

Cheltenham Borough Council

Licensing Committee – 4 November 2020

Local Government (Miscellaneous Provisions) Act 1982

Application for a Street Trading Consent

Mr Jamie Fisher

Report of the Licensing Officer

1. Summary and recommendation

- 1.1 We have received an application from Mr Jamie Fisher trading as Bella Mia Pizza for a street trading consent to sell Pizza, desserts and cold drinks from a Trailer measuring 3m long 1.5m wide.
- 1.2 Mr Fisher has applied to trade outside Space NK Apothecary on the Promenade. **Appendix 1** shows the location of the proposed trading pitch.
- 1.3 Mr Fisher has applied for an annual consent on the following days and times:

Monday	None
Tuesday	None
Wednesday	None
Thursday	None
Friday	11:00 - 21:00
Saturday	11:00 - 21:00
Sunday	11:00 - 21:00

- 1.4 An image of the trading unit is shown in **Appendix 2**.
- 1.5 The Committee must consider the application and decide whether to:-**
- 1.5.1 Approve the application if Members are satisfied that the location is suitable,**
- 1.5.2 Approve the application subject to additional terms and conditions, if they believe the location would be suitable in such circumstances or**
- 1.5.3 Refuse the application if they are not satisfied the location is suitable.**

The application does not comply with the provisions of the Street Scene policy, but in all instances the committee must give reasons for its decision.

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. 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.

3.1 Permitted locations for street trading

The council's adopted policy prescribes three permitted trading sites. These locations 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 established retailers within vicinity. This criterion permits the authority to undertake a qualitative assessment of the goods to be sold by each competing applicant against those on sale in the adjacent area. The authority 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.

The authority would expect a minimum of 6 feet (1.8m) of unobstructed highway/walkway on at least one side of the proposed trading unit/location.

- **Appearance of the Stall or Vehicle** – Trading units must enhance the visual appearance of the street and street scene rather than detract from it and be constructed in a suitable scale, style and using 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 authority will generally not permit trading units where the unit fully, or substantially, blocks lines of sight to established retailers in the vicinity.

Any street trading operation which negatively impacts public access by walking, cycling or public transport will not generally be accepted.

- **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 and recycling, waste disposal and waste created by customers.

The authority will encourage the use of sustainable products and will consider the trader's environmental credentials in respect of these when considering whether or not to approve applications. The authority will expect applicants to submit environmental statements setting out how the applicant will operate in an environmentally sustainable way.

4. Consultee Comments

- 4.1 There were no comments received during the consultation period.

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 **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.**
- 5.4 **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 Each application should be dealt with on its own merits based on the overarching aims of the policy, which are to:
- 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.
- 5.6 **Approved Locations** – The licensing policy makes provision for applications to be made in any one of the three permitted locations in the town. The policy is intentionally not prescriptive of goods and services so to provide flexibility for traders to approach the council with proposals.

5.6.1 Applications for trading locations outside the permitted locations will be dealt with on their merits but there will be a presumption against the grant of a consent.

5.7 The Committee is to note that the trading location does not comply with the council's trading policy in that the proposed location is not an approved location.

6. Officer recommendation

6.1 The officer recommendation is that this application be refused.

Reason(s): As outlined above (5.3), there is a presumption against the grant of the application because it is not an approved location but this does not fetter the Committee's discretion to take into account the individual merits of the application and act otherwise.

However, for the Committee to do so, it should hear clear and cogent reasons to depart from the policy. The onus is on the applicant to explain how the merits of their application would warrant that approach. If doing so, they should refer to relevant principles laid down in the Street Trading policy and any other matter they believe is relevant.

Special Condition(s): The applicant is to be made aware that if the application is approved, they will not be permitted to trade when there are street trading markets in place.

- The Farmers market take place on the second and last Friday of each month apart from December when it takes place on the second and third Friday of the month.
- The Arts and Crafts markets take place on the third Saturday of the each month and from the 12th to 20th December 2020.
- There may be additional markets for 2021 - awaiting possible applications.
- This may mean the Licensing Team would need to inform the trader of other events that take place, when they could not trade.

Background Papers

Service Records

Case Officer

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