

Licensing Committee

Friday, 8th January, 2016
2.15 - 4.02 pm

Attendees	
Councillors:	Roger Whyborn (Chair), Diggory Seacome (Vice-Chair), Andrew Chard, Wendy Flynn, Adam Lillywhite, Anne Regan, Rob Reid, Pat Thornton and Helena McCloskey
Also in attendance:	Vikki Fennell and Andy Fox

Minutes

1. APOLOGIES

Apologies were received from Councillor Walklett.

2. DECLARATIONS OF INTEREST

None

3. PUBLIC QUESTIONS

None

4. MINUTES OF LAST MEETING

The minutes of the last meeting held on 4 December 2015 were approved and signed as a true record.

5. APPLICATION FOR PERMISSION TO PLACE TABLES AND CHAIRS ON THE HIGHWAY

The Senior Licensing Officer, Andy Fox, introduced the report regarding an application from The Stable Bar and Restaurant Limited for permission to place 3 picnic style tables with benches on the pavement outside The Stable premises at 40 Clarence Street from 10:00 to 00:30 every day of the week. Appendix 1 showed a picture of the proposed structure, with the location plan at Appendix B.

The Officer reported that objections had been received from Planning Enforcement on grounds of appearance of the tables and chairs and from Gloucestershire Constabulary on the lack of barriers around the designated licenced area. He continued that in consultation with the applicant, it had been confirmed that the benches would be removed during non-trading hours, that the applicant was willing to place barriers around the proposed tables and chairs and that the applicant had agreed to the table and two seats on Clarence Street being excluded from the consent.

The Officers recommendation was to grant the application subject to the amendment from 3 to 2 tables with chairs and to the approval of the proposed design for the barriers.

In reply to questions from members, the Officer clarified that the pavement tables and chairs design guide (attached as Appendix C) was produced in 2002 and stated that wooden tables and chairs were not normally permitted in an urban setting and also confirmed that the area in blue on the location plan was private land and not highways. The Officer stated he did not know the dimensions of the tables or whether the 8 tables behind the railings would remain out during non-trading hours.

Mr James Anderson, Solicitor for Poppleston Allen and Ms Poppy Armstrong, Operations Manager at The Stable were in attendance representing the applicant and Mr Anderson was invited to speak in support of the application.

In response to members' previous questions to the Officer, Mr Anderson confirmed that the tables were 1 metre in length and 1.5m deep and designed to seat 4 people and that the tables and chairs on the private land behind the railings would remain there all the time. He continued that they had applied for the maximum period allowed for the tables and chairs to be out, but in practice the premises would close at 11pm and they would be moved in at this time each evening. Mr Anderson confirmed that they were happy to accept the recommendation not to have one of the tables on Clarence Street but asked the committee to give due consideration to the other 2 tables and chairs on Crescent Place. With regard to wooden benches not being normal practice, Mr Anderson informed members that the benches chosen were of a high standard and hard wearing and that they wanted this particular style in order to be in keeping with the furniture inside the premises. He felt that once they had weathered and stained, that they would be more in keeping with Cheltenham street scene and he circulated photos of tables that had been in situ for some time at other Stable premises which once aged, blended in better.

Mr Anderson continued that they would be happy to accept the condition to have barriers at the designated area to safeguard members of the public, but favoured barriers at either end and not in front of the benches as he felt this would restrict access for customers and waiting staff. He felt the benches themselves acted as a natural barrier. Mr Anderson showed members photos of two options of wooden barriers which were just over 1m in height.

Members voiced concerns about the appearance of the benches and not complying with the design guide and the tables being left out overnight. The applicant's Solicitor replied that he noted the preference for wooden benches to be in countryside surroundings, but hoped that the natural stained effect of the wood would be acceptable. He added that these tables and benches blended with the inside wood panelling of the establishment which was a feature of 'Stable' premises and felt this lead to aesthetic continuity inside and out. He reassured members that the tables, although solid, could be lifted by one person and thus moved in and out easily. As there would be only 2 tables and 4 benches to move each day he felt this would not be a problem and was aware that if left out they would be in breach of the license.

Members were concerned about the distance drinks and food had to be carried to the proposed tables in the interest of safety to members of the public and waiting staff, taking into account restricted space on the pavement including a lamp post and a sign, a working cellar hatch, restricted space in the entrance lobby and steep steps to the entrance door and the possible risks with using

glasses. Mr Anderson replied that they were an experienced operator with well trained staff who would adhere to health and safety regulations. He stressed they were only talking about 8 more covers so felt the extra risk with glasses and access was small. All food would be waiter service, thus reducing the number of people moving in and out. Mr Anderson was not in favour of using polycarbonate glasses as suggested by a member as it would be difficult to enforce serving in plastic glasses to the 8 customers on the additional two tables, whereas the 32 customers using the tables on the private land would be served in normal glasses. Mr Anderson questioned if other premises in Cheltenham were allowed to carry glasses on highway pavements and he was informed not if the area was covered by the alcohol free zone order.

In reply to a question, Mr Anderson informed members that there was a walkway space between the tables and benches on the private land and the railings, that waiting staff would use, with no access to the pavement.

One member questioned how many residents lived in the vicinity, to which the ward councillor for that area informed there were no residents within 25-30 metres of the establishment. Mr Anderson again repeated that it would only be an extra 8 people outside, most customers would be using the outside tables in the daytime or just for smoking later in the evening and that the premises would close at 11pm.

The Chair moved to vote on this application amended to permission for two picnic style tables and chairs.

Upon a vote it was 4 for, 5 against.

RESOLVED THAT, permission to place tables and chairs on the highway at The Stable, 40 Clarence Street, be refused, as members considered the application not to be compatible with the current Street Scene Policy.

The Chair summarised the rationale behind this decision being that the appearance of the wooden tables and chairs were not in keeping with the Council's Pavement Tables and Chairs Design Guide for use in an urban area and because the application was against the Council's Street Scene Policy on the grounds that the application obstructed the highway and posed a risk to public health and safety and protection, namely in relation to restricted space on the pavement with obstacles, a working cellar hatch, steep steps to the entrance and risks with using glasses and distance for carrying food and drink on the highway.

6. APPLICATION FOR A STREET TRADING CONSENT

The Senior Licensing Officer, Andy Fox, introduced the report regarding an application from Miss Kirsty Westlake of Juicilicious for a street trading consent to sell healthy food and drinks from a gazebo measuring 3m x 3m on the Promenade outside Waterstones from January to April, June to September and November from 08:00 to 18:30 Monday to Friday and 08:30 to 18:30 on Saturday and Sunday. Appendix 1 showed the location of the proposed trading pitch and Appendix 2 gave an image of the trading unit. The Officer continued that three objections had been received and advised that members must consider the application on this location plan and layout only. The Officer recommendation was that this application be refused on the grounds of

appearance and not in keeping with the streetscape; the goods to be sold not being unique and enhancing the enjoyment of the town and obstruction to the highway.

In response to a question from a member, the Officer reported that the Christmas, Farmers' and Craft markets all used that area of the Promenade which were all actively promoted by the Council with tighter controls. One member expressed concern about the objection on the grounds of the type of goods sold, as he felt competition was favourable and that nearby food establishments only had a limited variety of the healthy range on offer in this application.

The applicant was invited to speak in favour of her application. Miss Westlake informed members that she would be selling healthy drinks, juices and smoothies, as well as three healthy breakfast options and healthy snacks. In response to Huffkins' objection to direct competition, she had up-dated her menu which no longer included lunch options and she felt the items on her new menu were not in competition with anyone else nearby. Miss Westlake circulated a copy of her revised menu to members.

With regard to the objection of obstructing the highway, Miss Westlake reported that she had been under the impression from a member of the Licensing team that this pitch was already approved and had been advised to submit her application quickly. The Officer advised that the policy outlining the pitches had not yet been approved and thus each application for a pitch would go through on their own merit. On this point, the Chair questioned the GCC comment regarding pedestrian access on the Promenade, as other larger markets were located there.

Miss Westlake continued that she agreed with the objection that the physical appearance of the gazebo was not in keeping with the streetscape for the Promenade and informed members of 2 different options that she considered more suitable, one being a tricycle and the other a more robust easy to set up half wooden hut and circulated pictures of these to the committee. Members favoured the hut option, which with dimensions of 6ft x 4ft was smaller than the gazebo.

In reply to questions from members, the applicant stated that the reason she had not applied for trading consent in May, October and December was because she had been advised by the Licensing team of an international market and the Christmas market trading in this area at those times. Miss Westlake also advised members that the majority of her items would be produced at her business premises at home, but that she would have a small silent generator to be able to make individual smoothies.

With regard to the objections from GCC, Huffkins and the Cheltenham Business Partnership, the Chair felt they didn't address the real issues and that the Committee needed to consider the overall picture and the Borough as a whole and not concern itself with the profitability of traders. Another member also pointed out that the pitch applied for was not free and had to be paid for. In consultation with members, the Chair stated that the application with the gazebo would have been refused, however if the applicant was willing to change the design to the hut then this proposal could be supported.

The applicant agreed to change the design to the hut option and in reply to a question stated that the hut could be set up in 10 minutes by two people and that it came in a packing bag that could fit into the back of a larger car. Miss Westlake was happy to park the car nearby and carry the hut to the appropriate spot, but it was pointed out that vehicles were allowed on the Promenade for loading and unloading for the markets at certain times of the day.

The Chair moved to vote on 1.5.1 subject to the change of design of the stall.

Upon a vote it was 9 for, 0 against.

RESOLVED THAT, Miss Kirsty Westlake's application for a street trading consent be approved subject to the change of design to the wooden hut, as members were satisfied that the proposal was suitable and in keeping with the Street Scene Policy.

The Chair wished Miss Westlake success and welcomed seeing a young person setting up in business.

7. REVIEW OF A PRIVATE HIRE DRIVER'S LICENCE

The Senior Licensing Officer, Andy Fox, introduced the report regarding an application for a review of Mr Keith David Lewis' Private Hire Driver's Licence PHD116 which was due for renewal on 8 December 2016. Mr Lewis had a number of penalty points on his driver's licence, details of which were outlined in the background papers, and had failed to declare these points to the council in accordance with statutory and policy requirements. In the light of this, the matter had been brought to committee for members to consider if Mr Lewis remained a fit and proper person to hold such a licence.

In response to questions from members, the Officer informed the committee that Mr Lewis had no recollection of the speed he was driving on the three occasions, but that the SP30 fine indicated he was exceeding 30mph. However as 3-6 points could be given for each offence and given that Mr Lewis was awarded 3 points on each occasion, it could be reasonably assumed that it was less than double the speed limit and not excessively over 30mph. One member did point out that speed awareness courses were often offered for a first conviction if the speed was not much over the limit. The Officer advised members that a driver's licence was suspended at 12 points and that Mr Lewis had 9 points. The Officer informed members that taxi drivers were reminded via newsletters of the requirement to inform the council of any convictions. Drivers were also sent a copy of the conditions and a question on this point was in the test that the drivers had to pass and the Officer confirmed that Mr Lewis had correctly answered this question.

Mr Lewis was invited to address the committee and he apologised that it had slipped his mind to report the convictions to the council. He further denied the allegation that he bragged about this, questioning why he would want to brag about the number of points he had on his licence.

In reply to questions, Mr Lewis informed members that he didn't have any passengers when caught, that all offences were on transition from a 40mph limit to a 30mph area, one being on the way to Evesham and two being at the Walls

roundabout in Gloucester. He further added that he had been driving since the age of 19 and had been a licensed taxi driver for 3 years. As all the offences were within a relatively short period of time of 7 months, a member questioned if there was a reason for this, to which Mr Lewis replied that although he had had some personal problems, there was no real reason just bad luck.

A member questioned if Mr Lewis had taken the DVSA driving test and the Officer informed that he had not as the policy to take this test had only changed some 6-8 months ago. However Mr Lewis had taken the former Road Safety Unit test.

In considering whether Mr Lewis was a fit and proper person to hold such a licence, members were advised that they could add the condition that Mr Lewis complete the DVSA taxi driving test within a specified period of time and also consider issuing a written warning.

Members adjourned at 15.43 to consider the matter and reconvened at 15.58.

The Chair reported that the committee had taken a serious view on this matter, but that as all offences had happened in a relatively short period of time, members were of the opinion to issue a written warning and to ask Mr Lewis to complete the DVSA test. The Chair read out an amended 1.4.2.

Upon a vote it was 9 for, 0 against.

RESOLVED THAT, Mr Lewis be given a written warning and be required to successfully complete a DVSA taxi driving test within 3 months at his own expense.

8. ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION

None

9. DATE OF NEXT MEETING

5 February 2016

Roger Whyborn
Chairman