



CHELTENHAM

BOROUGH COUNCIL

Notice of a meeting of Licensing Sub-Committee - Miscellaneous

Wednesday, 25 April 2018
6.00 pm
Pittville Room - Municipal Offices

Membership	
Councillors:	David Willingham (Chair), Dennis Parsons (Vice-Chair), Adam Lillywhite, Diggory Seacome and Pat Thornton
Officers:	Vikki Fennell and Phil Cooper

Agenda

1.		APOLOGIES	
2.		DECLARATIONS OF INTEREST	
3.		MINUTES OF THE LAST MEETING To approve the minutes of the last meeting held on 4 th April 2018.	(Pages 3 - 6)
4.		APPLICATION FOR A STREET TRADING CONSENT Mr Edward Danter	(Pages 7 - 14)

Contact Officer: Sophie McGough, Democracy Officer,
Email: democratic.services@cheltenham.gov.uk

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Licensing Sub-Committee - Miscellaneous

**Wednesday, 4th April, 2018
6.00 - 6.45 pm**

Attendees	
Councillors:	David Willingham (Chair), Dennis Parsons (Vice-Chair), Adam Lillywhite, Diggory Seacome and Pat Thornton
Also in attendance:	Phil Cooper and Donna Marks

Minutes

1. APOLOGIES

There were no apologies.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. MINUTES OF THE LAST MEETING

The minutes of the last meeting held on 7th February were signed as a correct record.

4. APPLICATION FOR STREET TRADING CONSENT

The Chair welcomed the group and explained that they were there to determine an application for a street trading consent. He proceeded to outline the procedure for the meeting and questioned whether Members had conducted a site visit to the location in question, 3 Members confirmed that they had visited the site and 2 stated that they knew the area well.

The Licensing Officer began by introducing the report, he explained that Mr Piotr Pawet Kazieczko had made an application for a street trading consent at a location on Redmarley Road, Cheltenham, the location was highlighted at Appendix A of the report. The Licensing Officer also distributed a google image of the location in question for Members. He stated that Mr Kazieczko had applied to sell hot and cold food and drinks from an Iveco vehicle, the timings he was proposing to trade were 7:30-15:30 Monday to Friday, 07:30 – 14:00 Saturday and he did not propose to trade on Sundays. Mr Kazieczko had produced a statement in support of his application which was included at section 4.1 of the Officer's report. The Licensing Officer explained that objections had been received from Cheltenham Borough Council's Townscape and Planning team, as well as a nearby resident. He confirmed that the application complies with Council policy as it is located outside of the town centre zone where restrictions apply, and as such, each application outside of the zone must be determined on its own merits.

He reminded the sub-committee that they could:

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- Approve the application because it is compliant with the council's policy and Members are satisfied that the location, size of unit and type of goods are suitable; or
- Refuse the application because Members feel that the location, size of unit and/ or type of goods are not suitable.

The Licensing Officer also confirmed that should they be minded to, the sub-committee could grant the application for shorter than a year although they were not permitted to grant for longer.

The Members proceeded to ask the Licensing Officer a series of questions. He confirmed that:

- The image of the van included within the report was the van that Mr Kazieczko was proposing to use to trade. Mr Kazieczko confirmed that it was.
- He believed that Mr Kazieczko was planning to park on the road with the serving hatch facing out on to the pavement.

One Member then raised a query regarding parking restrictions in the area, as they had recently visited the location and believed it had double yellow lines where Mr Kazieczko was proposing to trade. Following a short discussion regarding the parking restrictions, the Legal Officer confirmed that Gloucestershire 'Highways' County Council could grant him an exemption, although this would be unusual. If this did happen the legal officer reminded the sub-committee that this could set a precedent for future applications, if a trader was able to obtain an exemption from Gloucestershire Highways to allow a vehicle to be sited on double yellow lines.

Some Members felt that should the application be granted there could be considerable reputational damage to the Council. Members sought to find out whether any parking restrictions were in place but in the meantime agreed to proceed in determining the application and should they be minded to grant then a condition could be applied that the licence be subject to no parking restrictions being in place.

Mr Kazieczko was then invited to speak in support of his application. He explained that at the time when he was monitoring the area there were no double yellow lines and so they must be a recent thing. He explained that he had been seeking a suitable location to trade for some time and felt that the location on Redmarley Road was fairly busy and had a lot of passing customers and so would be a suitable location to run a business.

The applicant was then asked to show on the map in the Officer's report and on the google image provided, the exact location in which he was proposing to trade. He confirmed that he planned to park his van by the bus stop at the beginning of the road, he explained that this was the widest part of the road at 8.5 metres and he felt this would be the easiest location to find a parking space in the mornings.

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The meeting was adjourned whilst one Member sought to confirm whether any parking restrictions were in place, following a short telephone conversation the Member confirmed that there were yellow lines at the location.

The Legal Officer explained that approving street trading consent in this location could be in breach of the Highways Act and the council could receive complaints from both Sainsbury's and local residents.

Some Members felt that in light of the legal advice, coupled with the objectors' concerns and the fact that Sainsbury's lorries also had to manoeuvre along the road that parking a van there could be dangerous.

The Legal Officer advised the sub-committee that they had 3 options, to:

- Debate and vote on the application;
- Adjourn/defer the meeting; or
- Refuse the licence and allow the applicant to provide a new application in a different location.

Following this advice the Licensing Officer confirmed that should the sub-committee be minded to adjourn/defer then the application would simply come back in its current state. If the applicant were to find a new suitable site then consultation would again need to take place and there would be another fee of £100. He therefore advised that the sub committee to make the decision to either grant or refuse the application not adjourn/defer.

The Chair apologised to the applicant for the confusion [in relation to the double yellow lines as this was clearly an unseen event by the Licensing Sub-committee and the Licensing Officers], during the meeting but reasoned that given the legal grounds and the unsuitable location the Committee would be minded to refuse the application

In his final right of reply the applicant explained the following:

- Lorries only unloaded during the night not during day time when he would be trading;
- Other vehicles were always parked on Redmarley Road and these did not cause obstructions;
- He had chosen the widest part of the road to park his van:
- The area was not overly busy during the hours he was proposing to trade and so would not cause a nuisance.

The sub committee then proceeded to vote on section 1.4.1 of the report to:

Approve the application because it is compliant with the council's policy and Members are satisfied that the location, size of unit and type of goods are suitable.

The sub-committee voted unanimously against section 1.4.1.

They then voted on section 1.4.2 to:

Refuse the application because Members feel that the location, size of unit and/or type of goods are not suitable.

The sub-committee voted unanimously for section 1.4.2.

Resolved that

The application be refused.

The Legal Officer advised the applicant that he did not have the right of appeal but reminded him that the Licensing Officer would be available for pre-application advice for any future applications.

5. LOCAL GOVERNMENT ACT 1972- EXEMPT INFORMATION

Upon a vote it was unanimously

RESOLVED that in accordance with Section 100A(4) Local Government Act 1972 the public be excluded from the meeting for the remaining items of business as it is likely that, in view of the nature of the business to be transacted or the nature of the proceedings, if members of the public are present there will be disclosed to them exempt information as defined in paragraph 1, 2 and 7, part 1 Schedule 12A (as amended) Local Government Act 1972, namely:

Information relating to any individual,

Information which is likely to reveal the identity of an individual,

Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

6. EXEMPT MINUTES OF THE LAST MEETING

The exempt minutes of the last meeting held on 7th February were signed as a correct record.

David Willingham
Chairman

Cheltenham Borough Council

Licensing Committee – 25th April 2018

Local Government (Miscellaneous Provisions) Act 1982

Application for a Street Trading Consent

Mr Edward Danter

Report of the Licensing Officer

1. Summary and recommendation

- 1.1 We have received an application from Mr Edward Danter for a street trading consent to sell hot turkey rolls, pork rolls, German & Gloucestershire Old Spot sausages and hot & cold drinks from a hot food unit measuring 4.8m x 2.4m.
- 1.2 Mr Danter has applied to trade outside 109 - 113 High Street near to the junction with Cambray Place, in the location referred to as 'High Street 6' in the council's street trading policy. **Appendix 1** shows the location of the proposed trading pitch.
- 1.3 Mr Danter has applied for consent to trade from 09th November to 31st December 2018 on the following days and times:
- | | |
|-----------|---------------|
| Monday | 09:00 - 18:00 |
| Tuesday | 09:00 - 18:00 |
| Wednesday | 09:00 - 18:00 |
| Thursday | 09:00 - 21:00 |
| Friday | 09:00 - 18:00 |
| Saturday | 09:00 - 18:00 |
| Sunday | 11:00 - 17:00 |
- 1.4 An image of the trading unit is shown in **Appendix 2**.
- 1.5 The proposed trading location is one that is approved for street trading in the council's adopted policy, however the type of goods being sold is not compliant with the policy and nor is the size of the trading unit.
- 1.6 **The Committee can:**
- 1.6.1 **Approved the application because Members are satisfied that the location is suitable, or**
- 1.6.2 **Refuse the application because it does not comply with the provision of the Street Scene policy.**

1.7 Implications

Legal

The Local Government (Miscellaneous Provisions) Act 1982 provides that a local authority can grant a trading consent for an individual within their area. Under the legislation consent can be granted for a period not exceeding 12 months. Consent must therefore be reviewed every 12 months. A local authority can apply reasonable conditions to the consent.

Any application should be considered in line with the Council's policy on Street Trading.

Contact officer: One Legal
E-mail: legalservices@tewkesbury.gov.uk
Tel no: 01684 272015

2. Background

2.1 The current street trading policy was adopted by Council on 12 February 2016. A copy of the 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 & Objectives

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

Each application will be determined on individual merits and in view of promoting the principles and objectives contained in this policy.

In particular the policy aims to promote the following aims and objectives in reference to street trading activities:

- prevent the obstruction of the streets by street trading activities;
- sustain established shopkeepers in the town;
- maintain the quality of the townscape and add value to the town;
- encourage inward investment; and
- promote quality markets.

3.1 Permitted locations for street trading

The council's adopted policy prescribes a number of permitted trading locations and associated permitted trading goods. These locations and permitted goods are outlined in the council's adopted policy that is available on the council's website.

3.2 Assessment criteria

In considering applications for the grant of a consent the following factors will be considered:

- **Needs of the Area** - The retail offer of each individual pitch. The goods complement and do not conflict with the goods sold by other retailers (including other street traders) within vicinity. This criterion permits the council to undertake a qualitative assessment of the goods to be sold by each competing applicant against those on sale in the adjacent area. The council does however recognise that the surrounding retail offer is subject to change therefore it will apply this criterion to applications for new or renewal applications.

- **Public Nuisance** – Whether the street trading activity represents, or is likely to represent, a substantial risk of nuisance to the public or properties in the vicinity from noise, misbehaviour, emissions, smells etc.
- **Public Safety** – Whether the street trading activity represents, or is likely to represent, a substantial risk to the public from the point of view of obstruction, fire hazard, unhygienic conditions or danger that may occur when a trader is accessing the site.
- **Appearance of the Stall or Vehicle** – Trading units must enhance the visual appearance of the street rather than detract from it and be constructed in a suitable scale, style and of appropriate materials. It should also be designed to be fully accessible for all customers and advertising material must be limited to the name of the stall, the type of product sold and a simple price list and be professionally designed and printed. The council will generally not permit trading units over 3 meters tall to avoid obstruction of sight.
- **Environmental Credentials** - The impact of the proposed operation on the local environment including street surfaces, tree pits & materials, power supply, carbon footprint, supply chain, packaging, waste minimisation, waste disposal and waste created by customers.

4. Consultee Comments

4.1 During the consultation process the following comments were received:

Operations Manager, Cheltenham Business Improvement District (BID)

Cheltenham Business Improvement District (BID) opposes the application for the hot food Xmas unit outside 109-113 High Street.

Our food and drink businesses in particular are concerned that this unit would operate in direct opposition to them at a time when they should be benefitting from the additional footfall that the Christmas season brings. The businesses pay business rates and the BID levy, whereas a temporary operator of this kind would not.

Among the food and drink businesses in the immediate area that would be directly affected if this application went ahead are: Farmhouse Deli, Zi Coffee Shop and Bakery, Costa Coffee, SOHO Coffee, The Butcher's Block, Sainsbury's Local.

Businesses were consulted when the council's latest policy for street trading was drawn up. They wanted the policy to clearly state what goods could be sold at particular locations and for a limit to be put on the size of any temporary units. The policy does this.

However, the location in question has been allocated for sign-up services and buskers selling merchandise. It does not permit food and drink sales. The maximum size of unit allowed is 6m.sq, whereas this unit would be 11.52m.sq.

The John Lewis store is due to open before the time period covered by this application and the first stage of work to improve High Street East will also have been completed. The council's stated ambition is to improve the quality of the public realm in this area, which can best be done by sticking to the street trading policy and limiting the number of street traders allowed to operate in this and other areas.

5. Licensing Comments

5.1 The Committee must determine the application with a view to promoting the council's adopted policy and Members should not arbitrarily deviate from the council's policy.

5.2 As outlined above, this application does not fully comply with the council's policy for the following reasons:

- (i) Although the proposed location is an approved location for trading (referred to as High Street 6 in the policy), the location is not approved for the sale of hot food and drink (see 5.4 below);
- (ii) The trading unit exceeds the permitted size for trading units in that location. The policy approves trading units up to 6m² in that location, whereas this unit, being 4.8m x 2.4m, is 11.52m².

5.3 The policy outlines the following permitted trading types for the location in question:

- Signup Services
- Busking (when also selling merchandise)

5.4 The policy takes into account a number of factors when determining the permitted trading types. These are outlined in paragraph 2.2 above ("Permitted Locations") and Members should take these into account when determining this application. The reason that the policy restricts certain types of trading in particular locations is that it takes into account the needs of the area and the presence of other businesses. In this location there are several established food outlets and the policy seeks to limit oversupply and thereby protect the interests of established retail businesses.

5.5 Whilst the policy creates a presumption against the grant of an application if the application does not comply with the policy, this position should not fetter the committee's discretion to take into account the individual merits of the application and any circumstances that may warrant a deviation from the policy.

5.6 Members are reminded that clear and thorough reasons should be given for decisions made by the committee particularly where the decision is contrary to adopted policy.

6. Officer recommendation

6.1 The officer recommendation is that this application be refused.

Reason(s): The officer recommendation is based on the fact that the application does not comply with the council's policy and has attracted an objection from Cheltenham Bid.

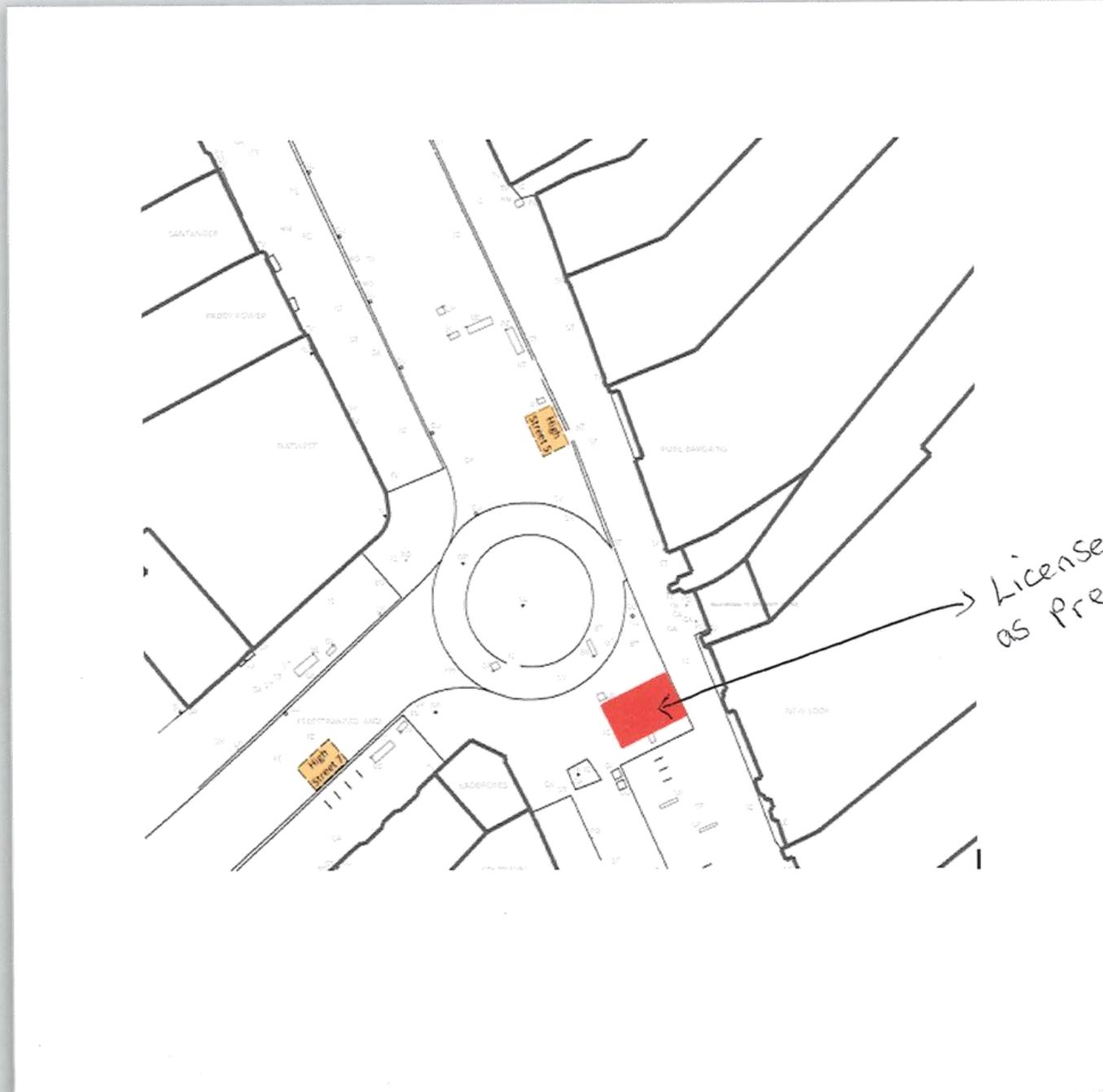
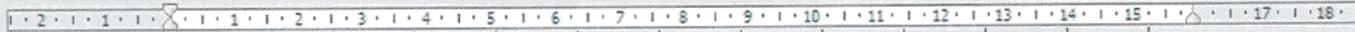
Background Papers

Service Records

Adopted Street Trading Policy

Case Officer

Contact officer: Mr Phillip Bowen
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 775200



Licensed Pitch Same
as Previous Years 2016
2017

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Edward Denters
Unit Cheltenham High St
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