

Cheltenham Borough Council

Licensing Committee – 1 July 2016

Highways Act 1980 Local Government (Miscellaneous Provisions) Act 1982

Application for permission to place tables and chairs on the highway

Juicilicious Promenade

Report of Licensing Team Leader

1. Summary and Recommendation

1.1 An application has been received from Mrs Stephanie Westlake in respect of Juicilicious situated on the Promenade. The applicant wishes to place 8 chairs and 4 tables on the pedestrianised Promenade.

1.2 It is intended that the tables and chairs be put out:

| | |
|-----------|---------------|
| Monday | 08:00 - 18:30 |
| Tuesday | 08:00 - 18:30 |
| Wednesday | 08:00 - 18:30 |
| Thursday | 08:00 - 18:30 |
| Friday | 08:00 - 18:30 |
| Saturday | 08:00 - 18:30 |
| Sunday | 08:00 - 18:30 |

1.3 A picture of the proposed structure(s) is attached at **Appendix A** and a location plan at **Appendix B**.

1.4 The Committee can:

1.4.1 Grant the consent because the application is compatible with the current Street Scene Policy, or

1.4.2 Refuse the consent because the application falls outside the provisions of the current Street Scene Policy.

1.5 Summary of implications

Legal

No right of appeal.

Contact officer: One Legal
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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. Policy Principles, Aims and Objectives

- 3.1 This section outlines the policies the council will apply when making decisions on applications for consents.
- 3.2 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.

4. Consultee Comments:

4.1 Comments have been received from two consultees in relation to this application:

4.1.1 Business Partnership Manager (on behalf of Cafe Rouge):

"After speaking with my Area manager and operations director we feel this could be brand damaging and would like to protest this."

4.1.2 Public Space Designer:

"I object to this application for several reasons:

- 1. it is replicating too closely what is available in the immediate vicinity from adjacent businesses*
- 2. this space is already intensively used by markets this intensity is already at capacity as far as I am concerned*
- 3. notwithstanding the previous point, this is in the wrong place on the Prom, other cafes operate on the western side & the application area takes up more of the space for pedestrian desire lines*
- 4. I do not believe an increase in scale of the operation can be managed without a negative effect on the space through increased vehicle deliveries & set up requirements."*

5. Licensing Comments

5.1 The Committee must determine the application with a view to promoting the council's adopted policy.

5.2 Through the policy 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.

5.3 Members are to note that whilst the policy seeks to promote the 'cafe culture' in Cheltenham, this must be compatible with other highway uses.

5.4 Members must also bear in mind the overall policy objectives 3.2.

5.5 In relation to the comments submitted by the Business Partnership Manager on behalf of Cafe Rouge, the potential for brand damage is not a relevant consideration for members because:

5.5.1 There is no evidence of this; and

5.5.2 This is not relevant to either the policy considerations or the primary legislation which deals with obstruction of the highway as its main concern.

5.6 If Members are minded to grant this consent, it should be subject to a condition that the use of the relevant space must be restricted to non-market days.

6. Officer recommendation

6.1 The officer recommendation is that this application be refused.

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Reason(s): The primary legislation underpinning this consent – Highways Act 1980 – is primarily concerned with avoiding unnecessary obstruction of the public highway. This is reflected in the council's policy.

The relevant section of the Promenade (between Imperial Circus and Crescent Terrace) whilst entirely pedestrianised, is also very congested with existing consents for tables & chairs and street trading, tree pits, street furniture, phone boxes, vehicular thoroughfare and markets.

Officers are of the view that granting this consent will add further unnecessary obstruction to the area that is already very congested.

The officer recommendation is therefore based on:

- Promoting the purpose of the primary legislation;
- Promoting the policy's overarching aims i.e. "...to ensure that these objects do not obstruct the highway."
- Promoting the specific policy on tables and chairs i.e. the use of the space is not compatible with other highway uses in this area.

Background Papers**Service Records****Case Officer**

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