

Cheltenham Borough Council
Licensing Committee – 6 November 2015
Highways Act 1980

Local Government (Miscellaneous Provisions) Act 1982

Application for Permission to Place Tables and Chairs on the Highway
Caffe Dolcetti, 4 Regent Street, Cheltenham

Report of the Licensing Officer

1. Executive Summary and Recommendation

- 1.1 An application has been received from Mr Robert Gibson in respect of Caffe Dolcetti, 4 Regent Street, Cheltenham, GL51 1HE.
- 1.2 The applicant seeks permission to place 2 tables and 4 chairs on the highway outside the premises from 10:00 to 18:00 hrs every day.
- 1.3 **Appendix A** shows photographs of the location and **Appendix B** is a plan showing how the tables and chairs will be positioned and includes photos of the furniture.
- 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**
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- 1.5.2 Legal No right of appeal.

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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. Consultation and Feedback

- 3.1 No responses were received from consultees other than Gloucestershire Constabulary who pointed out that the width of the pavement in this location is insufficient for furniture (see further comments under paragraph 6).

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.

- 5.3 Each application is assessed against the outlined conditions included in the application pack and this policy.5.4 No object and its associated activity may generate noise which is likely to cause nuisance or annoyance.
- 5.5 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.
- 5.6 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.
- 5.7 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.
- 5.8 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.
- 5.9 For health and safety reasons, the Council will not permit glass top tables.
- 5.10 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.
- 5.11 When in use the pavement area will need to be enclosed, to demarcate the permitted area and contain the tables and chairs, thus making it distinguishable to other pavement users, and particularly to assist blind and visually impaired pedestrians.
- 5.12 The layout of furniture and means of enclosure will only be approved if adequate provision has been made for customers with disabilities.
- 5.13 The enclosure shall be removed outside the hours of operation or when it is not intended to operate on the pavement within that period. The materials should therefore be lightweight in construction and portable but stable enough to prevent collapse if accidentally walked/stumbled into.
- 5.14 The design of the barrier should complement the character of the surrounding area and in any event must have bars/elements at around 100mm and 1,000mm above ground level.

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 are advised that the Council's standard expectation in respect of all objects on the highway is that a minimum of 1.8m clearance will be left available for passers-by and other road users. In this instance the amount of space left for passers-by would be a maximum of 1.55m. This distance has the potential to be reduced by customers using the furniture who may move it, as the tables and chairs are not enclosed by barriers.
- 6.3 Members will note that the Council's conditions relating to tables and chairs on the public highway include the requirement that the furniture must be enclosed within barriers to demarcate the permitted area. This application does not include such barriers and the amount of space left for passers-by would be considerably reduced if barriers were used.
- 6.4 For the reasons explained above, officers recommend that permission to place tables and chairs on the highway should be refused in this case, because the proposals would constitute a clear obstruction of the public highway.

- 6.5 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

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