

Cheltenham Borough Council

Licensing Committee – 4 July 2014

Conditions for Tables and Chairs Consent

Report of the Licensing & Business Support Team Leader

1. Executive Summary

- 1.1 Cheltenham Borough Council has entered into agreement with Gloucestershire Highways to control the provision of tables and chairs locally.
- 1.2 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.
- 1.3 The Council's "Conditions of Permission to Place Tables & Chairs on the Highway" are outlined in Appendix G of the current policy on measures to control street scene activities in Cheltenham.
- 1.4 This report seeks permission from the Committee to make minor amendments to a number of conditions.

2. Recommendation

2.1 The Committee is recommended to:

- 2.1.2 Approve the proposed amendments of the conditions outlined in paragraph 2.5 of the report.

3. Implications

How does the Decision contribute to the Council's Corporate Priorities? Not applicable.

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2. Background

- 2.1 Cheltenham Borough Council has entered into agreement with Gloucestershire Highways to control the provision of tables and chairs locally.
- 2.2 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.

- 2.3 Conditions are attached to consents to ensure public safety and quality standards are maintained and also to ensure the public highway is not unnecessarily obstructed.
- 2.4 It is therefore important that conditions remain relevant and enforceable.
- 2.5 For the reasons outlined below, it has become necessary to amend a number of conditions.

Current	Amended	Explanation
It shall be the duty of the person to whom the Permission is granted to clean the section of the highway in respect of which Permission is granted to the specification of the Assistant Director Community Services.	It shall be the duty of the person to whom the Permission is granted to clean the section of the highway in respect of which Permission is granted.	The post of Assistant Director Community Services no longer exists.
The Permission does not authorise the holder to allow alcoholic drinks to be served or consumed at the tables and chairs. It is the responsibility of the person to whom the Permission is granted to check with the Licensing Justices that the liquor licence for the premises allows such activities to take place.	The Permission does not authorise the holder to allow alcoholic drinks to be served or consumed at the tables and chairs. It is the responsibility of the person to whom the Permission is granted to check with the Council's Licensing Section that the alcohol licence for the premises allows such activities to take place.	Alcohol licensing is no longer the responsibility of the HMCS.
The tables and chairs shall not be placed in any other area than that stated in the Permission. They shall be placed in an area delineated by a suitable temporary barrier which is positioned to the satisfaction of the Assistant Director Environmental Maintenance.	The tables and chairs shall not be placed in any other area than that stated in the Permission. They shall be placed in an area delineated by a suitable temporary barrier which is positioned in accordance with the attached plan.	The post of Assistant Director Environmental Maintenance no longer exists.

Implementation

- 2.6 Given the nature of the proposed amendments above, it is not considered unreasonable for the amended conditions to take immediate effect.
- 2.7 Officers will write to all current consent holders to notify them of these minor amendments.

3. Probity in Licensing

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

- 3.2 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.
- 3.3 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.
- 3.4 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.
- 3.5 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.
- 3.6 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.
- 3.7 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.

Background Papers

Service records

Policy on Measures to Control Street Scene Activities in Cheltenham

Highways Act 1980

Cheltenham Borough Council highways agreement with Gloucestershire Highways

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