

# Cheltenham Borough Council

## Licensing Committee – 3 March 2021

### Local Government (Miscellaneous Provisions) Act 1982

#### Application for a Street Trading Consent

**Caroline Mukherjee**

#### Report of the Licensing Team Leader

#### 1. Summary and recommendation

- 1.1 We have received an application from Ms Caroline Mukherjee for a street trading consent to sell stir fried and rolled ice cream, confectioneries and soft drinks from a trailer measuring 3.6m (11.8ft) x 2m (6ft) x 2.1m (6ft).
- 1.2 Ms Mukherjee has applied to trade on the High Street adjacent to John Lewis. **Appendix 1** shows the location of the proposed trading pitch.
- 1.3 Ms Mukherjee has applied for an annual consent on the following days and times:

Monday	09:00 - 18:00
Tuesday	09:00 - 18:00
Wednesday	09:00 - 18:00
Thursday	09:00 - 18:00
Friday	09:00 - 18:00
Saturday	09:00 - 18:00
Sunday	09:00 - 18:00

**N.B. They would like to trade every day in May half term - 31/05/21 – 04/06/21 and on the specific days laid out below until the end of September only.**

**01/05/2021 to 30/09/2021**  
**01/05 - 30/06 Sat/Sun Only**  
**(31/05/ - 04/06 everyday)**  
**01/07 - 31/08 everyday**  
**01/09 - 30/09 Sat/Sun only**

- 1.4 An image of the trading unit is shown in **Appendix 2**.
- 1.5 **The Committee can:**
- 1.5.1 **Approve the application because Members are satisfied that the location is suitable for the purpose of the provisions of the authority's adopted street trading policy; or**
- 1.5.2 **Refuse the application because it does not comply with the provision of the authority's adopted street trading policy.**

## 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.

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## 2. Background

2.1 The current street trading policy was adopted by Council on 11 February 2020. 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 unnecessary obstruction of the highway by street trading activities;
- sustain established shopkeepers in the town;
- maintain the quality of the townscape and add value to the town; and
- encourage inward investment.

### 3.1 Permitted locations for street trading

The council's adopted policy prescribes three permitted trading locations. 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 The consultation responses in the form of objections to the application are attached at **Appendix 3**.

4.2 In addition, the following comments were received:-

- a) Townscape Team CBC – No objection but please note The Traffic Regulation Orders. One of them states that the applicant is not allow to drive on/off the High Street between 10am and 6pm and also, the vehicle with the trailer can only arrive from the Bath Road / Cambray Place end and depart through the Rodney Road (as one wat system indicates).
- b) Environmental Health Team - The operator will need to be registered as a food business. This is usually the authority in which the vehicle is kept overnight (not always the authority in which it trades) they only need to register with one LA and they may have done this elsewhere. *The applicant is registered for such purposes with Stroud District Council.*

#### 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. The location applied for is not in a permitted location, as it falls outside of the zones in the town centre.

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 In addition, the objections highlight some concerns in particular, and with respect to the assessment criteria at 4.2 of the policy, namely:-
- a) Needs of the area – as it is suggested the offer of the street trader will conflict with the existing permanent businesses.
  - b) Appearance of the unit – the policy mentions situations where a unit may fully or substantially block lines of sight of an established retailer. Comments are made in relation to sight lines and Members should consider the potential impact ‘on the ground’, with regard to the size of this unit and its specific location. The point made about any potential visual impact on the High Street is a more subjective argument, but Members should consider it.
- 5.6 The street trading policy does not refer to social distancing in relation to a health pandemic specifically. However, it does refer to public safety, and this should be considered. The unit may be popular and draw customers, it will be important to understand how the applicant might manage a crowd gathering or queue forming whilst promoting social distancing, at least for the short term if granted consent.
- 5.7 Finally, there now seems a little more clarity from Central Government on how they envisage society may function over the next few months. Members may consider whether this potential slow return to a pre – pandemic town centre experience may affect their consideration. This could be in terms of the behaviour of the public through that process i.e. how quickly will the public return to the town centre and how busy will this area become. Additionally, it could be how will established business be impacted through that process i.e. will this trader add to or detract from that overall experience, could it be a positive draw, which may even benefit other business. These impacts are difficult to assess and quite subjective issues, but promoting public safety and enhancing/ not detracting from the town centre experience should be key drivers.

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**Background Papers**

Service Records

**Case Officer**

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