

**Cheltenham Borough Council**  
**Licensing Committee – 6 March 2015**

**Highways Act 1980**

**Local Government (Miscellaneous Provisions) Act 1982**

**Application for Permission to Place Tables and Chairs on the Highway**

**Turtle Bay, 20 - 26 Pittville Street**

**Report of the Licensing Officer**

**1. Executive Summary and Recommendation**

- 1.1 An application has been received from Mr Brynn Macek of Fusion Design and Architecture in respect of Turtle Bay, 20-26 Pittville Street, Cheltenham GL52 2LJ.
- 1.2 The applicant seeks permission to place 10 tables and 30 chairs on the highway outside the premises during the following times:

Monday	11:30 – 00:00
Tuesday	11:30 – 00:00
Wednesday	11:30 – 00:00
Thursday	11:30 – 00:00
Friday	11:30 – 01:00
Saturday	11:30 – 01:00
Sunday	11:30 – 00:00

- 1.3 **Appendix A** shows photographs of the furniture. **Appendix B** is a plan showing how the tables and chairs will be positioned. **Appendix C** shows the location of the premises.
- 1.4 **The Committee is recommended to resolve that:**
- 1.4.1 **The application be approved because Members feel the application is compatible with the current Street Scene Policy, or**
- 1.4.2 **The application be refused as the application falls outside the provisions of the current Street Scene Policy.**

**1.5 Summary of implications**

- 1.5.1 Financial **Contact officer: Sarah Didcote**  
**E-mail: sarah.didcote@cheltenham.gov.uk**  
**Tel no: 01242 26 4125**
- 1.5.2 Legal No right of appeal.

**Contact officer: Vikki Fennell**  
**E-mail: Vikki.Fennell@tewkesbury.gov.uk**  
**Tel no: 01684 272015**

## 2. Background

- 2.1 The current policy for *Town Centre Street Activities: Street Trading & Objects on the Highway* was approved on 1<sup>st</sup> 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. Consultation and Feedback

- 3.1 Consultation was undertaken in accordance with the Council's consultation procedure for tables and chairs on the highway. The applicants initially applied for 13 tables and 36 chairs, which attracted the following objections and comments, after which the applicant revised the numbers of tables and chairs downwards.

### **Senior Enforcement and Compliance Officer (Planning), Cheltenham Borough Council**

Seems somewhat restricted, and with the comings and goings through entrance/exit to this outside tables/chairs area this could cause pedestrian conflict as it is directly opposite junction and dropped tactile kerb for wheelchair users and the like. With this and the bicycle stands and litter bin there is potential for conflict.

### **Senior Environmental Health Officer (health & safety), Cheltenham Borough Council**

The footpath is not particularly wide in areas and this is quite a busy street corner, especially for buses.

'A' board guidance: 3.3 (of Policy on Measures to Control Street Scene Activities in Cheltenham) indicates a minimum of 1.8 meters of footway to remain in place. There seems to be no minimal guidance on seating but as discussed by default it should be the same.

None of the seating leaves 1.8 metres of access pavement. Distances at the bike racks is 1.4m, at the rubbish bin 1.18m and next to the Tree 0.96m.

I strongly advise that the table and chairs arrangement be minimised to ensure 1.8 metre clearance, effectively a sensible enough space for an adult with a pushchair and child to get through.

Should the proposed set up go ahead I may be minded to take statutory action, under the Health and Safety at Work etc Act 1974 against the premises in order to ensure the distances are reduced to protect the public. This is because the presence of so much furniture on the street would encourage the public to walk in the road, onto a busy street.

I therefore recommend the application be amended to ensure 1.8 metre clearance.

In response to these comments, the applicants changed their proposal to 10 tables and 30 chairs and a revised plan was provided (Appendix B) which was circulated to the objectors to establish whether their objections still stood, in light of the proposed revisions. The following comments were received in response to the revisions made.

### **Senior Enforcement and Compliance Officer (Planning), Cheltenham Borough Council**

My original comments equally apply.

### **Senior Environmental Health Officer (health & safety), Cheltenham Borough Council**

The alterations have improved the distance. I would only need to take formal action if there was a particular problem or complaints noted as the issues are not as gross within this second plan.

However I would encourage alignment with CBC guidelines, to ensure 1.8 meters is obtained at all points.

### **Senior Environmental Health Officer (noise pollution), Cheltenham Borough Council**

I am concerned re the hours of use of the outside area, which are proposed to stay open until midnight Sunday – Thursday and 1:00AM Friday & Saturday. This has potential to cause noise nuisance to residents of nearby residential property, situated above shops on Pittville Street due to noise from customer voices etc.

In general, use of outdoor areas should be discouraged after 11PM and designated premises supervisors are expected to supervise external areas being used by smokers to ensure that noise is kept to a minimum and they return into the property promptly. Providing tables and chairs does not encourage customers to return indoors.

I would therefore recommend that the use of external tables and chairs is limited to the hours of 11:30AM – 11:00PM daily.

### **Gloucestershire Constabulary**

The Police have no objections to the amendment to the original plan.

- 3.2 In response to comments made by consultees, the applicants provided the following additional comments in support of their application.

Further to our site survey and proposed revised layout, we have drawn our layout noting the conditions found already existing on Pittville Street. We have indicated clearance distances of no less than what exists at the external seating outside 'Caffe La Scala' a few steps down the road (which also has a tree in front and a clearance of no more than only 1000mm). Please see attached photograph. We had carefully done so to avoid any issues with our proposed external seating layout, trusting the existing conditions at neighbouring shops would be fair examples to follow.

In previous external applications with other councils, we have always received responses from council that served as acceptance and/or compromise to what we had proposed and an agreement on which tables and chairs, and their placement, were to be allowed. We feel it is important to have external seating running the full length of our shopfront knowing this will add life to a prominent and deserving street in Cheltenham's centre and it would be a shame to constrict this due to a discrepancy of only 150mm between tree and table/rubbish bin and table. We have left a larger clearance of over 2.2m along the bicycle racks, knowing this is a space of excessive movement/manoeuvring of bikes.

We would ask to be considered on our revised seating layout noting that our minimum clearance dimensions are more generous than what is currently found on Pittville Street and especially on the premise that the external seating will add much positive energy and life to the street.

#### **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.

#### **5. Policy Principles, Aims and Objectives**

- 5.1 This section outlines the policies the Council will apply when making decisions on applications for consents.
- 5.2 In particular, this part of the policy will aim to promote the following aims and objectives:
- To have a clear & transparent policy governing all decisions relating to objects placed on the highway.
  - To enable the Council to manage all objects placed on the highway in order to provide effective control measures.
  - 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.

Each application is assessed against the outlined conditions included in the application pack and this policy.

No object and its associated activity may generate noise which is likely to cause nuisance or annoyance.

Any object given consent to be placed on the highway must be sufficiently weighed down or secured to ensure that the object will not cause any harm or damage.

The Council wishes, as far as is compatible with other highway uses, to promote the 'cafe culture' in Cheltenham because of the added life and vitality this brings to the town. To this end, the Council will look favourably on applications by operators in appropriate locations to put tables and chairs on the pavement outside their premises.

Consent to place tables and chairs on the highway will only be granted for the consumption of food and drink, provided they are in association with a business operating from nearby premises.

Consent to place tables and chairs on the highway will be subject to the use of canvas barriers to cordon off the area where the tables and chairs are placed on the highway.

For health and safety reasons, the Council will not permit glass top tables.

Where consent has been issued for tables and chairs to be placed on the highway the Council may permit, within reason, other objects to be placed inside the area that has been cordoned off with barriers.

## 6. Licensing Comments

- 6.1 The Committee must determine the application with a view to promoting the Council's adopted policy and should only depart from the policy where there are clear and defensible reasons for doing so.
- 6.2 Members will note on the plan of the furniture at appendix B, in some places less than 1.8m clearance distance has been left between the furniture and other fixed objects, specifically a tree pit and a fixed bin. The Council's standard requirement is for no less than 1.8m to be left for passers-by. The applicants are aware of the requirement and have provided an explanation which is above at paragraph 3.2.
- 6.3 Members will note that the applicants have made reference to other nearby premises which they believe have left less than 1.8m between their street furniture and other fixed objects. This is an enforcement matter and will be dealt with separately. No nearby premises have been given dispensation to leave less than the minimum 1.8m distance and those comments are not relevant to this application, which must be determined on its own merits.
- 6.4 In accordance with the current Street Scene Policy members must determine and consider if an application of this type positively enhances the enjoyment and reputation of the town as a tourist and leisure destination whilst being in keeping with the streetscape.

**Report Author**

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