

# Cheltenham Borough Council

## Licensing Committee – 5 September 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, chilled drinks, cakes and biscuits from a mobile unit measuring 2.5m x 2.1m (8ft x 6.8ft) 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 and Sunday 09:00 to 18:00. She has also applied for extended hours (08:00 to 21:00) during late night shopping over Christmas.
- 1.3 An image of the mobile unit 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 approved because Members are satisfied that the application does comply with the provision of the Street Scene policy and the location is deemed suitable; or**
- 1.4.2 **The application be refused because it does not comply with the provision of the Street Scene policy as the proposed location is deemed unsuitable.**

#### 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 1<sup>st</sup> 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. Objections

Objections have been received from:

**Howard Barber (Public Realm Designer)** - This application is in direct competition with several businesses nearby but does not add any value for the visitor to the town.

This section of the High Street, despite its large width, is extremely congested at busy times and has no space for new obstructions.

**Martin Quantock (Manager, Cheltenham Business Partnership)** - I would like to register my strong objection to this application for the following reasons:

- The site is directly outside a retail premise selling exactly the same beverages and in close proximity to other retailers selling the same beverages and food stuff (Burger King, M&S, several units in the Regent Arcade, etc)
- The High Street improvement works will include 'pull-ins' for delivery vehicles to come off the route on which they drive to allow them to deliver and to let other vehicles through whilst they are doing so - this unit may be on the site of one of the 'pull-ins'.
- Although this is subjective, it is my opinion that the unit proposed by the applicant is possibly the most unattractive unit that has been submitted to trade in the town centre - it would be more suited in a field at a fairground, rather than at a leading regional shopping destination.
- We already have up to four generators at any one time running in the High Street used by street traders that have been licensed to trade there - an additional one is surely beyond the tipping point and will start turning the public away from the area through the noise, fumes and irritation caused by the generators.
- The High Street is presently very cluttered with all the licensed traders, charity workers and peddlars that have started to make a reappearance - this substantially sized unit would only add to the problem of clutter.
- The size of the unit would block the site lines of the shops adjacent to it from the other side of the street.
- The goods that are proposed to be sold from the unit are non-seasonal and can be obtained at many of the established retailers in close proximity.
- Much work and investment is carried out in attempting to make the Cheltenham town centre an attractive shopping destination and a place attractive for businesses to invest in - units such as this undermine these efforts and are actually detrimental to the town.

I do hope, for the sake of the success of the Cheltenham town centre, that this application is refused by the Licensing Committee.

**Martin Levick (Senior Enforcement & Compliance Officer)** - Not conducive to character and appearance of the Strand.

**Mr William Danter** - I think this application is unacceptable, being so close to our Roundabout. There is quite a bit of Street furniture in this area. The Roundabout used to use the proposed position before the benches were placed there. Another thing to take into account, is that the shops place their bins in this area a few times a week to be collected It would just jam the area up!

If passed, this unit would block the site lines to the our Roundabout & some shops. I do not see what benefit this application would bring to the High Street.

## 6. Officer 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 Furthermore, the relevant legislation given the Council a very wide discretion to grant, or refuse, a street trading consent. Schedule 4 paragraph 7(2) of the Local Government (Miscellaneous Provisions) Act 1982 states “...*the council may grant a consent if they think fit.*” The wide discretion allows the council to take into account any matters considered relevant which could include the suitability of the proposed trading position or type of street trading. [Emphasis added].
- 6.4 The policy 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 and that the type of trading is out of character for the location. Licensing officers share the same concern. The map at **appendix C** illustrates the current street trading consent in place in the vicinity of this application.
- 6.5 Members must also have regards to the adopted Probity in Licensing guide.
- 6.6 Mrs Fullwood has been invited to attend the hearing.

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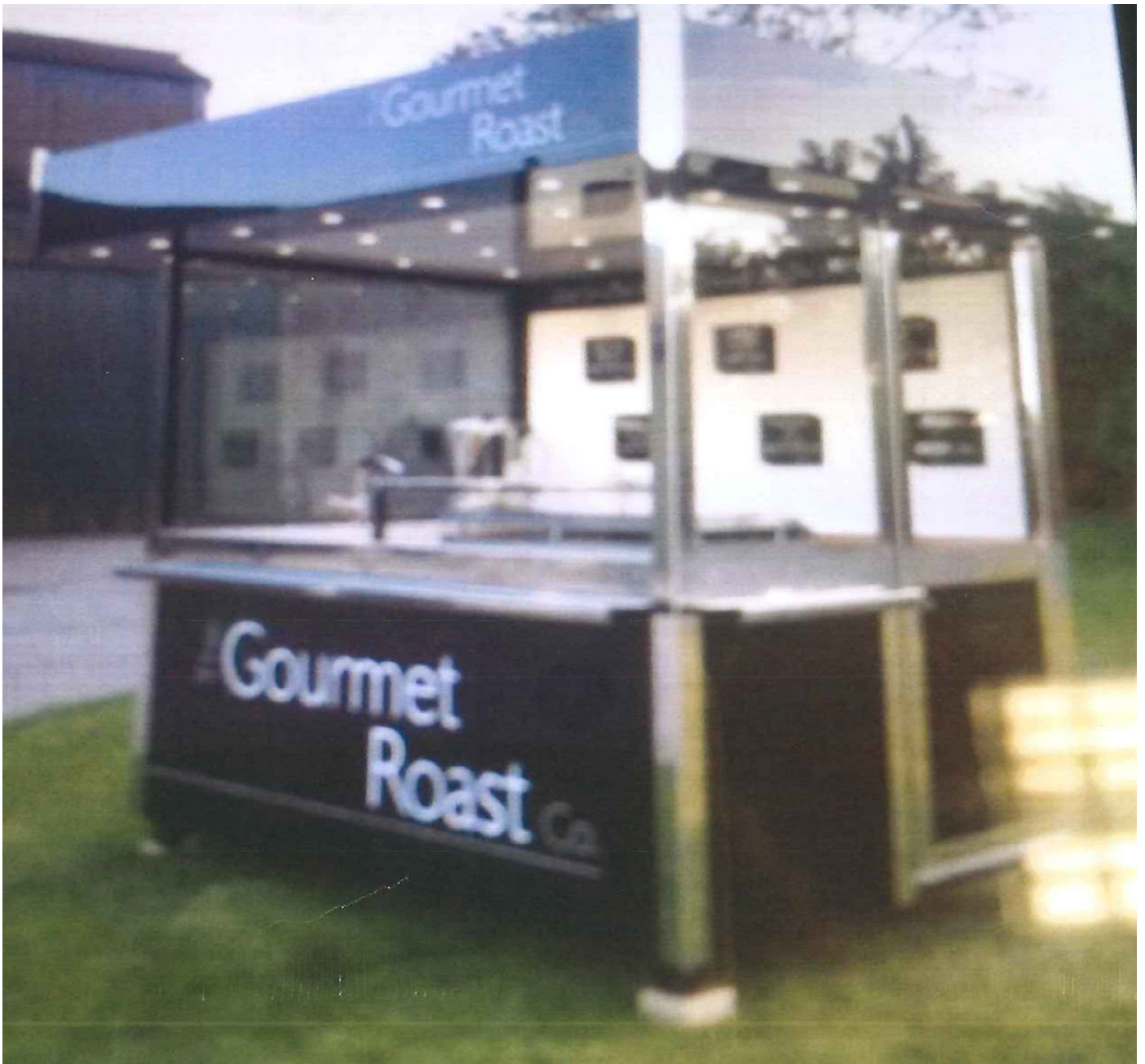
**Background Papers**

Service Records

**Report Author**

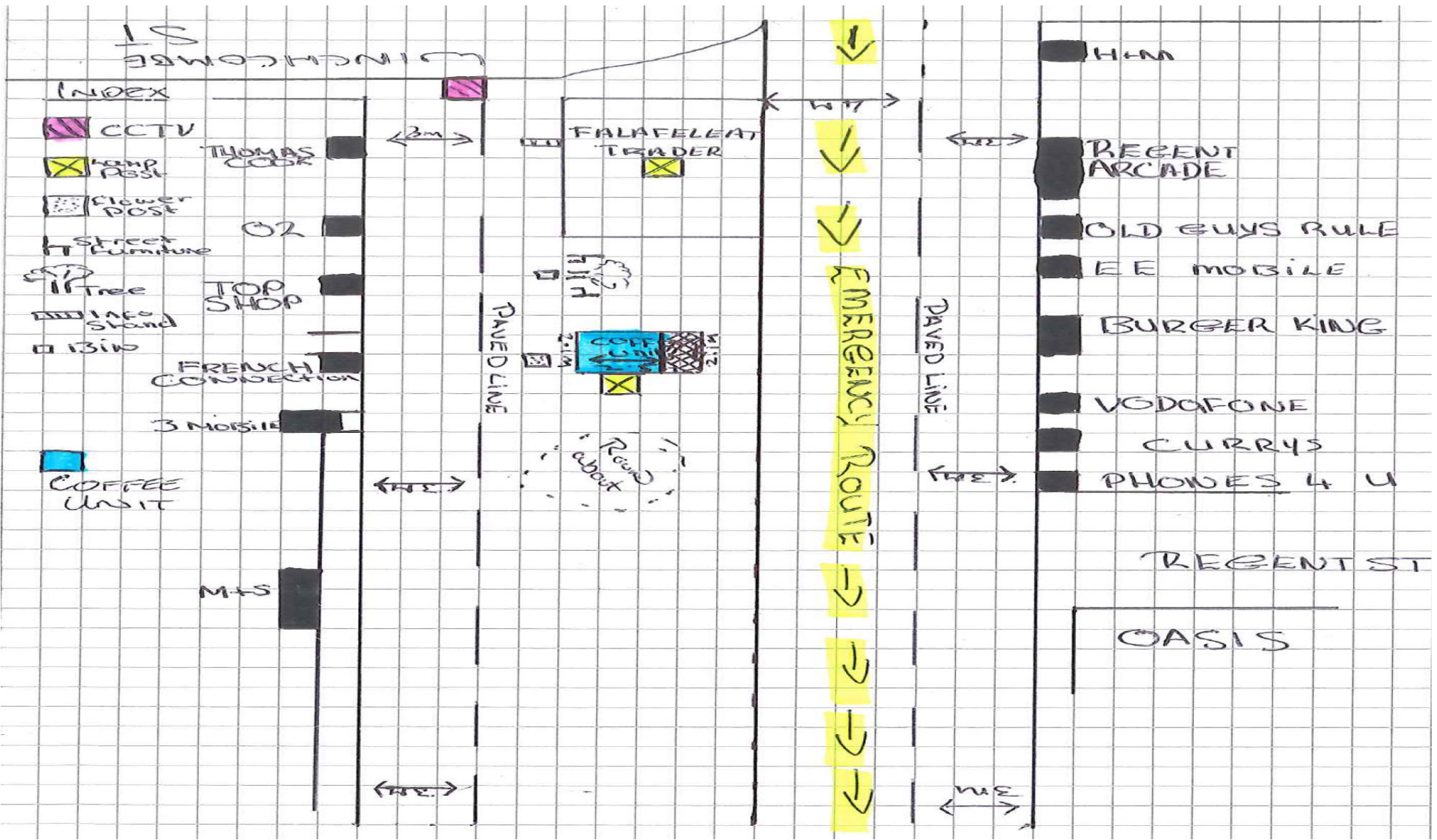
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Appendix A





Appendix B





Appendix C

