

Cheltenham Borough Council

Licensing Committee – 5 December 2018

Local Government (Miscellaneous Provisions) Act 1982

Application for a Street Trading Consent

Mr Steven Palmer (18/03132/STA)

Report of the Licensing Team Leader

1. Summary and recommendation

- 1.1 We have received an application from Mr Steven Palmer for a street trading consent to sell Christmas trees, natural decorations and wreaths from an enclosed area 49m (106ft) x 21m (69ft).
- 1.2 Mr Palmer has applied to trade from Pittville Park (Pittville Lawn). **Appendix 1** shows the location of the proposed trading pitch.
- 1.3 Mr Palmer has applied for a time limited consent from the 30 November 2018 – 21 December 2018 on the following days and times:

Monday	08:00 - 21:00
Tuesday	08:00 - 21:00
Wednesday	08:00 - 21:00
Thursday	08:00 - 21:00
Friday	08:00 - 21:00
Saturday	08:00 - 21:00
Sunday	08:00 - 21:00

- 1.4 An image of the proposed site set up 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; or**
- 1.5.2 **Refuse the application because Members are not satisfied that the location is suitable for the proposed trading.**

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.

3.3 Special Events

The council recognises that there may be times when consent may be sought otherwise than in accordance with the policy for special one-off events.

These may include, for example, one-off charitable or promotional events.

Applications of this type will be determined on a case-to-case basis taking into account the assessment criteria set out above.

4. Consultee Comments

4.1 No objections were received from any of the responsible authorities.

4.2 The Senior Environmental Health Officer responsible for pollution control has submitted the following comments in relation to the application:

I have been asked to review your application for street trading consent at the above location.

I can confirm I have no objection to your application, but offer the following recommendations which you should consider, in order to ensure that your operation does not cause a statutory nuisance to residents in the area:

Noise

There is potential for noise from the site to impact neighbouring properties, if it is not suitably controlled. I would therefore suggest the following:

- *Keep any on-site music to a low level and make regular checks to ensure it is not audible at the boundaries of neighbouring property.*
- *If generators are to be used ensure they are properly silenced and positioned away from residential property, screened by other structures on site.*
- *Any power tools in use should be kept to a minimum and used well away from neighbouring property.*
- *If deliveries to site are required, ensure they only take place during the “working day”. I would suggest 9:00AM – 5:00PM.*

Lighting

There is a potential for nuisance to be caused by lighting at the site. Please ensure the following recommendations are adhered to:

- *Ensure all lighting is directed on to the site, with minimal overspill. Lights should be angled away from residential property or cowled to ensure light is not directed at other premises.*
- *All lighting should be turned OFF when the site is not open to the public.*

I am optimistic that the site can operate in a suitable way, which is sympathetic to local residents. Please be aware that if the site causes a statutory nuisance to other properties, the council will be required to take further action to ensure that the nuisance is abated. This is likely to be in the form of an abatement notice, served under the Environmental Protection Act 1990. Such a notice is likely to require specific equipment to be removed or taken out of use, which may have an impact on your ability to operate the site. Failure to comply with such a notice is an offence.

4.4 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 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 Members are to note that the proposed trading location falls outside the scope of the policy's permitted locations and as such, the application should be determined on its merits bearing in mind also the assessment criteria outlined above.
- 5.3 This application has generated a substantial amount of objections dealing with a broad range of issues. However, the committee must ensure that it limits consideration of facts to those relevant to the trading application.
- 5.4 To assist the committee with this, it may be useful for Members to understand the various processes, roles and responsibilities involved in granting permission for events to go ahead on council owned land.
- 5.5 Most events occupying council owned land will be subject to a land use agreement. This agreement is essentially the contract between the occupier and the council (as land owner) and sets out the conditions that the occupier will need to comply with when occupying the land. The conditions generally relate to, amongst others, duties to make good damage and the responsibility of the occupier to ensure they have all the necessary formal consents in place. This process is the responsibility of the council's Green Space Team.
- 5.6 Aside from land use agreement is the council's regulatory function. It may be that an occupier/event organiser needs a formal authorisation to do what they propose to do as part of their operation. Under these circumstances, and in addition to the land use agreement, they will need to apply to the council's licensing department for the formal authorisations they require, in this case a trading licence.
- 5.7 The council acting in its capacity as regulator will be required to determine these applications in the usual manner. For the purpose of dealing with licensing applications therefore, Members must ensure that they act in their capacity as a regulatory committee.
- 5.8 The consultation on this application was open from 20 November to 30 November. Due to a technical issue with the council's public access system, the consultation was extended and additional information was made publically available on the council website.
- 5.9 Members must note for the avoidance of doubt, that whilst the trading application was subject to a public consultation, the land use agreement process is delegated to officers and there is currently no consultation process on the agreement of land use agreements.
- 5.10 Members may have noticed that Mr Palmer has already begun trading. At the moment, he is charging an entry fee which takes him outside the scope of street trading legislation. Schedule 4,

paragraph 1(a) defines a street, for the purpose of street trading, as being "...any road, footway, beach or **other area to which the public have access without payment.**" As such, whilst he continues to charge an entry fee, the area is not one to which the public have access without payment as consequently he is able to trade without a trading licence.

Background Papers

Service Records

Case Officer**Contact officer: Louis Krog****E-mail: licensing@cheltenham.gov.uk****Tel no: 01242 262626**