

Cheltenham Borough Council

Licensing Committee – 10 January 2014

Local Government (Miscellaneous Provisions) Act 1982 Application for a Street Trading Consent

Mr William Danter

Report of the Licensing & Business Support Team Leader

1. Summary and recommendation

- 1.1 We have received an application from Mr William Danter, for a street trading consent to sell hot & cold food and cold drinks from a Traditional English Barrow measuring 3.4m long x 2.14m. Mr Danter is applying to trade on the High Street adjacent to Next and the Carphone Warehouse.
- 1.2 Mr Danter has applied to trade on the following dates and times:

Dates

Saturday 14 Feb to Tuesday 4 March 2014 (ending on Pancake Day)
Saturday 5 April until Monday 21 April 2014
Saturday 24 May until Sunday 1 June 2014
Saturday 19 July until Saturday 23 August 2014
Saturday 25 Oct until Saturday 1 November 2014

Times

Monday	09.30 - 17.30
Tuesday	09.30 - 17.30
Wednesday	09.30 - 17.30
Thursday	09.30 - 20.00
Friday	09.30 - 17.30
Saturday	09.00 - 18.00
Sunday	10.00 - 17.00

- 1.2 An image of the trading unit is attached at **Appendix A** and a location map is attached at **Appendix B**.
- 1.3 **The Committee is recommended to resolve that:**
- 1.3.1 **The application be approved because Members are satisfied that it does comply with the Council's policy in relation to street trading in conservation areas; or**
- 1.3.2 **The application be refused because it does not comply with the Council's policy in relation to street trading in conservation areas.**

1.4 Implications

1.4.1 Financial

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1.4.2 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.

Consent can be revoked at any time. An existing trader or a trader who has previously traded from a location does not have a legal right to any consent being automatically renewed or granted.

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

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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.
- 2.2 The above policy stipulates that all new applications for street trading consent will be referred to the Licensing Committee for determination.

3. Policy Considerations

- 3.1 The Council's current policy in respect of street trading was implemented on the 1st of April 2013.
- 3.2 The current street trading policy aims to promote the following aims and objectives in reference to street trading activities:
- To have a clear & transparent policy governing street trading activities in the Borough.
 - To enable the Council to manage all street trading activities in order to provide effective control measures.
 - To ensure that all street trading activities meet the required quality standards, pose no risk to public health, safety & protection and do not prejudice the Council's efforts to improve the image, perception and attractiveness of the Town as a tourist and leisure destination, and is in keeping with the streetscape.
 - To avoid duplication with other statutory provisions and the Council's commitment to work in partnership with other enforcement agencies.
- 3.3 The proposed trading location is situated in a designated conservation area. The Council has adopted a more restrictive approach to street trading in the conservation areas of a type which could positively enhance the enjoyment of the town as a tourist and leisure destination.
- 3.4 To this end, the Council will normally only permit street trading where an applicant can satisfy the Council that the type of street trading they have applied for will enhance the town's reputation as a tourist and leisure destination and where the type of trading and pitch is in keeping with the streetscape.

4. Licensing Probity Guide

- 4.1 Cheltenham Borough Council's Licensing Committee operates in a quasi-judicial way in determining contentious licensing applications, policy issues and related matters.

- 4.2 The decisions that the Committee makes are significant and weighty. The Committee operates, for the most part, under its extensive delegated powers and it, rather than any other part of the Council, actually makes the decisions. The decisions can have a considerable effect on the value of premises or other capital assets, on the amenities of people living near licensed premises and on the lives of applicants. Furthermore if the Committee makes a wrong or irrational decision this may mean that the Council will face substantial costs if there is a successful appeal against the decision or if the decision is the subject of a legal challenge from an aggrieved third party.
- 4.3 Some licensing legislation specifies procedures to be followed but in all cases human rights and natural justice considerations dictate that the Committee adheres to the following principles in that decisions must:
- Be made on the individual merits of a case.
 - Have regard to all relevant national and local guidance.
 - Be made impartially and in good faith.
 - Be made by the body that receives all the relevant information and evidence.
 - Relate to the issue or question placed before the committee.
 - Be based only on consideration of relevant and material matters.
 - Be rational and reasoned.
 - Be made in a way that does not give rise to public suspicion or mistrust.
- 4.5 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.
- 4.6 Licensing applications must be determined on the basis of the documents and information that have been formally submitted and where all parties have had a proper opportunity to consider them.
- 4.7 Members must read and carefully consider the content of the circulated report before the meeting and they must have regard to its contents in reaching their decisions.
- 4.8 Where Members propose to make a decision contrary to the officer recommendation clear licensing reasons must be established and these must be seconded and minuted.

5. Corporate Priorities

- 5.1 The Council has set out a commitment to ensure Cheltenham's natural and built environment is enhanced & protected and the town has a strong and sustainable economy.

6. Consultee Comments

- 6.1 No objections were received during the consultation period.

7. Licensing Comments

- 7.1 This is a new application for street trading consent in as much as Mr Danter has never been licensed for the dates & times sought and the goods he is proposing to sell is different from his previous consents. In accordance, Members are asked to consider whether the application should be granted taking into account the Council's policy on street trading in conservation areas.
- 7.2 The said policy states that the Council *has adopted a more restrictive approach to street trading in the conservation areas of a type which could positively enhance the enjoyment of the town as a tourist and leisure destination.* (Emphasis added)

7.3 Members are therefore to determine of the trading proposed by Mr Danter is such that it would “positively enhance the enjoyment of the town as a tourist and leisure destination”.

Background Papers

Service Records

Report Author

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