

Cheltenham Borough Council

Miscellaneous Licensing Sub-Committee – 5 August 2020

Highways Act 1980 Local Government (Miscellaneous Provisions) Act 1982

Application for Permission to Place Tables and Chairs on the Highway

Aquavitae 10 Ormond Place Cheltenham

Report of Licensing Team Leader

1. Summary and Recommendation

1.1 An application for the variation of a consent to place tables & chairs (“pavement consent”) has been received from Mr Paul Stephens in respect of Aquavitae on 10 Ormond Place, Cheltenham. The application is to place 42 chairs and 21 tables on Ormond Place.

1.2 Proposed days & times;

Monday	09:00 - 04:00
Tuesday	09:00 - 04:00
Wednesday	09:00 - 04:00
Thursday	09:00 - 04:00
Friday	09:00 - 04:00
Saturday	09:00 - 04:00
Sunday	09:00 - 04:00

1.3 Current days & times;

Monday	09:00 - 03:30
Tuesday	09:00 - 03:30
Wednesday	09:00 - 03:30
Thursday	09:00 - 03:30
Friday	09:00 - 03:30
Saturday	09:00 - 03:30
Sunday	09:00 - 03:30

1.4 A plan of the proposed layout is attached at **Appendix A**.

1.5 An objection has been received in relation to this application with further details at paragraph 4.

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
E-mail: legalservices@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. 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.

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

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

3.5 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.

3.6 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.

3.7 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.

3.8 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.

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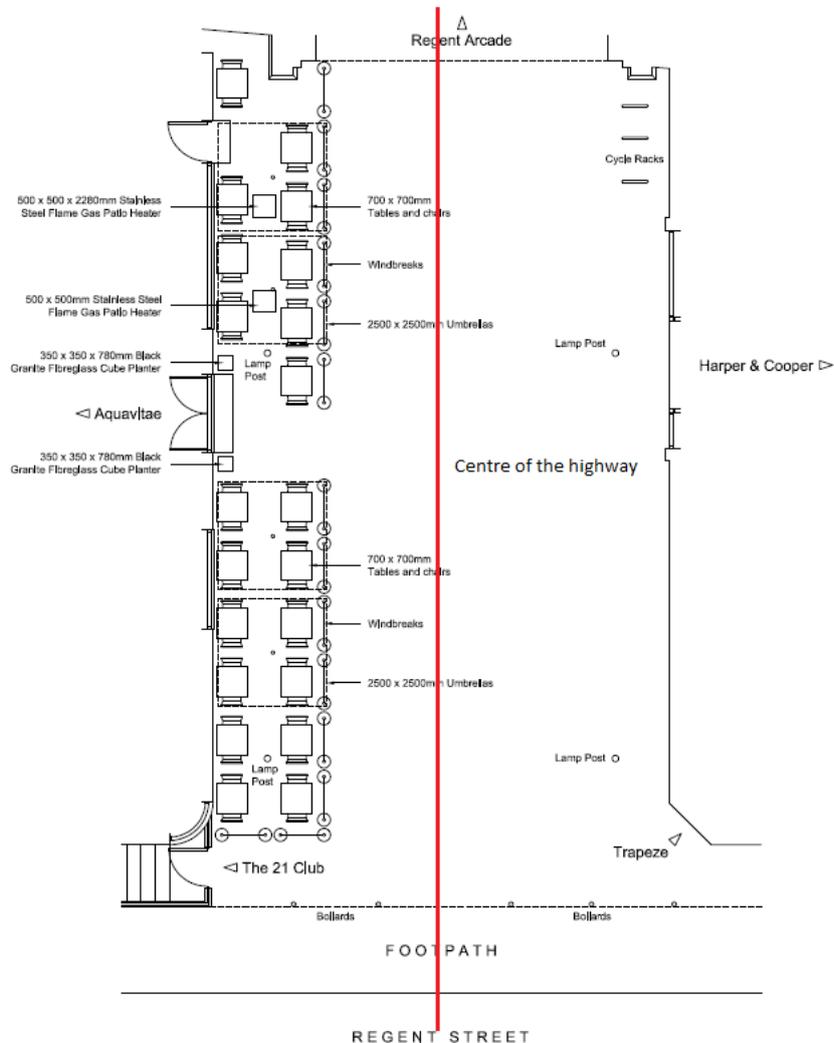
- 3.9 For health and safety reasons, the Council will not permit glass top tables.
- 3.10 Where consent has been issued for tables and chairs to be placed on the highway the Council may permit, within reason, other objects to be placed inside the area that has been cordoned off with barriers.

4. Consultee Comments:

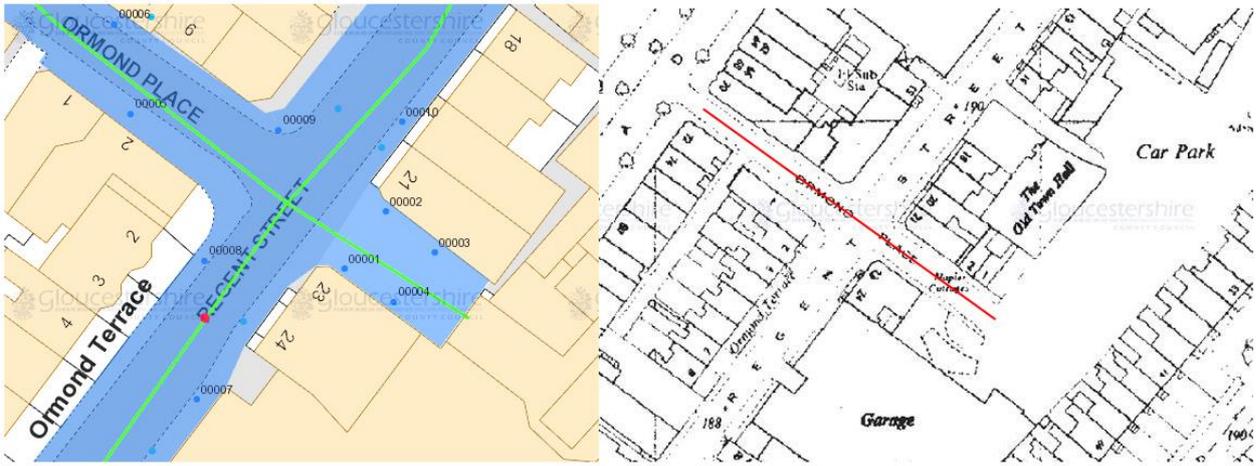
- 4.1 An objection was submitted by Gowling WLG on behalf of the owners of the Regent Arcade.
- 4.2 A copy of the objection is attached at **Appendix B** of this report.

5. Licensing Comments

- 5.1 The Committee must determine the application with a view to promoting the authority's adopted policy and fully consider the representations received and the applicant's response to these.
- 5.2 The objection makes reference to matters under the section 115E(3) Highways Act 1980 and the council's ability to issue this consent. Under the aforementioned section, the council is not able to issue a consent for the obstruction of the highway unless it has "obtained the consent of the frontagers with an interest" affected.
- 5.3 The council's legal position is that the objector's client cannot be viewed as frontager with an interest to this application due to the nature of where the centre of the highways falls (see below line in red) in respect of the area of highway in question.



- 5.4 Section 115A of the Highways Act 1980 states: “In this Part of this Act “frontagers” means the owners and occupiers of any premises adjoining the part of a highway on, in or over which an object or structure would be placed or on which facilities for recreation or refreshment or both have been, are being or would be provided; but *frontagers have an interest under this Part of this Act only in proposals to place objects or structures or provide or operate facilities wholly or partly between their premises and the centre of the highway.*”
- 5.5 Gloucester County Council’s Local Highways Manager for Cheltenham, stated in relation to where the centre of the highway falls outside 10 Ormond Place: “I have had a look at some old mapping showing the street before Regent Arcade was built when Ormond Place led to a car park. No 21 and 23 Regent Arcade do not seem to have changed so if I was looking to identify the centre of the highway I would simply measure the distance between these two building at a couple of points and divide the measurement by two to find the middle.” The plans accompanying the response above are shown below for reference:



- 5.6 Since the council’s view is that the arcade cannot be classed as a frontager with an interest, the committee will need to determine the application on its individual merits taking into account the evidence it hears on the day (both verbal and written) and with a view of promoting the council’s policies.
- 5.7 In relation to the relevant policies, relevant extracts are outlined above (paragraph 3). Members must also be mindful of the Probity in licensing guidance in general but particularly, “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.
- 5.8 The committee must consider the wider implications of the granting this consent, if it is mindful of doing so. The objector has, for example, raised the issue of the opening of the new cinema in the Arcade and the investment to refurbish the public realm area on Ormond Place leading to the arcade’s entrance.

Background Papers

Service Records

Case Officer

Contact officer: Mr Louis Krog
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 262626