

Cheltenham Borough Council

Licensing Committee – 3 October 2018

Local Government (Miscellaneous Provisions) Act 1982

Application for a Street Trading Consent

Mr Paul Stephens (18/02006/STA)

Report of the Licensing Team Leader

1. Summary and recommendation

- 1.1 We have received an application from Mr Paul Stephens for a street trading consent to sell hot dogs, burgers, chicken wraps and chips from a Gazebo measuring 2m (6ft) x 3m (10ft).
- 1.2 Mr Stephens has applied to trade on the paved area outside Aqua Vitae located at 10 Ormond Place. **Appendix 1** shows the location of the proposed trading pitch.
- 1.3 Mr Stephens has applied for a temporary consent for the following dates and times:
- 20th October 2018, 19:00 - 03:00
 - 16-17th November 2018, 19:00 - 03:00
- 1.4 An image of the trading unit is shown in **Appendix 2**.
- 1.5 **The Committee can:**
- 1.5.1 **Approved the application because Members are satisfied that the location is suitable for the proposed trading, or**
- 1.5.2 **Refuse the application because it does not comply with the provision of the adopted Street Trading Licensing Policy or for any other reason.**

1.6 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 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 An objection has been received in relation to this application outlined in the accompanying background papers.

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 The policy takes into account a number of factors when determining the permitted trading types. These are outlined above ("Permitted Locations") and Members should take these into account when determining this application.
- 5.3 The proposed trading location in respect of this application is not one permitted by the licensing policy. Consequently, officers have recommended that the application be refused.
- 5.4 However, Members should be mindful that this application is for a temporary trading consent and as such the policy provisions must be interpreted in light of this.
- 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 however to take into account the individual merits of the application and any circumstances that may warrant a deviation from the policy.
- 5.4 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.
- 5.5 The objection makes reference to matters under the section 115E(3) Highways Act 1980 and the council's ability to issue this consent. The council's legal view in relation to the aforementioned is that objects (and therefore obstructions of the highway) associated with street trading consents are

not subject to the requirements and restrictions associated with section 115E(3) of the Highways Act 1980. As such, it is within the committee's ability to determine this application on its merits.

5.6 The objector has also raised issues regarding the needs of the area stating that there is sufficient existing provision in the vicinity to negate the need for the trading consent to sell hot dogs, burgers, chicken wraps and chips. In this regard, Members must be mindful of the policy position in relation to the needs of the area as outlined under 3.2 above.

6. Officer recommendation

6.1 The officer recommendation is that this application be refused.

6.2 **Reason(s):** The application does not comply with the provisions of paragraph 4.1 of the adopted Street Trading Licensing Policy in that the proposed trading location is not one allocated as a "Permitted Location".

Background Papers

Service Records

Case Officer

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