

# Cheltenham Borough Council

## Licensing Committee – 6th March 2015

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

**Mr Bambas Shaouna**

### Report of the Licensing Officer

#### 1. Summary and recommendation

1.1 Mr Bambas Shaouna has made 3 applications for street trading in respect of ice cream units.

1.2 Application details:

Application ref	Type of unit	Trading location	Proposed trading times
15/00065/ STA	Static ice cream tricycle as pictured at appendix A.	Promenade as shown at appendix B.	Seasonal consent: April-Sept 2015 Mon to Sat 09:00-17:00 Sun 09:00-17:00
15/00145/ STA	Mobile ice cream van reg no. X231 ABF as pictured at appendix A.	Within permitted areas of the Borough subject to a request for special dispensation as explained at paragraph 1.5.	Ongoing consent: 12 months Every day 12:00-19:00
15/00146/ STA	Mobile ice cream van reg no. P103 EOX as pictured at appendix A.	Within the permitted areas of Cheltenham subject to a request for special dispensation as explained at paragraph 1.5.	Seasonal consent: April – Sept 2015 Every day 12:00-19:00

1.3 Images of the 3 trading units are attached at **appendix A**.

1.4 A location plan of the static unit is attached at **appendix B**.

1.5 With regards to the trading location of the 2 mobile units, the applicant has requested special dispensation for two of the Council's standard conditions not to apply in his case. Those conditions are as follows, and his statement of reasons is attached at **appendix C**. Along with the statement of reasons, the applicant has provided copies of undated newspaper cuttings which he would like drawn to the attention of the Committee.

**Condition 1:** Trading prohibited in the following streets or parts of streets: . . . Evesham Road and roads adjacent to Pittville Park.

[The exact location at Pittville Park where the applicant intends to trade, if this condition is disappplied in his case, is on Pittville Lawn. The applicant has provided a photograph of the location which is attached at **appendix D**]

**Condition 2:** Trading prohibited within 75 metres of the gates of all schools, except Bournside School\*, on both sides of the road in any direction during the period half an hour before school opening to one hour after closing during school terms.

\*In the case of Bournside School trading is prohibited on Warden Hill Road within 100 metres of frontage to Bournside School, both sides of the road in any direction, except in the lay- by opposite to number 89, during the period half an hour before school opening to 1 hour after closing during school terms

**1.6 In the interests of avoiding confusion, the Committee is recommended to deal firstly with the static unit, which has not attracted any objections or adverse comments, before moving on to consider the two mobile units.**

**1.6.1 The Committee is recommended to resolve that:**

**1.6.2 The application(s) be approved because Members are satisfied that the application(s) comply with the provisions of the Street Scene policy and the location(s) are deemed suitable in that they enhance the town's reputation as a tourist and leisure destination, and are in keeping with the streetscape;**

**1.6.3 Subject to 1.6.2, if the Committee resolves to grant the application(s), whether to agree to the applicant's request to disapply standard conditions in respect of the two mobile units; or**

**1.6.4 The application(s) be refused because they do not comply with the provision of the Street Scene policy as the proposed location(s) are deemed unsuitable.**

## **1.7 Implications**

### **1.7.1 Financial**

**Contact officer: Sarah Didcote**

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### **1.7.2 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**

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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.

### **3.5 SPECIAL CONDITIONS FOR MOBILE ICE CREAM TRADERS - MECHANICALLY PROPELLED VEHICLES**

1. Trading prohibited in the following streets or parts of streets:

(a) High Street (from Sandford Park entrance to Townsend Street)

(b) Promenade (from High Street to Montpellier Walk)

(c) Clarence Street

(d) North Street

(e) Pittville Street

(f) Regent Street

(g) Rodney Road

(h) Winchcombe Street (from High Street to Warwick Place)

(l) Imperial Square

(j) Montpellier Walk

(k) Montpellier Street

(l) Warden Hill Road (within 100 metres of frontage to Bournside School), both sides of the road in any direction, except in the lay- by opposite to number 89, during the period half an hour before school opening to 1 hour after closing during school terms).

(m) Loweswater Road (from the junction with Alma Road to the junction with Langdale Road during the above period and times).

(n) Evesham Road and roads adjacent to Pittville Park.

2. Trading prohibited within 75 metres of the gates of all schools, except Bournside School (see Special Condition 1) on both sides of the road in any direction during the period half an hour before school opening to one hour after closing during school terms.

3. The consent holder shall not, without the prior permission of the Council, trade in any particular location for more than 30 minutes at any one time and shall not return to that particular location, or any position in the immediate vicinity thereof (which expression shall be as interpreted by the Council), within 2 hours of leaving it.

4. The consent holder shall comply with all traffic regulations rules orders and directions which apply to the public highways on which he trades.

5. The consent holder is required to comply with the Code of Practice on Noise from Ice Cream Van Chimes, etc. 1982 or any modification or re-enactment thereof. (summary attached).

### **3.6 CHELTENHAM BOROUGH COUNCIL SUMMARY OF THE CODE OF PRACTICE ON NOISE FROM ICE CREAM TRADERS MECHANICALLY PROPELLED VEHICLE CHIMES, ETC. 1982**

It is an offence to sound your chimes before 12 noon or after 7.00 p.m. It is also an offence to sound your chimes in such a way as to give reasonable cause for annoyance. The main points of the Code of Practice approved by the Government on methods of minimising annoyance caused by your chimes are as follows:

### **DO NOT SOUND CHIMES**

1. For longer than 4 seconds at a time;
2. More often than once every 3 minutes;
3. When the vehicle is stationary;
4. Except on approach to a selling point;
5. When in sight of another vehicle which is trading;
6. When within 50 metres of Schools (during School hours), Hospitals and places of Worship (on Sundays and other recognised days of Worship);
7. More often than once in every 2 hours in the same length of street;
8. Louder than 80 dB(A) at 7.5 metres;
9. As loudly in quiet areas or narrow streets as elsewhere.

## **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.

## 5. Objections and Comments from Consultees

### **Green Space Manager, Cheltenham Borough Council**

We have a contract with the Coffee Company who run our parks and gardens cafes, they have worked hard to establish business in the parks which enables them to run the boating lake, tennis courts, fishing, and golf course, which on their own do not break even. I would not wish to see anything that might jeopardise these much enjoyed public facilities. Ice cream sales form a very important part of this business, and this year they will be serving ice cream from Central Cross, the Boat House, and from a mobile ice cream bike by the play area. In my view this is more than enough and comfortably meets demand. I would not support special dispensation of the conditions.

### **Senior Environmental Health Officer (health and safety), Cheltenham Borough Council**

I recommend the conditions relating to trading outside the school are not lifted. Traffic outside schools is heavy in the periods stipulated and the addition of another vehicle distraction does not help the public safety of the area. If the street trader considers that other areas used increases the risk of road traffic incidences arising, then the committee should consider exempting street trading in these areas as well, around peak times.

In relation to the proposed Pittville Park [Pittville Lawn] location I can currently see no public safety concerns in relation to this site, if the van can be parked off the main carriage way I have no objections. Parking can be busy in this area and this may increase the risk of a road safety accident occurring, however traffic is not great down Pittville Lawn and the cars that do pass tend to go slowly, it may be no different than an ice-cream van locating themselves in a car park.

### **Senior Enforcement & Compliance Officer (planning), Cheltenham Borough Council**

It would be an error to agree to this dispensation which could set a precedent for other ice cream vendors and burger vans to be parked outside schools.

## 6. Licensing Comments

- 6.1 The Committee must determine the application with a view to promoting the Council's adopted policy and should only depart from the policy where there are clear and defensible reasons for doing so. In this case the applicant has made a specific request for part of the Council's adopted policy not to apply in his case. If Members consider this request to be reasonable they must provide clear reasons for departing from the Policy and consider whether in so doing, they are setting a precedent.
- 6.2 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."
- 6.3 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".
- 6.4 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].

- 6.5 Members must also have regards to the adopted Probity in Licensing guide.
- 6.6 Mr Shaouna has been invited to attend the hearing.

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

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