

Cheltenham Borough Council

Licensing Committee – 25 April 2014

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

Mr Raviv Hadad

Report of the Licensing & Business Support Team Leader

1. Summary and recommendation

1.1 We have received a renewal application from Mr Raviv Hadad, for a street trading consent to sell hot & cold food and drink from a mobile trike measuring on the High Street outside Thomas Cook.

1.2 The application is to trade everyday between 11:00 and 23:00. The proposed hours are the same as the current consent being renewed.

1.3 An image of the trike is attached at **Appendix A** and a location map is attached at **Appendix B**.

1.4 The Committee is recommended to resolve that:

1.4.1 The application be refused because it does not comply with the provision of the Street Scene policy as the proposed location is deemed unsuitable; or

1.4.2 The application be approved because Members are satisfied that the application does comply with the provision of the Street Scene policy and the location is deemed suitable;

1.4.3 Subject to resolution 1.4.2, the application only be granted to the end of June 2014.

1.5 Implications

1.5.1 Financial

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1.5.2 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.

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:

- 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 ensure that all objects placed on the highway meet the required quality standards, pose no risk to public health, safety & protection and to ensure that these objects do not obstruct the highway.
- To avoid duplication with other statutory provisions and the Council's commitment to work in partnership with other enforcement agencies.

3.1 Site Assessment

Consent from static locations will not normally be granted where:

- A significant effect on road safety would arise either from the siting of the trading activity itself, or from customers visiting or leaving the site,
- There would be a significant loss of amenity caused by traffic, noise, rubbish, potential for the harbourage of vermin, odour or fumes,
- There is a conflict with Traffic Orders such as waiting restrictions,
- The site or pitch obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use for street trading purposes,
- The site does not allow the consent holder, staff and customers to park in a safe manner,
- The street trading activity is carried out after dusk and the site is not adequately lit to allow safe access and egress from the site for both customers and staff.

3.2 Public Safety

In the interests of highway safety, no activity will be permitted within a minimum of 2 metres of a kerb.

3.3 Conservation Areas

The scope of this part of the policy covers the entire borough. However, the town centre, amongst a number of other areas in the borough, has conservation area status and as a result the Council will adopt a more restrictive approach to applications for these areas in particular.

3.4 Town Centre & Conservation Area

Despite this, the Council would not wish to prevent a modest amount of street trading in these areas of the town of a type which could positively enhance the enjoyment of the town as a tourist and leisure destination. To this end, street trading will generally be permitted in these areas where it enhances the town's reputation as a tourist and leisure destination, and is in keeping with the streetscape.

The appearance of a trader's business must enhance, or at least not be detrimental, to the street scene.

4. Probity in Licensing

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.

4.4 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.

4.5 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.

4.6 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.

4.7 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.

5. Consultee Comments

5.1 Objections have been received from:

Nigel Overall (Gloucestershire Highways) – “Gloucestershire Highways would not have any highway related objections to this application. However it should be noted that road improvement

works are planned for this area, programmed start in June 2014 and hence restrictions should be written into all Street Trading Licences granted for this area.”

Detail of the work being undertaken is attached at **Appendix C** of this report. Due to the nature of the work being undertaken, Gloucestershire Highways have requested that, should this consent be granted, that it only be done so until June 2014.

Richard Nichol (Canada Life - Owners of Regent Arcade) – Mr Nicol stated in his objection:

“I am writing to formally register Canada Life’s objection to the above two street trading applications as owners of Regent Arcade Shopping Centre.

I attach a copy of the letter dated 9 October 2013 from my colleague Mike Roberts objecting to the initial street trading application in respect of the ‘Falfeleat Mobile Bike’. Plainly we were disappointed and indeed surprised that despite there being clear grounds for refusal, the application was approved. The grounds for objection outlined in Mike’s letter again apply in respect of the renewal application for this street trader (14/00404/STA) as well as the new application for a mobile coffee unit (14/00363 /STA) to be positioned close by.

To summarise, both vehicles are to be positioned directly in front of Regent Arcade’s High Street façade (which runs from Burger King to River Island), obscuring the main entrance which Canada Life recently spent £20m re-developing and which has substantially improved the appearance of the pedestrianised section the High Street. As you are likely aware this redevelopment and specifically its classical Regency design secured a royal visit to the town last November from HRH Prince of Wales. Obscuring the principal entrance to Regent Arcade will make it less visible to shoppers, reducing footfall within the centre and negatively impacting on the trade of the 55 retail operators currently in the scheme.

Of greater concern however is the detrimental impact that increased numbers of these mobile food stalls will have on established food operators within the town. Mobile food stalls plainly have an unfair advantage over established businesses as they effectively have no overheads. In particular, established food operators who trade from traditional shops/retail units remain heavily overburdened with business rates liabilities that are based off pre-recession rent levels. Mobile food stalls plainly do not have to pay any business rates, so the enhanced competition created by their growing presence will only lead to established food operators failing. Many of these food operators are family-run, long established businesses that employ comparatively large numbers of staff, and losing them would increase the number of vacant shops/retail units within the town.

The decision to continue approving increasing numbers of street trading applications is counter-intuitive and detrimental to existing traditional retail businesses and food operators. On the face of it the council does not appear to have a joined-up strategy on this issue and some councillors don’t appear to take into consideration the wider issues at stake. It was indeed noted that when the original application for the ‘Falfeleat Mobile Bike’ was being considered, one councillor remarked to the chamber that business rates were paid to landlords and this was not corrected by anyone else on the panel. This lack of understanding is deeply concerning, particularly when councillors are charged with making informed and balanced decisions on such important issues that affect the livelihood of people and businesses in their constituencies.

Another incorrect and unhelpful interpretation that has previously been implied by those associated with the committee, is that Canada Life, being a large London-based life assurance company which owns a considerable amount of property in the town is somehow ‘trying to throw its weight around’ to try and influence the panel for its own benefit. This could not be further from the truth. I would have hoped that the commitment Canada Life has shown to Cheltenham and indeed CBC (as our partners at Regent Arcade), particularly through the recent recession would have countered any such suggestion. Our objections are primarily based upon the negative impact these applications

will have on our retailers in Regent Arcade (particularly food operators) and indeed others in the town.

We trust that after thorough and informed consideration, both applications will be duly rejected.”

Mr Howard Barber (Public Realm Designer, Cheltenham Borough Council) – Whilst Mr Barber did not object to the application, he noted that a new wayfinding monolith is to be installed to the western edge of the licence area but they would want people to access both sides of it.

For Member’s information, details of the proposed monolith are attached at **Appendix D**.

6. Licensing Comments

- 6.1 The Council’s current policy in relation to street trading in the town centre states that the Council will permit a “...modest amount of street trading ... of a type which could positively enhance the enjoyment of the town as a tourist and leisure destination. To this end, street trading will generally be permitted in these areas where it enhances the town’s reputation as a tourist and leisure destination, and is in keeping with the streetscape.”
- 6.2 In accordance with the above policy position, Members must be satisfied that the proposed street trading is such that it continues to “enhances the town’s reputation as a tourist and leisure destination, and is in keeping with the streetscape”.
- 6.3 Members must also have regards to the adopted Probity in Licensing guide.
- 6.4 In relation to the proposed monolith, Members are to note that agreement has been reached with Mr Hadad to move his proposed trading position 3 metres (approx 9 feet) up the High Street towards Boots Corner. This will satisfy the concerns made by Mr Barber.
- 6.5 Members will note from the recommendations that it is recommended that this consent be issued until June 2014 taking into account the road improvement works. If Mr Hadad would like to continue to trade for the duration of the works, estimated to be between June and October, he will be required to submit a new application for this location to ensure proper consultation on the alternative location is undertaken. Officers will assist Mr Hadad where possible.

Background Papers

Service Records

Report Author

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Appendix A



Appendix B

