

Cheltenham Borough Council

Licensing Committee – 25 April 2014

Local Government (Miscellaneous Provisions) Act 1982 Application for a Street Trading Consent

Mr Mark Morris

Report of the Licensing & Business Support Team Leader

1. Summary and recommendation

- 1.1 An application for the renewal of a street trading consent has been received from Mr Mark Morris in respect of his flower stall located on the Promenade at the junction with Ormond Place.
- 1.2 The application is to sell fresh cut flowers, pot plants and holly wreaths from a stall measuring 12 - 18 square metres Monday to Fridays 08:30 to 18:00 and 11:00 to 17:00 on Sundays.
- 1.3 An image of the stall is attached at **Appendix A** and a location map is attached at **Appendix B**.
- 1.4 A number of objections have been received in connection with this application and for that reason it has been referred to the Licensing Committee for determination in accordance with the Council's Constitutional arrangements.
- 1.5 The Committee is recommended to resolve that:**
- 1.5.1 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**
- 1.5.2 The application be approved because Members are satisfied that the application does comply with the provision of the Street Scene policy and the location is deemed suitable;**
- 1.5.3 Subject to resolution 1.5.2, decide whether the consent should be time limited;**
- 1.5.4 Subject to resolution 1.5.3, to delegate authority to officers to revoke the consent at the appropriate time when the improvement works are due to begin.**

1.6 Implications

1.6.1 Financial

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1.6.2 Legal

The Local Government (Miscellaneous Provisions) Act 1982 provides that a local authority can grant a trading consent for an individual within their area. Under the legislation consent can be granted for a period not exceeding 12 months. Consent must therefore be reviewed every 12 months. A local authority can apply reasonable conditions to the consent.

Consent can be revoked at any time. An existing trader or a trader who has previously traded from a location does not have a legal right to any consent being automatically renewed or granted.

Any application should be considered in line with the Council's policy on Street Trading.

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2. Background

2.1 The current policy for *Town Centre Street Activities: Street Trading & Objects on the Highway* was approved on 1st April 2013. A copy of the whole policy has previously been circulated to members and extracts are included in the application pack that was given to the applicant.

3. Policy Principles, Aims & Objectives

This section outlines the policies the council will apply when making decisions on applications for consents.

Each application will be determined on individual merits and in view of promoting the principles and objectives contained in this policy.

In particular the policy aims to promote the following aims and objectives in reference to street trading activities:

- To have a clear & transparent policy governing street trading activities in the Borough.
- To enable the Council to manage all street trading activities in order to provide effective control measures.
- To ensure that all street trading activities meet the required quality standards, pose no risk to public health, safety & protection and do not prejudice the Council's efforts to improve the image, perception and attractiveness of the Town as a tourist and leisure destination, and is in keeping with the streetscape.
- To ensure that all objects placed on the highway meet the required quality standards, pose no risk to public health, safety & protection and to ensure that these objects do not obstruct the highway.
- To avoid duplication with other statutory provisions and the Council's commitment to work in partnership with other enforcement agencies.

3.1 Site Assessment

Consent from static locations will not normally be granted where:

- A significant effect on road safety would arise either from the siting of the trading activity itself, or from customers visiting or leaving the site,
- There would be a significant loss of amenity caused by traffic, noise, rubbish, potential for the harbourage of vermin, odour or fumes,
- There is a conflict with Traffic Orders such as waiting restrictions,

- The site or pitch obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use for street trading purposes,
- The site does not allow the consent holder, staff and customers to park in a safe manner,
- The street trading activity is carried out after dusk and the site is not adequately lit to allow safe access and egress from the site for both customers and staff.

3.2 Public Safety

In the interests of highway safety, no activity will be permitted within a minimum of 2 metres of a kerb.

3.3 Conservation Areas

The scope of this part of the policy covers the entire borough. However, the town centre, amongst a number of other areas in the borough, has conservation area status and as a result the Council will adopt a more restrictive approach to applications for these areas in particular.

3.4 Town Centre & Conservation Area

Despite this, the Council would not wish to prevent a modest amount of street trading in these areas of the town of a type which could positively enhance the enjoyment of the town as a tourist and leisure destination. To this end, street trading will generally be permitted in these areas where it enhances the town's reputation as a tourist and leisure destination, and is in keeping with the streetscape.

The appearance of a trader's business must enhance, or at least not be detrimental, to the street scene.

4. Probity in Licensing

4.1 Cheltenham Borough Council's Licensing Committee operates in a quasi-judicial way in determining contentious licensing applications, policy issues and related matters.

4.2 The decisions that the Committee makes are significant and weighty. The Committee operates, for the most part, under its extensive delegated powers and it, rather than any other part of the Council, actually makes the decisions. The decisions can have a considerable effect on the value of premises or other capital assets, on the amenities of people living near licensed premises and on the lives of applicants. Furthermore if the Committee makes a wrong or irrational decision this may mean that the Council will face substantial costs if there is a successful appeal against the decision or if the decision is the subject of a legal challenge from an aggrieved third party.

4.3 Some licensing legislation specifies procedures to be followed but in all cases human rights and natural justice considerations dictate that the Committee adheres to the following principles in that decisions must:

- Be made on the individual merits of a case.
- Have regard to all relevant national and local guidance.
- Be made impartially and in good faith.
- Be made by the body that receives all the relevant information and evidence.
- Relate to the issue or question placed before the committee.
- Be based only on consideration of relevant and material matters.
- Be rational and reasoned.
- Be made in a way that does not give rise to public suspicion or mistrust.

4.4 Licensing Committee Members must vote in the best interests of the Borough as a whole and must not vote on the basis of local ward interests that may be contrary to a balanced licensing assessment in the light of the evidence before the members and wider policies and guidance.

- 4.5 Licensing applications must be determined on the basis of the documents and information that have been formally submitted and where all parties have had a proper opportunity to consider them.
- 4.6 Members must read and carefully consider the content of the circulated report before the meeting and they must have regard to its contents in reaching their decisions.
- 4.7 Where Members propose to make a decision contrary to the officer recommendation clear licensing reasons must be established and these must be seconded and minuted.

5. Consultee Comments

5.1 Objections have been received from:

5.1.1 **Mr Alexander Rose (Managing Director – Beards Jewellers):**

Dear Sirs,

Application for Street Trading Licence Application Number (14/00620/STA)

In regard to the application to the above mention Street Trading Licence Application, we wish to formally object to the renewal of the licence or ANY street trading at the proposed renewal location.

We have outlined our concerns both in person, and in writing to council officials in the past and have been advised that the renewal of the licence is the best time to raise the objections and press the case for rejecting the application.

We are one of two businesses closest to the siting of the street trading and are without doubt one of the stakeholders most directly affected by any street trading at the Ormond Place location.

We are strongly opposed to street trading at this location for the following reasons:

- It has a direct impact on our businesses ability to raise receipts and revenue, due to the lack of visibility of our largest window frontage; indeed many of our new clients are not even aware we sell the products we do along the Ormond Place frontage due to the fact they cannot be seen by passing trade from The Promenade.
- Our business relies heavily on our watch brands who we can only site on the Ormond Place frontage, we receive numerous complaints from the brands about the lack of visibility to the general public and the lack of growth we achieve in comparison to other retailers who have better visibility as a result of the reduced visibility. We are unable to advertise on the building due to council advertising restrictions so are unable to use the premises to its full potential and this has been the case since the flower stand was moved into Ormond Place a few years ago. To add insult to injury, on days (which there are not many) when the flower stand is not present, we see a direct increase in enquiries, foot flow, and sales of products sited on Ormond Place.
- The siting of the stand prevents multiple pedestrians moving down Ormond Place due to the congestion. Wheelchairs, bicycles and pedestrians at peak times have to queue to get past the stand, this is made worse by the recent siting of the bus stop which now also stops outside our premises; the queue and congestion from people trying to get up Ormond Place prevents people passing up the Promenade. We have been witness to, and assisted, members of the public who have been knocked over or pushed up against our windows trying to get by.
- We have also been informed that Canada Life who own the Regent Arcade are proposing a much needed investment in Ormond Place to improve its attractiveness to shoppers. We are informed that the investment hinges on the fact that if the council renew the application, they quite simply wont invest.

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The investment Canada Life are proposing would bring a much needed re-development of the Ormond Place end of the Regent Arcade in a similar way they have to the High Street end. The investment would bring in much needed new business, create jobs and increase visitors to the town which can only be a positive for the wider community. We understand their reluctance to invest so heavily if the street trading licence is renewed as their visibility will also be significantly impacted and would be a complete waste of money

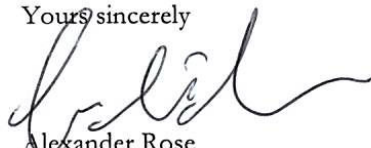
- With the presence of so many empty units (1 on the Promenade, and multiple units in the Regent Arcade) we find it staggering that street traders, who can be sited more appropriately and still prosper, are being considered in areas where they are creating barriers to investment and financial growth for businesses that have fixed locations and cannot perform at their full potential

We hope the council will take these objections into account and consider the needs of the wider business community. The siting of ANY street trading in this location is untenable and impacting not only our business but all the business along Ormond Place.

It is impacting the general public and if renewed will prevent a much needed investment to the town.

We remain available to add explanation to our objections

Yours sincerely



Alexander Rose
Managing Director

5.1.2 Mr Jeremy Williamson (Managing Director – Cheltenham Development Task Force):



7th April 2014

Dear Louis

Re: 14/00620/STA Flower Stand

I am really supportive of the town centre flower seller stalls for the vibrancy that they bring to the street scene; however the location at the junction of the Promenade and Ormond Place poses both existing and future challenges.

This particular stall has become too large for its location with flower containers regularly beyond the reach of the umbrella. This results in a significant reduction in pavement width for such a busy thoroughfare. In addition, the scale of the stall and associated umbrella block the sight lines to Regent Street and the Regent Arcade.

This latter aspect is of particular significance to the Regent Arcade. Having successfully completed a major refurbishment to their High Street entrance, Canada Life as owners (in partnership with Cheltenham Borough Council), now wish to proceed with an approved planning scheme on their Regent Street frontage.

The proposal includes not only work to their structure but critically significant work to the public realm connecting the Regent Arcade entrance to the Promenade. This will materially enhance this part of town and is a cost that neither GCC (as highways authority) nor CBC could currently contemplate.

Canada Life has made it quite clear that they will not undertake the enhancements unless they can secure unimpeded views from Regent Arcade to the Promenade and vice versa. This can only be achieved if the flower stall is relocated.

On this basis I would suggest that the licence application be supported but not in this location, and equally that other applications for this area be deterred for the same reason. This compromise approach would allow the town to keep the flower stall, perhaps on the Promenade itself so in close proximity to current location but at the same time ensure that the proposed major capital investment is not lost. A win-win situation.

Yours sincerely

Jeremy Williamson

5.1.3 Richard Nichol (Canada Life - Owners of Regent Arcade):

"I am writing to formally register Canada Life's objection to the above street trading application as owners of Regent Arcade Shopping Centre. As stated in previous objections submitted by our managing agents DTZ and Centre Director John Forward, the existing flower stand (or indeed any other street trader occupying this site) substantially obscures visibility of passing shoppers on the Promenade to the shops and businesses on Ormond Place and the entrance to Regent Arcade beyond. This is obviously detrimental to the trade of those retailers on Ormond Place, Regent Street and within the Arcade, many of which are local businesses that are heavily reliant on passing pedestrian footfall.

As you may be aware, Canada Life has obtained planning consent to redevelop Regent Arcade's Ormond Place entrance as well as pedestrianising a substantial area of streetscape all the way through to the Promenade. These works would undoubtedly improve the appearance of this part of Cheltenham, albeit at significant cost to ourselves. Further details are attached for reference. Subject to funding and the ironing out a few outstanding points with Mike Redman and his team, we would hope to start work on site later this year (ideally Q3) following the discharge of conditions. It is a fundamental requirement of this investment that the sightlines from the Promenade to the Arcade are not obscured in any way. I can therefore confirm that if the committee approves this street licence renewal application for another year, these works to the Ormond Place streetscape will not go ahead."

5.1.4 Mr Martin Quantock (Business Partnership Manager):

"Regarding the application renewal for the pitch on Ormond Place.

I understand that if this trader (or any other trader) would be allowed to trade on this pitch (or any other pitch on Ormond Place that would obscure the street scene and/or the view of the entrance to the Regent Arcade) then the proposed improvement works to be carried out this year and funded by Canada Life would no longer take place.

The proposed improvements to the street scene would help the businesses in this area (the street has both independent and national retailers trading there) and would involve significant investment by Canada Life.

For this reason I would object to the renewal, particularly as an alternative site may be available on the pedestrianised area of the Promenade."

5.1.5 Mr Richard Ralph (DTZ Associate Director):

"I am writing to you in relation DTZ's position as managing agents of Regent Arcade Shopping Centre, Cheltenham. We wish to object to the street trading application regarding the Flower Seller (Street Trading Consultation (14/00620/STA) on the grounds that it obscures the vision from the Promenade along Ormond Terrace in the direction of the Regent Arcade.

The positioning of this street trader or indeed any other street trader in this location blocks the view from the recently refurbished Promenade of Ormond Terrace, the majority the businesses who trade along this area are in the main small independent retailers which helps make Cheltenham different to other towns, they all pay considerable business rates which are collected by the council in addition to all of the other costs associated with running a business including employing staff, utility bills and rent. Street Traders pay a small licence fee and very little else and are able to trade from prime locations, resulting in unfair competition.

Canada Life who own the shopping centre has secured planning consent to carry out refurbishment to the Ormond Place entrance to the centre and as part of that are also have planning consent to upgrade Ormond Terrace to a pedestrian area including new and upgraded street furniture and lighting from the junction of Regent Street to the Promenade this work will be funded by Canada Life. This is to encourage more visitors to explore Ormond Terrace, Regent Street and the Regent Arcade. This work is planned to be started this summer.

Our objection is not only for this application but for any Street Trading Application in that location which will visually impact on the new streetscape of Ormond Terrace. I can categorically state that if this or any other application is granted in this location or anywhere in Ormond Terrace that may obscure the streetscape Canada Life will not carry out any improvements to Ormond Terrace and therefore depriving those shops in Ormond Terrace and Regent Street increased footfall, sales and additional employment opportunities.

For and on behalf of DTZ, a UGL Company"

5.1.6 Mr John Forward (Regent Arcade Manager):

“We are writing to object to the street trading application regarding the Flower Seller (Street Trading Consultation (14/00620/STA) on the grounds that it obscures the vision from the Promenade along Ormond Terrace in the direction of the Regent Arcade.

The positioning of this street trader or indeed any other street trader in this location blocks the view from the recently refurbished Promenade of Ormond Terrace, the majority the businesses who trade along this area are in the main small independent retailers which helps make Cheltenham different to other towns, they all pay considerable business rates which are collected by the council in addition to all of the other costs associated with running a business including employing staff, utility bills and rent. Street Traders pay a small licence fee and very little else and are able to trade from prime locations, resulting in unfair competition.

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Our objection is not only for this application but for any Street Trading Application in that location which will visually impact on the new streetscape of Ormond Terrace. I can categorically state that if this or any other application is granted in this location or anywhere in Ormond Terrace that may obscure the streetscape Canada Life will not carry out any improvements to Ormond Terrace and therefore depriving those shops in Ormond Terrace and Regent Street increased footfall, sales and additional employment opportunities.”

5.1.7 Mr Wilf Tomaney (Urban Design Manager, Cheltenham Borough Council):

“The sale of flowers generally has a positive impact on the street scene - bringing colour, beneficial activity, a strong sense of place, public use of the street and the stall-holders themselves are a strong beneficial human presence in the area - being known locally, engaging in conversation with passers-by etc. helping additionally with passive street surveillance. These stalls currently bring all these elements, particularly those in town centre locations.

I have no objection to the Pittville Street or Cemetery locations.

In principle I have no objection to the Ormond Place location which does much to enliven the Promenade. However, there are a number of concerns:

1. the canopy is large and with the display beneath it does restrict what is an important pedestrian route from the Promenade to Regent Arcade, Regent Street, the theatre etc.
2. whilst the current arrangement is striking from the front (Promenade view), from the rear (Regent Street view to the Promenade) it is very much back-of-house. Anecdotally there appears to be concerns regarding this from nearby retailers.
3. the planning permission for the redevelopment of the rear of Regent Arcade includes a landscaping scheme which if it goes ahead will bring substantial private investment in the public realm along Ormond Place and across to the Regent Arcade. This is to be welcomed. However, it seems that the investment is unlikely to be made if a flower stall is present in the street because it is considered to screen views of the Arcade from the Promenade.

In discussions with interested parties (stall-holder, neighbouring retailer, Arcade representatives) a number of suggestions have been made including

- a. a bespoke stall design is incorporated into the landscape treatment proposed for Ormond Place, possibly moving stall to one side, using a blank wall as a back-drop.
- b. relocate stall to nearby on the Promenade - possibly the pedestrianised Promenade. Each is acceptable to some, but neither is acceptable to all parties.

There are significant benefits in the landscape proposals for Ormond Place in terms of street scene; the proposal is also likely to have a beneficial impact on pedestrian movement and calming traffic at its Regent Street/Ormond Place junction. The flower stall has benefits for the Promenade in terms of visual amenity, activity etc., as outlined earlier, but disbenefits visually on Ormond Place where the rear of the stall is prominent and can be restrictive for the heavy pedestrian movement in this area.

On balance the implementation of the landscape scheme is likely to have the most benefits and my conclusion is an objection to the Promenade/Ormond Place licence because of its potential to halt this scheme.

If the committee is minded to approve, conditions might include:

- A. limit the spread of the canopy to retain a 2.5m clearance either side, in order to benefit pedestrian movement (maybe permit exceptionally encroachment on special occasions - Christmas, Easter, Mother's Day)
- B. require improvement to the appearance of the rear of the stall, so that the back-of-house elements are less prominent - probably enclosed by flower displays."

6. Licensing Comments

- 6.1 Members will note from the objections received that there is no objection in principle to the type of trading but objectors stated that the siting of the particular stall is inappropriate for the location particularly given the Ormond Place improvement works due to start in the third quarter of 2014. For Members' information, a plan outlying the proposed scheme is attached at **appendix C** of this report.
- 6.2 When determining this application, Members must be guided by the current policy in relation to street trading, the adopted probity in licensing guide and the relevant statutory requirements.
- 6.3 In relation to the current policy, the relevant extracts are outlined above under paragraph 3. In particular, street trading in the town centre that states that the Council will permit a "...modest amount of street trading ... of a type which could positively enhance the enjoyment of the town as a tourist and leisure destination. To this end, street trading will generally be permitted in these areas where it enhances the town's reputation as a tourist and leisure destination, and is in keeping with the streetscape."
- 6.4 The probity in licensing guide states, amongst others, that "Licensing Committee Members must vote in the best interests of the Borough as a whole and must not vote on the basis of local ward interests that may be contrary to a balanced licensing assessment in the light of the evidence before the members and wider policies and guidance."
- 6.5 Whilst the entire probity in licensing guide is relevant and should be taken into account, the quoted paragraph above is particularly relevant given the objections received in relation to the proposed improvement scheme. Members will need to consider whether the impact of the scheme to improve Ormond Place is such that, on balance, it is in the best interest of the borough as a whole to go ahead although it be at the expense of the trading position.

- 6.6 In law, the Council has a very wide discretion to grant, or refuse, a street trading consent. Schedule 4 paragraph 7(2) of the Local Government (Miscellaneous Provisions) Act 1982 states "...the council may grant a consent if they think fit." The wide discretion allows the council to take into account any matters considered relevant which could include the suitability of the proposed trading position or type of street trading.
- 6.7 Furthermore, Members will note from the legal officer's comment that the law does not automatically grant an applicant the legal right to any consent being automatically renewed or granted.

Alternative Locations/Options

- 6.8 Officers from the Council have met with Mr Morris and representatives of the arcade and Beards to establish whether a compromise can be reached. Options included moving the stall to the Promenade outside Cavendish House or trying to incorporate a trading pitch in the proposed scheme as that is it more in keeping with what the arcade is trying to achieve for the location. Unfortunately neither party could agree on the alternatives.
- 6.9 There is the further option, if Members consider it appropriate, to grant the renewal but subject to the express condition that it will be revoked once the improvement work is due to start. This option was discussed with Canada Life. They prefer the assurance that the matter to do with the granting of this consent has been put to bed (subject to appeals) but also maintain, notwithstanding the proposed improvement works, that the trading pitch is too intrusive and obstructs too much of both the highway and the line of sight.
- 6.10 Notwithstanding this however, the option to issue a time limited consent is still an issue open to the Committee.
- 6.11 If Members do vote to refuse to renew the consent, Mr Morris can submit a new application for a different location primarily to ensure proper consultation on the new location is undertaken. Officers will assist where appropriate.
- 6.12 Members must provide full and clear reasons for whatever decision is reached with regards to this application.
- 6.13 There exists no right of appeal against the refusal of a street trading consent.

Background Papers

Service Records

Report Author

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Appendix A



Appendix B

