

Cheltenham Borough Council
Licensing Committee – 2 October 2015
Highways Act 1980

Local Government (Miscellaneous Provisions) Act 1982

Application for Permission to Place Tables and Chairs on the Highway
81 The Prom, 81 Promenade, Cheltenham GL50 1PJ

Report of the Licensing Officer

1. Executive Summary and Recommendation

- 1.1 An application has been received from Rajinder Singh Boyal in respect of 81 The Prom, 81 Promenade, Cheltenham GL50 1PJ.
- 1.2 The applicant seeks permission to place 3 tables and 5 chairs on the highway outside the premises from 08:00 to 22:00 hrs, every day.
- 1.3 **Appendix A** shows photographs of the furniture and a plan showing how the tables and chairs will be positioned. **Appendix B** 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 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. Consultation and Feedback

3.1 The following responses were received from consultees:

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

I wish to formally object to this application on the following grounds:

The application does not reflect the policy aims and objectives in that:

Notwithstanding that the tables and chairs are not of a quality befitting this important heritage frontage, the placing of chairs and tables on this frontage, together with its attendant canvas barrier and unspecified other objects which may be placed inside the cordoned off area, will be seriously harmful to the intrinsic special architectural and historic qualities of this nationally important Grade II* Listed Terrace and Listed railings, piers and walls.

Further, the position of the chairs/tables at the foot of the stairway entrance to the premises is a public safety hazard and obstruction.

Landscape Architect, Cheltenham Borough Council

Following discussion with colleagues I am writing to object to the above application for the following reasons:

81, The Promenade is part of the Grade II* Listed Regency Terrace, which includes the Municipal Offices. The boundary of a listed building has a major effect on the setting of the listed building. In the case of this Regency Terrace the boundary treatment – wrought iron railings on a stone plinth – forms an essential element of the cohesive visual appearance of the terrace. Placing tables and chairs outside on the pavement would visually disrupt the uniformity of the boundary and harm the setting of the listed building.

It is noted from the drawing that it is proposed to place a barrier around the seating area. No details of the appearance of this barrier have been supplied, but it represents a further boundary beyond the historic wrought iron railings and would therefore harm the setting of the listed building.

The building is situated in the Montpellier Character Area of Cheltenham's Central Conservation Area. Cheltenham Borough Council is committed to the preservation and enhancement of the town's conservation areas. There is no precedent for outdoor tables and chairs along the footway of the Inner Promenade and the proposal would therefore neither preserve nor enhance the character and appearance of this part of the conservation area.

The footpath is not wide enough to accommodate the proposal. The drawing shows that 1.4m width of footway is required for the seating area. This would leave 1.8m clear for pedestrians. This is not sufficient – best practice guidance requires a minimum width of 2m.

Townscape Manager, Cheltenham Borough Council

I particularly agree the points [above] regarding narrowing of the carriageway (1.8m is not sufficient space) also the point about the barriers.

Gloucestershire Constabulary

Police have no objections to table and chairs at the above premises.

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 that the applicant has proposed leaving 1.8m space between the barriers surrounding the furniture and the kerbside. Consultees have commented that this is insufficient. Members are advised that the current policy does not specify a minimum distance in relation to applications for tables and chairs, but in general terms the Committee normally expects a minimum of 1.8m clearance to be left in respect of all objects on the highway.
- 6.3 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.

Background Papers

Service Records

Report Author

Contact officer: Mr Philip Cooper
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 775200