

Cheltenham Borough Council

Licensing Committee – 7 March 2014

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

Susan Elizabeth Kinnear Report of the Licensing & Business Support Team Leader

1. Summary and recommendation

- 1.1 We have received an application from Mrs Susan Kinnear, for a street trading consent for an ice cream cart measuring 1.52m (l) x 1.26m (h) x 1m (w). Mrs Kinnear is applying to trade on the Promenade by the Long Gardens.
- 1.2 Mrs Kinnear has applied for consent to trade on the following dates and at the following times:

Seasonal Consent: April to September

Times

Monday	12:00 - 18:00 hrs
Tuesday	12:00 - 18:00 hrs
Wednesday	12:00 - 18:00 hrs
Thursday	12:00 - 18:00 hrs
Friday	12:00 - 18:00 hrs
Saturday	12:00 - 18:00 hrs
Sunday	12:00 - 18:00 hrs

- 1.2 An image of the trading unit and a location map are attached at **Appendix A**.
- 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 **Contact officer: Sarah Didcote**
 E-mail: sarah.didcote@cheltenham.gov.uk
 Tel no: 01242 26 4125
- 1.4.2 Legal **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.
- 2.3 Consultation was undertaken in accordance with the Council's normal consultation procedure for applications for street trading consent. No objections were received.
- 2.4 The following comments were made by the Council's Urban Design Manager:
*"We support the application - there isn't anywhere else nearby that has ice cream as a major part of its retail offer. It also puts a bit of activity back on the street in this location now the markets have gone, people will sit in the Long Gardens when the weather's hot - an ice cream vender on hand seems appropriate.
 Can we ensure that they are dealing with any litter problem?"*

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 report has been brought to member's attention as prescribed in the scheme of delegation set out in the Street Scene Policy (page 6) adopted on 1st April 2013, whereby all new street trading applications are referred to the Licensing Committee.

7.2 The Committee must determine the application with a view to promoting the Council's adopted policy.

7.3 In accordance with the current Street Scene Policy members must determine and consider if an application of this type positively enhances the enjoyment and reputation of the town as a tourist and leisure destination whilst being in keeping with the streetscape.

Report Author

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