

Cheltenham Borough Council

Licensing Committee – 3 October 2018

Local Government (Miscellaneous Provisions) Act 1982

Application for renewal of a Street Trading Consent

Mr Mark Morris (18/01656/STA)

Report of the Licensing Team Leader

1. Summary and recommendation

1.1 We have received an application for the renewal of a street trading consent from Mr Mark Morris to sell fresh cut flowers from a stall on the corner of Ormond Terrace and Promenade. **Appendix 1** shows the location of the trading pitch.

1.2 Mr Morris has applied for an annual consent on the following days and times:

| | |
|-----------|---------------|
| Monday | 08.30 - 18.00 |
| Tuesday | 08.30 - 18.00 |
| Wednesday | 08.30 - 18.00 |
| Thursday | 08.30 - 18.00 |
| Friday | 08.30 - 18.00 |
| Saturday | 08.30 - 18.00 |
| Sunday | 11:00 - 17:00 |

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 A number of objections have been received in relation to this application. These are outlined in the accompanying background papers.

5. Licensing Comments

- 5.1 This application is for the renewal of an existing street trading consent. The application complies with the provisions of the council's adopted Street Trading Licensing Policy.
- 5.2 This application has generated a number of objections as outlined in the accompanying background papers including a number of signatories on a petition calling for the "removal" of the licensed stall.
- 5.3 Members must also be aware of a petition that has been published under the council's petition scheme in support of this application. The petition in support has attracted 125 electronic signatories calling on the council to "support the current position of our flower stand when considering the renewal of our street trading licence."
- 5.4 The objection raised by Beards Jewellers makes reference to matters under the section 115E(2) 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(2) of the Highways Act 1980. As such, it is within the committee's ability to determine this application on its merits.
- 5.5 Members will be aware that the trading location relating to this application has been the cause of the majority of the objections received. A meeting was held in August, facilitated by the BID and council, to get the parties on both sides of the argument around the table in order to attempt a practical compromise. A number of alternative locations were discussed but Mr Morris did not consider any of these to be a suitable alternative. For information, the alternative locations were:
- Outside Cavendish House on the pedestrianised Promenade;
 - Further down Ormond Place to where the pedestrianised section meets the road; and
 - On the pedestrianised Promenade adjacent to the Minotaur statue.

- 5.6 Although this is an application for the renewal of an existing consent, Members are not strictly bound by previous decisions to grant this consent. The legislation gives the committee a wide discretion stating that a “council may grant a consent if they think fit” and as such the Committee can take into consideration a number of factors when determining whether this consent should be issued for a further 12 months.
- 5.7 The issues to be taken into consideration must include the evidence the Committee is presented with on the day but equally wider considerations can be taken into account, for example, the changing nature of the public realm, wider future plans that may affect, or be affected, by the grant of this consent, or the changing nature of the needs of the local area.
- 5.8 If the committee are minded to refuse the application, it must give clear and comprehensive reasons for doing so.
- 5.9 Members are reminded that the application must be determined on its merits. It is not within the committee’s ability to grant this consent but for an alternative location. If the committee considers an alternative location to be more suitable, it must refuse this application and ask the applicant to submit a new application.

Background Papers

Service Records

Case Officer

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