

Your Reference
20/00894/TCAX

Our Reference
2651115/NXH03



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FAO Phil Cooper

3 July 2020

Dear Sirs

Aquavitae - Outside Aquavitae on Ormond Place, Cheltenham - Application to place tables and chairs within the public highway - reference 20/00894/TCAX (the "Application")

This representation is submitted on behalf of our clients, Canada Life Limited, which is the proprietor of a long leasehold interest in the Regent Arcade in Cheltenham and The Regent Arcade Trust. Cheltenham Borough Council is the freeholder. Our clients have submitted representations in relation to previous applications, most recently an application under reference 18/01920/TCAX ("**the 2018 Application**").

It is established that the part of Ormond Place which is the subject of the Application forms part of the adopted highway and it will be recalled that the Regent Arcade has the benefit of a pedestrian access directly onto Ormond Place, which is a principal entrance to the shopping centre scheme which provides over 200,000 sqft of retail space with over 50 stores. Footfall through this entrance is presently in the region of 3.5 million people per year. Our client's premises directly adjoin that part of Ormond Place over which Cheltenham Borough Council's consent is being sought via the Application.

Our client has been supplied with some details as regards the application, via an email from Cheltenham Borough Council. Our client wishes to object to the grant of the application, on the following grounds:

1. Our client is a frontager to the highway and as such, under s.115E(3), the local authority is prohibited from issuing its approval without our client's consent.
2. The new cinema is due to open later this year and the customers of Aquavitae will block the entrance to the cinema for patrons;
3. The tables and chairs will block the entrance to the Regent Arcade for shoppers prior to closing; and
4. The current use of the area by Aquavitae has resulted in smashed glass on the highway, in front of the entrance to the Regent Arcade, which has not been cleaned up by Aquavitae;

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We expand on each of these grounds below.

Frontager to the Highway

The provisions of section 115E(3) Highways Act 1980 set out that an authority is prohibited from issuing its approval to a proposed highway obstruction where consent from frontagers has not been obtained. For these purposes our client is a frontager; it has premises directly abutting, and an access onto, Ormond Place.

For the current purposes, a frontager is defined by s.115A(7) of the Act as the owner or occupier "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".

Our client's property adjoins Ormond Place, in fact the extent of the entrance to the Regent Arcade stretches across the entire width of Ormond Place, being a principle entrance to the shopping centre. It also adjoins Aquavitae, the property to which this application relates. From viewing the plans it can clearly be concluded that our client is a frontager to the area of Ormond Place in question as the proposed tables and chairs layout extends to the face of our clients frontage.

This representation should be taken as a clear statement on behalf of our client that it does not give its consent to the Application. Accordingly the grant of consent in these circumstances would be unlawful and unsound, and would sit contrary to Cheltenham Borough Council's public law obligations.

If the Council disputes our clients' status as frontager, for the purposes of s.115E of the Highways Act, we invite them to set out their legal reasoning. Our client reserves their right to take further legal action against the Council's decision if their status as frontage is ignored.

Access to the new Cinema

In our client's representations we have previously explained the proposed redevelopment of a leisure-led unit at this end of Regent Arcade together with works to upgrade the Ormond Place entrance and streetscape. These works have now completed and a new 22,000 sq ft boutique Tivoli cinema with lounge and dining facilities is due to open in September/October 2020, and it is intended that a new 25,000 sq ft foodhall will shortly follow. To enter the cinema, customers must use the Ormond Place entrance, following the closure of the High Street and House of Fraser entrances in the evenings. The cinema will be busiest in the evenings and will open regularly past midnight and so customers will often move past Aquavitae while the bar patrons are outside. This entrance will also be used by customers who park in Cheltenham Borough Council's car park. This is a new and safer means of access to the car park which the Council and users of the car park do not currently benefit from.

Although the physical limits of the tables and chairs do not extend over the entrance to the Arcade and the cinema, Aquavitae's customers often move across Ormond Place, outside of the authorised area, causing a block to the cinema customers. Earlier this year, during the Cheltenham Gold Cup racing week, Aquavitae erected marquees on Ormond Place which blocked the entrance to the Regent Arcade, during the Arcade's opening times. The owner initially refused to remove the marquees and employees of the Regent Arcade had to step in and demand that the marquees be taken down. These issues have been raised with the owner of Aquavitae previously but his staff have not contained the customers to the authorised area.

We have enclosed photos of the crowd at Aquavitae taking up the entire width of Ormond Place, whereas the licence is restricted to an area at the front of the bar which does not block the entrance to the Regent Arcade. These photos are enclosed at Appendix 1.

Access to The Regent Arcade shops

Additional to the block caused to the cinema, the shopping customers to the Arcade are also affected. During the 2018 Application, the times that the tables and chairs would be placed outside was a contentious point. The owner of Aquavitae assured the Council and our clients that he would only place the tables and chairs outside and open them to customers once the Arcade has closed. However, since obtaining the licence the owner has begun placing the tables and chairs outside as early as 4pm on several occasions. The Regent Arcade closes at 6pm and so this results in two hours of interruption to the shoppers entering and exiting the Arcade from the Ormond Place entrance.

The majority of the customers to the Regent Arcade are local to Cheltenham and the customers of the cinema will overwhelmingly be local to Cheltenham. Our client does not want local residents or visitors to Cheltenham to be discouraged from shopping in the Regent Arcade or visiting the new cinema because of the irresponsible actions of Aquavitae.

Health and Safety

Aquavitae have currently been placing tables and chairs on the highway pursuant to an existing licence. Our client, on numerous occasions, has seen shards of smashed glass and other litter on the paving outside the entrance to the Regent Arcade when opening the Arcade in the morning, which have arisen from the previous night at Aquavitae.

Our clients have spent a lot of money recently on works to the streetscape of Ormond Place, including re-paving the area. These works were funded entirely by Canada Life, with no contributions from adjacent landlords or Cheltenham Borough Council, and benefits neighbouring property owners and occupiers, including Aquavitae. The shards of glass often fall between the cracks of the new paving and make it difficult to remove. This is clearly a health and safety hazard to the many shoppers of the Regent Arcade. Our client does not understand why customers of Aquavitae are allowed to take glass outside the bar. If a licence required drinks to be served in plastic cups, this would go some way to solving the health and safety issue.

This issue has been raised on numerous occasions with the owner of Aquavitae but the owner and his staff have still failed to clean the area properly and the shattered glass still remains present in the mornings. Our clients have also raised this issue with Cheltenham Borough Council previously but no investigation or enforcement action has been taken by the Council. This does nothing to dissuade Aquavitae from complying with the terms of their licence or taking any measures to clean up the mess left by their patrons. Our clients have absolutely no belief that any conditions imposed on a licence would have the effect of preventing the litter and glass unless proper enforcement action is taken by the Council. For this reason, it would be irrational and dangerous for a new licence to be granted to Aquavitae.

Conclusion

Our client has, at all times, acted reasonably and amicably with Aquavitae (including its owner and staff) and Cheltenham Borough Council in order to maintain cordial relationships and ensure that the Arcade and Aquavitae can both operate safely and logistically. Our client has allowed Aquavitae to obtain a licence for seating in this area, despite being well within its legal right as frontage to the highway to insist that there should be no external seating on Ormond Place. However, Aquavitae have not been acting likewise since

the grant of the previous licence and regretfully our client now cannot entertain tables and chairs outside Aquavitae.

Despite representations to them from our clients, Cheltenham Borough Council has failed to take action against Aquavitae for the flagrant breaches of the existing licence and health and safety regulations. We would like to obtain reassurances from the Council that in the future, should any licence be granted, they will police such licence strictly and monitor and manage Aquavitae's use of the licensed area and not hesitate to revoke the licence if Aquavitae do not comply with its terms. Without such monitoring our client believes Aquavitae will revert to breaching the licence and creating further health and safety hazards to the users of the Regent Arcade, the new cinema and the car park.

We kindly request confirmation of receipt of this representation, along with confirmation that its contents shall be brought to the attention of the Licensing Sub-Committee sitting to determine the Application, where we look forward to providing our representations and answering any questions the committee members may have. Please can you give us notice of the date of the Licensing Sub-Committee where the Application will be determined.

Yours faithfully

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