

Cheltenham Borough Council

Licensing Committee – 10 January 2014

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

Mr Glen Ford

Report of the Licensing & Business Support Team Leader

1. Summary and recommendation

- 1.1 An application has been received from Mr Glen Ford, for street trading consent to sell ice-cream from an Ice Cream Van. Mr Ford has applied for an annual consent to trade 12:00 to 20:00 everyday.
- 1.2 **The Committee is recommended to resolve that:**
- 1.2.1 **The application be approved because Members are satisfied that grant of this application will comply with the provision of the Street Scene policy and will not cause a nuisance, or**
- 1.2.2 **The application be refused because it does not comply with the provision of the Street Scene policy and will cause a nuisance.**

1.3 Implications

1.3.1 Financial

Contact officer: Sarah Didcote
E-mail: sarah.didcote@cheltenham.gov.uk
Tel no: 01242 26 4125

1.3.2 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.

Contact officer: Vikki Fennell
E-mail: vikki.fennell@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.
- 2.2 The above policy stipulates that all new applications for street trading consent will be referred to the Licensing Committee for determination.

3. Consultee Comments

- 3.1 An objection has been received from Mrs Louise Metcalfe, Senior Environmental Health Officer on behalf of the Environmental Protection Team.

The basis of her objection is that Mr Ford has persistently breached his licence conditions in relation to controlling noise. Consents are issued with the relevant conditions stipulating that the trader must comply with the “Code of Practice on Noise from Ice-Cream Van Chimes Etc. in England 2005”.

Mr Ford has persistently breached the above mentioned code of practice by playing his chimes longer than the permitted 12 seconds. This has led to a number of noise complaints to the Council and resulted in an abatement notice served on Mr Ford for likely occurrence of a statutory nuisance which included the requirement to comply with the Chimes Etc. code of practice.

- 3.2 A copy of Mrs Metcalfe’s objection is attached **Appendix A**.

4. Policy Considerations

- 4.1 The Council’s current policy in respect of street trading was implemented on the 1st of April 2013.
- 4.2 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.

5. Licensing Probity Guide

- 5.1 Cheltenham Borough Council’s Licensing Committee operates in a quasi-judicial way in determining contentious licensing applications, policy issues and related matters.
- 5.2 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.

5.3 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.

5.4 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.

5.5 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.

5.6 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.

5.7 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.

6. Corporate Priorities

6.1 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.

7. Licensing Comments

7.1 This application must be determined on individual merits in accordance with the Council's policies and giving due regard to consultation feedback.

7.2 The legislation is not very prescriptive in terms of what the Committee can, and cannot, take into account when determining street trading applications therefore it has a very wide discretion to take in to account anything it considers relevant.

7.3 In accordance with the above, the Committee can take into account any nuisance that may be caused by granting the consent including noise nuisance.

7.4 The committee must satisfy itself that the granting of this application will not cause a nuisance and the onus will be on the applicant to satisfy the committee of this.

7.5 If the Committee is minded to grant the application, it will be subject to the standard conditions outlined in the Council's current street trading policy.

7.6 Members are also to note, that the Council is empowered by paragraph 7(5)(a) of schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 to grant an application subject to any condition to prevent, amongst others, nuisance or annoyance whether to persons using the street or otherwise.

Members are therefore able to grant the consent subject to any conditions considered reasonable to prevent, nuisance or annoyance whether to persons using the street or otherwise.

Background Papers

Service Records

Report Author

Contact officer: Mr Louis Krog

E-mail: licensing@cheltenham.gov.uk

Tel no: 01242 775200