

Cheltenham Borough Council

Licensing Committee – 31st July 2015

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

Mr Adrian Paul Wood

Report of the Licensing Officer

1. Summary and recommendation

- 1.1 Mr Adrian Paul Wood has made 2 applications for street trading consent in respect of static units to sell seasonal fruit, vegetables and salad.
- 1.2 Application (1) relates to a location at the corner of Church Street and High Street as shown at **appendix A**.
- 1.3 Application (2) relates to a location on the pedestrianised High Street by Beechwood Arcade as shown at **appendix B**.
- 1.4 A photo of the proposed style of the trading units is at **appendix C**.
- 1.5.1 **The Committee is recommended to resolve that:**
- 1.5.2 **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;**
- 1.5.3 **The application(s) be refused because they do not comply with the provision of the Street Scene policy as the proposed trading units and / or location(s) are deemed unsuitable.**

1.6 Implications

- 1.6.1 Financial **Contact officer: Sarah Didcote**
Email: sarah.didcote@cheltenham.gov.uk; Tel no. 01242 26 4125
- 1.6.2 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.

5. Objections and Comments from Consultees

5.1 Gloucestershire County Council Highways

With regards to Street trading consultation [Church Street site] the Area Highways Representative has stated that this area would not be suitable for an outdoor greengrocers to trade. Church Street is used by traffic turning into the High Street and this could well make a pinch point for pedestrians standing in the road looking to pay for items and becoming unaware of traffic.

The same condition will also apply on the [High Street near Beechwood site] which at this present stage in time has a road closure in place until the end of July.

Pedestrians on looking to buy will not be concentrating on the traffic and could end up wandering around the stall causing others to be forced out into the road.

Other issues to be considered would be the maintenance of the building, if scaffolding is required then the greengrocers would be required to move elsewhere. Skips can also be placed in this area for shop refurbishing, which again will restrict pedestrian movement.

5.2 Cheltenham Borough Council's Licensing Team Leader

I would like to raise a number of concerns with regards to this application.

Principally, there is insufficient space for this proposed trading location.

The council's current policy states:

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.

3.3 Public Safety

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

Church Street, although not very busy, is a vehicular access road and used by a variety of vehicles serving the various businesses located on the street. From this currently trading location, it is clear that people crowd around the stall being served and waiting to be served. If this location were to be approved, people will certainly be crowding on Church Street which will not only cause a risk to public safety from vehicles coming around the corner (turning left off the High Street) but also cause an obstruction to those vehicles.

Furthermore, there are also potential access issues with the utility box and access chamber that will be obstructed by the trading stall.

5.3 Cheltenham Borough Council's Public Realm Designer (Built Environment)

Having discussed this within the team and the consultation group concerned with the public realm work proposed for this street, we would support this application for a maximum 6 month licence period.

Beyond December 2015 we are expecting to carry out improvements to the street, during the works trading at this location or anywhere on the street would be impossible.

Furthermore we do not consider the location suitable for street trading on completion of the works, such an activity would be counter to the intentions of the scheme to enhance the character and quality of this space and cause undue congestion on a narrow alleyway.

5.4 Cheltenham Borough Council's Landscape Architect (Built Environment)

I think positive activity like this would be great for the alleyways but I'm not sure there is enough space considering the size of their stall at present. The area stated in the application is okay (1.2m wide would be better to ensure the carriageway remains clear) but the area they have shown includes the utility box which would take up some of the space

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.

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 Referring to the Church Street location, Members should be mindful that the Council's adopted policy says that trading 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" or where "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" (paragraph 3.1). The policy also says the following in terms of trading near kerbs: "In the interests of highway safety, no activity will be permitted within a minimum of 2 metres of a kerb" (paragraph 3.2). Members may depart from the policy if there are clear and defensible reasons to do so.

6.6 Members may be aware that the Church Street location has previously been used for street trading by another trader, but Members should consider each application on its own merits based on the information provided and the objections received.

- 6.7 Members should be aware that Mr Wood has expressed a willingness to adjust the size and layout of the trading unit(s) if the Committee deems it appropriate.
- 6.8 Members must also have regards to the adopted Probity in Licensing guide.
- 6.9 Mr Wood and his representative Richard Knightley have been invited to attend the hearing.

Background Papers

Service Records

Report Author

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