

Cheltenham Borough Council

Licensing Committee – 12 April 2017

Local Government (Miscellaneous Provisions) Act 1982

Application for a Street Trading Consent

Mr Edward Danter

Report of the Licensing Officer

1. Summary and recommendation

- 1.1 An application has been made by Mr Edward Danter for a street trading consent to sell pork rolls, turkey rolls, German & Gloucestershire Old Spot sausages and hot and cold drinks from a trading unit measuring 4.8m x 2.4m.
- 1.2 Mr Danter has applied to trade on the High Street near to the junction with Cambray Place, in the location referred to as 'High Street 6' in the council's street trading policy. **Appendix 1** shows the location of the proposed trading pitch.
- 1.3 Mr Danter has applied for consent to trade from 10 November 2017 to 7 January 2018, on the following days and times:
- | | |
|-----------|-------------|
| Monday | 09.00-18.00 |
| Tuesday | 09.00-18.00 |
| Wednesday | 09.00-18.00 |
| Thursday | 09:00-21.00 |
| Friday | 09.00-18.00 |
| Saturday | 09.00-18.00 |
| Sunday | 11.00-17.00 |
- 1.4 An image of the trading unit is shown at **Appendix 2**.
- 1.5 The proposed trading location is one that is approved for street trading in the council's adopted policy, however the type of goods being sold is not compliant with the policy and nor is the size of the trading unit.
- 1.6 **The Committee can:**
- 1.6.1 **Approve the application because Members are satisfied that the location, size of unit and type of goods are suitable, or**
- 1.6.2 **Refuse the application because it does not comply with the provision of the street trading policy.**

1.7 Implications

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.

Any application should be considered in line with the Council's policy on Street Trading.

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2. Policy Principles, Aims & Objectives

This section outlines the policies the council will apply when making decisions on applications for street trading 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:

- prevent the obstruction of the streets by street trading activities;
- sustain established shopkeepers in the town;
- maintain the quality of the townscape and add value to the town;
- encourage inward investment; and
- promote quality markets.

2.1 Permitted locations for street trading

The council's adopted policy prescribes a number of permitted trading locations and associated permitted trading goods. These locations and permitted goods are outlined in the council's adopted policy that is available on the council's website.

2.2 Assessment criteria

In considering applications for the grant or renewal of a consent the following factors will be considered:

- **Needs of the Area** - The retail offer of each individual pitch. The goods complement and do not conflict with the goods sold by other retailers (including other street traders) within vicinity. This criterion permits the council to undertake a qualitative assessment of the goods to be sold by each competing applicant against those on sale in the adjacent area. The council does however recognise that the surrounding retail offer is subject to change therefore it will apply this criterion to applications for new or renewal applications.
- **Public Nuisance** – Whether the street trading activity represents, or is likely to represent, a substantial risk of nuisance to the public or properties in the vicinity from noise, misbehaviour, emissions, smells etc.

- **Public Safety** – Whether the street trading activity represents, or is likely to represent, a substantial risk to the public from the point of view of obstruction, fire hazard, unhygienic conditions or danger that may occur when a trader is accessing the site.
- **Appearance of the Stall or Vehicle** – Trading units must enhance the visual appearance of the street rather than detract from it and be constructed in a suitable scale, style and of appropriate materials. It should also be designed to be fully accessible for all customers and advertising material must be limited to the name of the stall, the type of product sold and a simple price list and be professionally designed and printed. The council will generally not permit trading units over 3 meters tall to avoid obstruction of sight.
- **Environmental Credentials** - The impact of the proposed operation on the local environment including street surfaces, tree pits & materials, power supply, carbon footprint, supply chain, packaging, waste minimisation, waste disposal and waste created by customers.

4. Consultee Comments

4.1 During the consultation process the following comments were received:

Senior Environmental Health Officer, Cheltenham Borough Council

With regard to this application I see that the proposed location is identical to Christmas 2016. Last year this department received a number of complaints about this stall, one regarding odours going into a nearby clothing store and allegedly making their stock smell of cooked food, and a complaint about noise from a generator affecting another trader on the opposite side of the road from the first.

For that reason I would object to the granting of the licence on the above grounds.

Operations Manager, Cheltenham Business Improvement District (BID)

Having spoken to some of the businesses on the High Street beyond Cambray Place, towards Bath Road, about the Cotswold Carvery at Christmas, these are some views:

New Look – they are strongly opposed to the Cotswold Carvery coming back at any time. It makes their clothes smell of fried onions and they had customers complaining last year. They feel it puts people off making purchases if they think the clothes will smell.

STA Travel – they don't mind one way or the other as they keep their doors closed anyway. It neither enhances nor detracts from their operations.

Farmhouse Deli – they are opposed to it returning at any time and made an objection in 2015, which they feel was ignored. It decreases the number of customers they get because people get there, buy some food and then turn around. It takes business away from both their counter sales and food take-away sales.

Argos – they like it being there, it's convenient for them to go and buy their lunch. (Reinforcing the point about it taking business away from the other businesses selling food).

Zi Coffee Shop and Bakery – they are opposed to it being there, they lose business.

The Butcher's Block – opposed to it being there. It's unfair on other businesses in the food trade who pay rates, levy and are there all the time.

Farmhouse Deli, High Street

As registered Traders supporting the Cheltenham Bid initiative, we wish to object to any Application for a Street Trading Licence to site a mobile "Hot Roast Van" on the pedestrian thoroughfare at the junction of Cambray Place and the Strand.

Such a facility would adversely impact the whole Strand/High Street area, and present both a physical obstruction as well as an unsightly and highly smelly environment. In addition, as a mobile operation, it would breach Health & Safety and environmental Health considerations in that it cannot offer toilet facilities and there are no nearby public conveniences.

The essence of the Cheltenham Bid initiative is to present the Town Center in as advantageous a light as possible and to allow a mobile Hot Food and drink facility to be sited in such a prominent position cannot be seen as advantageous

Finally as a resident Business, we object to Traders being able to bypass the regulations and financial commitments (Business Rates/Cheltenham Bid Levy) that we are subject to and, with the number of existing food outlets in the area do not feel that another outlet is necessary or will add to the attraction of the Town Centre

We trust this objection will be recorded and upheld in the event of an Application

5. Licensing Comments

- 5.1 The Committee must determine the application with a view to promoting the council's adopted policy and Members should not arbitrarily deviate from the council's policy.
- 5.2 As outlined above, this application does not fully comply with the council's policy for the following reasons:
- (i) Although the proposed location is an approved location for trading (referred to as High Street 6 in the policy), the location is not approved for the sale of hot food and drink (see 5.4 below);
 - (ii) The trading unit exceeds the permitted size for trading units in that location. The policy approves trading units up to 6m² in that location, whereas this unit, being 4.8m x 2.4m, is 11.52m².
- 5.3 The policy outlines the following permitted trading types for the location in question:
- Signup Services
 - Busking (when also selling merchandise)
- 5.4 The policy takes into account a number of factors when determining the permitted trading types. These are outlined in paragraph 2.2 above ("Permitted Locations") and Members should take these into account when determining this application. The reason that the policy restricts certain types of trading in particular locations is that it takes into account the needs of the area and the presence of other businesses. In this location there are several established food outlets and the policy seeks to limit oversupply and thereby protect the interests of established retail businesses.
- 5.5 Whilst none of the emergency services have objected to the application, Members are advised that comments were made by a fire safety officer when the trading unit was in place last year, to the effect that having a trading unit adjacent to retail units can cause an obstruction or bottleneck if people are leaving the retail unit in the event of an emergency.
- 5.6 Whilst the policy creates a presumption against the grant of an application if the application does not comply with the policy, this position should not fetter the committee's discretion to take into account the individual merits of the application and any circumstances that may warrant a deviation from the policy.

5.7 Members are reminded that clear and thorough reasons should be given for decisions made by the committee particularly where the decision is contrary to adopted policy.

6. Officer recommendation

6.1 The officer recommendation is that this application be refused.

Reason(s): The officer recommendation is based on the fact that the application does not comply with the council's policy and has attracted a number of objections both from relevant authorities (environmental health) and from local businesses.

Background Papers

Service Records

Adopted Street Trading Policy

Case Officer

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