

Cheltenham Borough Council

Licensing Committee – 25th April 2018

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 We have received an application from Mr Edward Danter for a street trading consent to sell hot turkey rolls, pork rolls, German & Gloucestershire Old Spot sausages and hot & cold drinks from a hot food unit measuring 4.8m x 2.4m.
- 1.2 Mr Danter has applied to trade outside 109 - 113 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 09th November to 31st December 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 in **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 **Approved the application because Members are satisfied that the location is suitable, or**
- 1.6.2 **Refuse the application because it does not comply with the provision of the Street Scene 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. Background

- 2.1** The current street trading policy was adopted by Council on 12 February 2016. A copy of the 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:

- 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.

3.1 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.

3.2 Assessment criteria

In considering applications for the grant 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:

Operations Manager, Cheltenham Business Improvement District (BID)

Cheltenham Business Improvement District (BID) opposes the application for the hot food Xmas unit outside 109-113 High Street.

Our food and drink businesses in particular are concerned that this unit would operate in direct opposition to them at a time when they should be benefitting from the additional footfall that the Christmas season brings. The businesses pay business rates and the BID levy, whereas a temporary operator of this kind would not.

Among the food and drink businesses in the immediate area that would be directly affected if this application went ahead are: Farmhouse Deli, Zi Coffee Shop and Bakery, Costa Coffee, SOHO Coffee, The Butcher's Block, Sainsbury's Local.

Businesses were consulted when the council's latest policy for street trading was drawn up. They wanted the policy to clearly state what goods could be sold at particular locations and for a limit to be put on the size of any temporary units. The policy does this.

However, the location in question has been allocated for sign-up services and buskers selling merchandise. It does not permit food and drink sales. The maximum size of unit allowed is 6m.sq, whereas this unit would be 11.52m.sq.

The John Lewis store is due to open before the time period covered by this application and the first stage of work to improve High Street East will also have been completed. The council's stated ambition is to improve the quality of the public realm in this area, which can best be done by sticking to the street trading policy and limiting the number of street traders allowed to operate in this and other areas.

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 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.

5.6 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 an objection from Cheltenham Bid.

Background Papers

Service Records

Adopted Street Trading Policy

Case Officer

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