

Cheltenham Borough Council

Licensing Committee – 25 April 2014

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

Mrs Marie Fullwood

Report of the Licensing & Business Support Team Leader

1. Summary and recommendation

1.1 An application has been received from Mrs Marie Fullwood, for a street trading consent. Mrs Fullwood is proposing to sell specialist coffees, pastries, chilled drinks and paninis from a mobile unit measuring 3m x 2.1m on the High Street (facing East) adjacent to French Connection and Burger King.

1.2 Mrs Fullwood has applied to trade Monday to Saturday 08:00 to 18:00.

1.3 An image of the mobile 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 refused because it does not comply with the provision of the Street Scene policy as the proposed location is deemed unsuitable; or

1.3.2 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;

1.3.3 Subject to resolution 1.3.2, the application only be granted to the end of June 2014.

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

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.

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:

Mr Martin Quantock (Business Partnership Manager) – Mr Quantock stated in his objection:

“I am writing to object to the street trading application ref 14/00363/STA for the following reasons:

- the site chosen by the applicant is directly adjacent to a business selling similar, if not identical, produce - the street trader would be very detrimental to the established business
- there is another long standing street trader in close proximity selling identical produce
- Glos Highways have plans to refurbish the High Street this year (apparently commencing April) - the siting of this applicant may compromise this work
- the size of the unit will act as a 'barrier' between the shops on either side of the High Street, and also obscure the windows of the retailers from passing pedestrians
- I believe we have reached the limit for the number of street traders that the High Street can accommodate (e.g. 3 x food sellers, 2 x flower sellers, 1 x ice cream seller, 1 x childrens roundabout ride)
- If this stall was allowed to trade, it would mean that at times during the year, Cheltenham will have five separate generators running to power the street traders, at the same time, on the High Street, between the Beechwood Shopping Centre and Pittville Street. I believe this would detract from the street scene, in terms of emissions, noise and attractiveness. Companies may feel that Cheltenham would no longer be an attractive town to invest in and go elsewhere.”

Mr John Forward (Regent Arcade Manager) – Mr Forward stated in his objection:

“I am registering my objection to the Licensing Application 14/00363/STA in respect of the Coffee & Donuts mobile unit to be sited on the High St This is yet another example of street traders cashing in on the increased footfall created by permanent retailers in the area.

Canada Life has made a considerable investment in the Regent Arcade over the last few years, in a bid to encourage new retailers into Cheltenham. We have a number of fast food operators already trading in the area Burger King in the High St and Millies, Auntie Annes, Soho Coffee and Druckers trading in the Regent Arcade all paying rent, employing staff and in addition paying very high business rates which are collected by the Cheltenham Borough Council on behalf of Central Government, these street traders only pay a small licence fee to the CBC. An example of business rates paid by some of the above traders per annum are:

Millies £28,966
 Auntie Annes £15,662
 Soho Coffee £14,954

Druckers £25,434

These costs are not negotiable they have no option but to pay, street traders do not have these costs. In addition they have rent, utility and staff costs.

In the Regent Arcade we have had 10 retailers close since Christmas all have stated that the business rates are too high with the loss of 54 jobs, if you continue to allow these operators to open on our High Streets it will result in more casualties amongst other retailers and increased unemployment. This is not a level playing field.

Not only do these street traders have an unfair advantage over more committed retailers, they do not add value to our High St, they block vision to other retailers shop fronts and window displays, they run generators which are noisy and emit fumes and generally make our High St look untidy and down market.

I trust that you will give this application full and careful consideration and look at the impact on the town centre and retailers who are committed who are committed to supporting the Town for the long term.”

Nigel Overall (Gloucestershire Highways) – Whilst Highways have not objected per se, they have advised the Council that they are doing highway improvement work due to start in June. 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.

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 facade (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.”

Pamela Airewele (KFG UK on behalf of Burger King) – Ms Airewele commented in her objection:

“Please note that we would like to formally object to this street trading application on the following grounds:

- Concerns regarding public sanitation – not just the sanitation of the proposed unit but for concern regarding customers ability to relieve themselves following consumption at this proposed unit.
- Access to public toilet – this does not appear to be clear. It is unreasonable for our toilets to be utilised which is the likely outcome as this unit does not provide its own facilities.
- Litter – the rubbish that will be generated by the unit and the waste that will be left behind by customers and the unit on a daily basis will be an eye sore. Moreover, will require additional litter patrol by the council in this area. Application does not appear to clarify how litter is to be managed.
- Nuisance – smell that will arise from this type of establishment (no extraction system). Smells just allowed to escape into the air making it an uncomfortable and unsanitary area to be near.
- Nuisance – pest that will be attracted to this type of establishment. No safeguards seem to be in place to deal with the eventual pests (pigeons, mice, rats and foxes) that will be attracted to this unit.
- Poor presentation of the unit – the proposed unit would not be in keeping with the general order of the high street.
- The unit will impede visibility to our unit, negatively affect trade and the value of the premises.
- Moreover, the introduction of this type of unit will impact the trade of our unit as they intend to directly compete with us on a number of our products.
- Safety of this type of unit – is the unit safe? With portable gas we are concerned as to whether the unit will not be a risk to the public.

- Public safety – the location of this unit will be an obstruction to the emergency route the pedestrian high street requires.

From reviewing the application it is unclear how the licensing objectives will be upheld let alone promoted, notably:

- prevention of crime and disorder
- public safety
- prevention of public nuisance
- protection of children from harm

As a party that would be significantly hindered by this application we strongly object to this application and support the council refusing this application in line with its obligations to uphold the licensing objectives listed above also.”

Mr William Danter – “I am writing to object regarding the Street Trading Proposal (14/00363/STA)

My grounds for objection are as follows:

This Large Catering Van would completely block the view of my Roundabout, so having a large impact on our business.

The diagram showing the proposed position is not accurate. It shows the Catering Van taking up less room than it actually will.

As I already sell Hot Fresh Donuts & Crepes. I think it would be unfair for the Council to grant someone another license duplicating this product so near to the position I am trading from.

I do not see how this proposal would enhance the High Street. It does not offer any products that are not already catered for

I took the liberty of parking my van for a few minutes last Sunday morning before the shops opened on the position this application has applied for.

As you can see, it totally blocks the view of my Roundabout when walking down the High Street! It also encroaches into the delivery and emergency route.

I think this is completely unacceptable!



Yes the Roundabout is there, you can just see the little sign.

I have been trading with my small traditional barrow in the High Street since 2006, selling Hot Fresh Donuts and Crepes. Having only recently been granted a license to trade during school holidays. If granted, this Coffee Van. Selling everything a Cafe sells as well as Donuts, would make my position unviable!

Thank you for your time as always.”

6. Licensing Comments

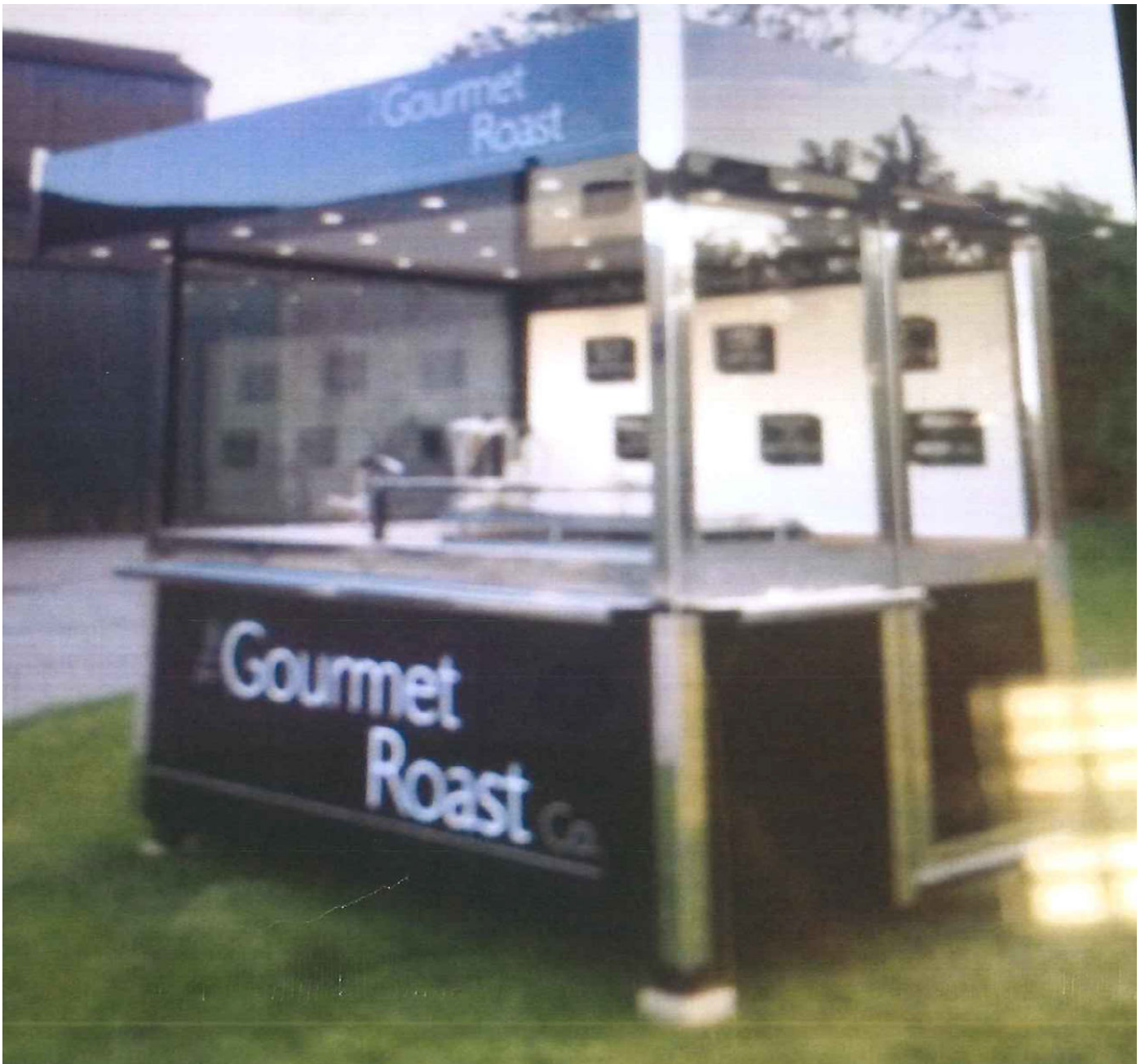
- 6.1 The Council’s current policy in relation to street trading in the town centre states that the Council will permit a “...modest amount of street trading ... of a type which could positively enhance the enjoyment of the town as a tourist and leisure destination. To this end, street trading will generally 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 enhances the town’s reputation as a tourist and leisure destination, and is in keeping with the streetscape”.
- 6.3 The policy further states that the Council will permit a “modest amount of street trading” in the town centre and other conservation areas. Members will note from the comments made by a number of objectors that there is concern over the overprovision of street traders in that area. Officers share the same concern.

- 6.4 If Members were to approve this application, there will be 6 traders on the High Street between the Boots Corner and the Beechwood Arcade. The location map at **Appendix B** also shows the other existing units for the information of Members.
- 6.5 In relation to the objection submitted by Ms Airewele, Members are to note the 4 licensing objectives are not relevant because they relate to applications made under the Licensing Act 2003, of which this is not.
- 6.6 Members must also have regards to the adopted Probity in Licensing guide.
- 6.7 Mrs Fullwood has been invited to attend the hearing.

Background Papers**Service Records****Report Author**

Contact officer: Mr Phil Cooper
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242775200

Appendix A



Appendix B

