, the application for the 16th-17th November because Members are satisfied that the location is suitable for the proposed trading.

Upon a vote it was unanimously for.

Resolved That

The application be approved for the 16th-17th November because Members are satisfied that the location is suitable for the proposed trading.

- 7. ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION**

David Willingham
Chairman