

Cheltenham Borough Council Licensing Sub-Committee - Miscellaneous

Meeting date: 11 July 2024

Meeting time: 6.00 pm

Meeting venue: Council Chamber - Municipal Offices

Membership:

Councillor Angie Boyes, Councillor Helen Pemberton, Councillor Julie Sankey, Councillor Simon Wheeler and Councillor Dr David Willingham

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Speaking at Licensing Committee

To find out more about Licensing Committee or to register to speak, please click [here](#) or contact Democratic Services.

Please note: the deadline to register to speak is 5.00pm on the day before the meeting.

Contact: democraticservices@cheltenham.gov.uk

Phone: 01242 264 130

Agenda

1 Apologies

2 Declarations of Interest

3 Public Questions

4 Application for Street Trading Consent (Pages 5 - 16)

5 Local Government Act 1972 Exempt Information

That in accordance with Section 100A(4) Local Government Act 1972 the public be excluded from the meeting for the remaining agenda items 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 and 2, Part (1) Schedule (12A) Local Government Act 1972, namely:

Paragraph 1; Information relating to any individual

Paragraph 2; Information which is likely to reveal the identity of an individual

6 Application for a New Hackney Carriage Drivers Licence (Pages 17 - 26)

7 BRIEFING NOTES

8 Any Other Items the Chairman Determines Urgent and Which Requires a Decision

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Licensing Sub - Committee – Miscellaneous

Local Government (Miscellaneous Provisions) Act 1982

Application for a Street Trading Consent

**Bambas Shaouna T/A Mr Whippy - 24/00920/STA, 24/00919/STA,
24/00906/STA, and 24/00905/STA**

Report of the Licensing Officer

1. Summary and recommendation

- 1.1 The authority has received four applications from Mr Bambas Shaouna for street trading consent to sell ice creams from four Ice Cream Vans.
- 1.2 Mr Shaouna has applied to trade in all permitted areas of the borough.
- 1.3 Mr Shaouna has applied for consent on the following days and times:

Monday	12:00 - 19:00
Tuesday	12:00 - 19:00
Wednesday	12:00 - 19:00
Thursday	12:00 - 19:00
Friday	12:00 - 19:00
Saturday	12:00 - 19:00
Sunday	12:00 - 19:00

- 1.4 Images of the trading units are shown in **Appendix 1**.
- 1.5 **The Committee can:-**
 - 1.5.1 **Approve the application because Members are satisfied that the location is suitable and that it complies with policy, or**
 - 1.5.2 **Refuse the application because it does not comply with the provisions of the Street Trading Policy and/ or they are not satisfied the location is suitable on the basis of objections received.**

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 11 February 2020. A copy of the policy is available at https://www.cheltenham.gov.uk/downloads/file/7332/street_trading_policy_-_revised_and_amended.

3. Purpose of the Policy

3.1 This policy sets out Cheltenham Borough Council's ("the authority") framework and approach for the management of street trading in the borough.

3.2 Through the street trading scheme the authority aims to control:

1. the location of street traders;
2. the number of street traders; and

3.3. The scheme also aims to:

1. prevent unnecessary obstruction of the highway by street trading activities;
2. sustain established shopkeepers in the town;
3. maintain the quality of the townscape and add value to the town; and
4. encourage inward investment.

3.4 In doing so, the authority recognises the importance of licensed businesses to the local economy and the character of the area whilst trying to ensure that the activities do not cause public or statutory nuisance to the people in the area.

3.5 This policy will guide the authority when it considers applications for street trading consents. It will inform applicants of the criteria against which applications will be considered.

Assessment Criteria

3.6 In considering applications for the grant or renewal of a consent, the following factors will be considered, along with any other matters considered reasonably relevant:-

- **Needs of the Area** - The retail offer of each individual pitch. The goods complement and do not conflict with the goods sold by other established retailers within vicinity. This criterion permits the authority to undertake a qualitative assessment of the goods to be sold by each competing applicant against those on sale in the adjacent area. The authority 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.

The authority would expect a minimum of 6 feet (1.8m) of unobstructed highway/walkway on at least one side of the proposed trading unit/location.

- **Appearance of the Stall or Vehicle** – Trading units must enhance the visual appearance of the street and street scene rather than detract from it and be constructed in a suitable scale, style and using 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 authority will generally not permit trading units where the unit fully, or substantially, blocks lines of sight to established retailers in the vicinity.

Any street trading operation which negatively impacts public access by walking, cycling or public transport will not generally be accepted.

- **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 and recycling, waste disposal and waste created by customers.

The authority will encourage the use of sustainable products and will consider the trader's environmental credentials in respect of these when considering whether or not to approve applications. The authority will expect applicants to submit environmental statements setting out how the applicant will operate in an environmentally sustainable way.

4. Consultee Comments

- 4.1 Environmental Protection replied during consultation to advise of noise complaints received in relation to this operation in September 2023, as well as a second noise complaint in June 2024, stating that this demonstrates a lack of noise control especially when considering that the majority of the time between these complaints was off-season for the operator. Whilst the Environmental Health officer has not raised this as an objection to the application they do want to raise concerns they have regarding this operator.
- 4.2 Further comments were received from a second Environmental Health officer concerning air quality, and these are raised as an objection. They also suggest condition that could be attached to the grant of a consent, should the sub – committee be minded to grant.
- 4.3 It should also be noted that the Licensing enforcement team have received complaints during consultation from members of the public concerning three separate vehicles specified in these applications. As the consultation was ongoing none of these vehicles had street trading consent at the time that these complaints were received. These issues are outlined in an officer's report - **Appendix 2 and Appendix 2.1**. These complaints raise concerns regarding the apparent trading without consent and potential compliance with conditions if a consent was to be granted. Members would need to be assured that such complaints do not highlight potential for conditions to be disregarded, if a consent is to be granted.

5. Licensing Comments

- 5.1 The Sub - 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.

24/00920/STA		
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- 5.2 The policy takes into account a number of factors when determining the permitted trading types. In addition the policy discusses the notion of “Permitted Locations” and Members should take these into account when determining an application, where appropriate.
- 5.3 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.
- 5.4 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, although Members are asked to consider this application on its merits, and in light of the objections received and any representations from the applicant.

Reason(s): Objection received relating to public safety, with concerns relating to air quality and children’s health. In addition, there are concerns raised about the apparent/ alleged failure to comply with advice and to trade without a consent.

Background Papers

Service Records

Case Officer

**Contact officer: Mr Jake Johnstone
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 264135**



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ENFORCEMENT OFFICER – SUMMARY OF CASE

Uniform Case No: 24/02898/LSTTRD and 24/02970/LSTTRD - Bambas Shaouna.T/A Mr Whippy

Officer: Sarah Hughes

Background:

Bambas Shaouna has traded in the Borough of Cheltenham for a number of years as 'Mr Whippy'. Over these years various Ice Cream vehicles have been licensed.

We have eight complaints recorded against this street trader over a period of six years.

2024 - 24/02898/LSTTRD relating to reports of noise and air pollution and parking too close to Lakeside School, and trading near to St Gregory's School without street trading consent.

24/02970/LSTTRD relating to parking on a pavement causing obstruction and being too close to Rowenfield School. On all occasions trading without street trading consent issued.

2023– 23/04808/LSTTRD reports of alleged noise nuisance, concerns of pollution and distance to Lakeside School. Also, 23/03585/LSTTRD report of vehicle parked too close to Rowenfield school on the junction of Bedford Avenue. Mr Capstick attended the offices to discuss the reports received into licensing.

22/03115/LSTTRD report of alleged noise and air pollution and parking too close to Lakeside Primary School.

2020 - 20/03273/LSTTRD Reports of Ice cream vehicle trading on private land without permission (Council land).

2018 - 18/02650/LSTTRD and 18/02235/LSTTRD – reports of vehicle trading without consent

Details of Complaint

Three separate reports regarding three different vehicles belonging to Mr Bambas Shaouna were received within the consultation period.

A complaint from a member of the public was received on Monday 10th June 2024 that on that day an ice cream vehicle, vehicle registration W992 EOB was once again parking in Wards Road, Cheltenham, opposite Lakeside Primary School. It is reported that this vehicle was seen on Monday 10th June 2024, arriving around half an hour before the end of the school day. The vehicle pulled up at the end of Wards Road, on double yellow lines, and

Signed: Sarah Hughes

stayed for a period of approximately 40/45 minutes, with the engine running intermittently. Occasionally the vehicle sounded its chimes.

On 13th June 2024 I received information from my colleague (and statutory consultee) that the ice cream van, vehicle registration W164 XDA, was parked near to was stopped at near to St. Gregory`s School on St James` Square yesterday (12/6/24) at 15:11, and was seen trading. A photograph of this vehicle was received.

A further report was received from a member of the public regarding a different ice cream vehicle, vehicle registration number V543EFR. It is alleged that this vehicle was parked entirely on the pavement, causing an obstruction, on Alstone Lane at the junction with Bedford Avenue, Cheltenham, at 1504hrs on 4th June 2024. The reporter describes that is very close to Rowanfield School and is an inappropriate place to trade from. A photograph of the vehicle in situ had been received.

Investigation of 24/02998/LSTTRD and 24/02970/LSTTRD

Following the report 24/02998/LSTTRD I checked the licensing database and noted that Mr Shaouna had recently made an application for street trading consent for three vehicles. W992 EOB/ V543 EFR and 24/00906/STA. All three applications were currently in the consultation period and no consent had been issued.

On 12th June 2024 I contacted the applicant, Mr Shaouna, via email, and explained that no consent had been issued and requested they cease trading until consent had been obtained. Mr Shaouna responded on 13th June 2024 informing me that whilst he was aware that no street trading consent had been issued, this incident was the fault of the driver at the time who no longer works for them. I responded to Mr Shaouna.

On 13th June 2024, following receipt of the information from my colleague (and statutory consultee) that a different vehicle belonging to Mr Shaouna, vehicle registration W164 XDA, was parked near to was stopped at near to St. Gregory`s School on St James` Square. My colleague was aware that this was a vehicle associated with a street trading application currently under consultation and that street trading consent had not been granted.

Later that day I made further contact with Mr Shaouna to inform him that a further report had been made about a different vehicle trading in the Borough. I expressed my concern that there appeared to be some serious communication issues and I urged these to be addressed immediately. I requested that all staff are informed immediately that there was no consent issued to trade in the Borough of Cheltenham. I received a response from Mr Shaouna confirming that he had informed all staff not to use the vans until they had heard back from the Council regarding their application.

On 14th June 2024 I received a telephone call from Mr Will Capstick who informed me that he felt he was at fault for these issues as he thought they had consent due to being asked by Mr Shaouna for photographs of the vehicles. Mr Capstick thought that this must have meant that they had consent. In likelihood these photographs were for the application process only. I expressed my concerns regarding communication between Mr Shaouna and himself and his drivers. I explained that whilst there was no current consent issued, the reports of irresponsibly parking and parking too close to a school is something discussed preciously and evidently not remedied. I reminded Will that, we had a meeting in the offices last year following complaints received and I provided him with clear advice and guidance on how to mitigate any future complaints. I explained that it was unfortunate that this had potentially not been adhered to.

Following this telephone call, I received an email from Mr Will Capstick informing me that he had spoken to Mr Shaouna and it has been suggested that he take full control of the business to mitigate any communication issues.

24/02970/LSTTRD - Mr Matthew Morris (Enforcement Officer) received a report that, on 4th June 2024 the vehicle V543EFR was parked entirely on the pavement, causing an obstruction, on Alstone Lane at the junction with Bedford Avenue, Cheltenham. Mr Morris emailed Mr Shaouna and Mr Will Capstick to inform them of this complaint. Mr Capstick responded and acknowledged this report made.

During the consultation period, all three vehicles relating to the three applications were seen trading without consent. Two complaints were received from members of the public with concerns about the proximity of these vehicles to schools, with one concerned about the obstruction of the pavement with the whole vehicle parked on the pavement (Rowenfield School). The other complaint detailed concerns not only relating to the distance to the school (Lakeside School) but concerns regarding fumes from the engine running for long periods of time outside their home, and the nuisance from the intermittent chiming of the bells.

Whilst an application for street trading consents for all three vehicles were in the consultation period, no consent had been granted for any vehicles associated with Mr Whippy, to trade in the Borough of Cheltenham.

Furthermore, and notably, the most recent complaints regarding trading locations are akin to the complaints received in 2023 in which Mr Capstick came into the offices to discuss with me. It was evident in this meeting that, as it is seasonal work, the company do have a high staff turnover and the complaints received were attributed to the actions of individual operators of the vehicles. However, I raised concerns about the lack of recorded training given to staff members and the accessibility of the licence conditions and code of conduct within the vehicle.

Following this meeting I requested that the conditions and code of conduct be printed and put in each vehicle so that all vehicle operators can see it and will be aware of any restrictions.

I also wrote up a list of due diligence measures to mitigate any further reports being received. This included training files for staff members. (See attached **SH4**).

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CHELTENHAM
BOROUGH COUNCIL

Mr Bambas Shaouna
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

ask for: Sarah Hughes
ddi number: 01242 262626
email: licensing@cheltenham.gov.uk
our ref: Street Trading
date: 23/04808/LSTTRD
12/10/23

Dear Mr Shaouna

Re: Street Trading Consent

Thank you to Will Capstick for taking the time to come into the office on Friday 7 October 2023 and discuss the complaints received in regards to the street trading activity from 'Mr Whippy' vehicles.

Four complainants had been identified over a period of three months.

The complaints received were that;

- The vehicle was parking too close to school premises
- The vehicle was positioned at a location for longer than permitted
- The chimes were sounded for longer than permitted
- The vehicle was operating beyond 7pm

All are contrary to the code of conduct and the conditions of the consent.

It was discussed at our meeting that you have spoken to the female driver with regards to the complaints received and you are confident that this driver understands the importance of adhering to the conditions attached with the consent. You have a copy of these conditions and the code of conduct, and have agreed that this will remain in the vehicles and be displayed clearly for staff to reference.

It was also suggested that, for due diligence and to prevent further complaints, that you may wish to;

- Ensure that the conditions and code of practice are available in all vans operating in the Borough of Cheltenham
- Consider the use of a chime with a timed cut out mechanism to prevent the chimes from being able to be sounded over the 12 second's limit.
- Ensure that staff are trained and understand the conditions of consent to operate. Talk new members of staff through these and provide tips (you discussed that a specific tune is shorter, perhaps suggest this is used?)

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- Create a physical file for each member of staff and include training in this. Ask staff members to sign to confirm that they have received training on a specific subject.
- If you have need to discuss ANY issues or concerns with a staff member, document that you have done so. You may find the attached document useful as a simple template, changing 'product' to the van registration and 'reason for refusal' to topic discussed for example
https://www.cheltenham.gov.uk/downloads/file/8281/refusal_log_template
- I would also suggest that you look to fit trackers to your vehicles. From a business point of view you may find your insurance company look favourably at this, but it may also allow you to disprove allegations

Please, however, be aware that if the code of practice is not followed then Environmental Health will investigate to establish if the issues reported constitute a 'statutory nuisance' under the Environmental Protection Act 1990. If the investigation identified a statutory nuisance they have a duty to serve an abatement notice to abate the nuisance.

As discussed during the meeting, compliance with the code of practice also helps to show that a vendor has used best practicable means to prevent, or counteract, the effects of any nuisance resulting from the chiming, which would be a consideration given when determining whether a statutory nuisance exists. Also, Compliance with the code of practice also helps to demonstrate that a vendor has complied with Section 63 of Control of Pollution Act 1974 (CoPA). Therefore, this emphasises the importance of adhering to the code of practice.

Additionally, Environmental Health officers may then object to future street trading applications which would mean that the application is referred to licensing committee for consideration.

We thank Will again for his time to attend last week and am hopeful that the measures you are considering implementing will prevent any future complaints.

Please make contact with us if you wish to discuss any points in this letter. We are happy to assist you, particularly with suggestions that may prevent a nuisance being caused to members of the public and persons within their homes.

Yours sincerely

Sarah Hughes
Licensing Enforcement Officer, Licensing

Amy McArthur
Technical Officer, Environmental Health

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