

Cheltenham Borough Council Licensing Sub-Committee - Miscellaneous Minutes

Meeting date: 8 January 2025

Meeting time: 6.00 pm - 6.40 pm

In attendance:

Councillors:

Angie Boyes, Helen Pemberton, Julie Sankey, Simon Wheeler and
Dr David Willingham

Also in attendance:

Vikki Fennell (Senior Lawyer, One Legal), Jake Johnstone (Senior Licensing Officer)

1 Apologies

There were none.

2 Declarations of Interest

Councillor Willingham and Councillor Pemberton had carried out a site visit prior to the meeting. The Chair noted that he is also a Councillor for Gloucestershire County Council. He explained that neither of these declarations were prejudicial.

3 Renewal Application for Street Trading Consent

The Senior Licensing Officer introduced the report as published.

In response to a Member question the Licensing Senior Licensing Officer confirmed business rates are not a material consideration for licensing conditions and are not referenced within the licensing policy.

The objector addressed the sub-committee and made the following points:

- They recognised that this is a commercial issue as the owner wishes to secure a suitable let for the property and that the loss of business rates is not a material consideration for a licensing committee.
- They are concerned that the stall blocks part of a pedestrianised route and believe that it would be more appropriately located in a fully pedestrianised street as this would reduce potential for traffic accidents.

Members then had the opportunity to ask questions of the objector, the responses are as follows:

- The owner purchased the property in October 2024.
- The owner inspected the property prior to purchase and had carried out a due diligence review of the street trading policy but due to an out-of-date listing on the website believed that the stall only operated on a seasonal basis.
- Two prospective tenants have cited the obstruction to sightlines and lack of signage visibility due to the stall as reasons they did not wish to rent the location. There may also be other reasons for their decision but these have not been provided to the letting agent.

The applicant addressed the sub-committee and made the following points:

- Informed of the complaint in late November and attended a meeting with the licensing team. Due to the Christmas period they have not had a full opportunity to prepare for the meeting.
- The business has traded in Cheltenham since 2005, initially seasonally. Following changes in the street trading policy they traded in the school holidays and Christmas period since 2014 and began trading under a year-round licence in 2019.
- They applied to change from their original location at the entrance to Beechwood Arcade following complaints from a café owner and worked with the town centre manager and other council departments to ensure their new location and design enhanced the location and business. There was agreement that the new location did not block sightlines and that there was still a generous pedestrian walkway.
- Concern was raised at the time that the stall would create a blind spot that may lead to traffic accidents, to mitigate this risk a barrier fence was erected at the back of the stall extending 7' in each direction to prevent pedestrians crossing where the view is obscured. In the 10 years they have been at the location there have been no incidents.
- The applicant is a voluntary Cheltenham BID and Visit Cheltenham member and work to support local businesses where possible. They have received significant local support for the business.

- If the Committee felt it was necessary they will consider moving location but feel this may lead to additional objections and could lead to loss of the business built through significant work and investment. They feel the stall is currently positioned well and does not affect any other business.

Members then had the opportunity to ask questions of the applicant, the responses are as follows:

- No complaints have been received from nearby businesses such as Next or the Car Phone Warehouse during the 10 years they have been at the location.
- Following consultation with council departments the style of the stall was changed to a contemporary design with a sloped roof so that store signage is visible as people walk up the high street.
- It is difficult to calculate the footfall the stall creates but they enjoy many regular visitors, have strong Google reviews and have received strong local support. Due to food being prepared at time of order there is often a queue at the stall. The queue has been located and managed to ensure it does not block pedestrian routes.
- They feel that rotating the stall 90° would further block the pedestrian route and would cause access issues due to the location of the entry door and defibrillator.

The matter then went to debate where the following points were made:

- The suggestion of any highways' safety risk was refuted by the lack of objections from either GCC Highways or the Police, and GCC road safety data showing the lack of any injury collisions in the vicinity of the street trading location in the last five years.
- The suggestion that the stall couldn't be let, was refuted by the fact a short-term lease was evident during the site visit.
- The site visit evidenced that rotating the stall would lead to more obstruction of the pavement and that complaints about obstruction of the sight lines to the retail stores were at best tenuous. It would also cause either an access issue to the stall or the need to relocate a defibrillator unit mounted to the stall. It may also lead to additional problems due to the need to relocate the queue for the stall.
- Sightlines were only obstructed from very specific locations and a refusal on these grounds could set a precedent that would not allow any street trading to occur.
- Street trading at the site has been in situ for a considerable time and was extant before the current owner acquired the premises from which the objection was made. Consequently, the "Agent of Change principle" favours the extant usage being allowed to prevail, and the "caveat emptor principle"

makes any concerns something for the new owner to contend with, as the stall was there first, its presence has not been concealed and it should have been obvious when the property was purchased.

- The fact the stall had been approved and trading for several years without problems, complaints from local businesses, or issues strongly suggested it was fully compliant with the council's street trading policy, and each of the headline compliance points were considered to be met by the sub-committee.
- The sub-committee could not reasonably form any grounds for refusal, relocation, or rotation of the stall.

The matter then went to the vote on 1.6.1 to grant the licence and was granted UNANIMOUSLY.

4 BRIEFING NOTES

There were none.

5 Any Other Items the Chairman Determines Urgent and Which Requires a Decision

There were none.