

Cheltenham Borough Council

Licensing Committee –

Local Government (Miscellaneous Provisions) Act 1982

Application for a Street Trading Consent

Miss Melissa Hobbs

Report of the Senior Licensing Officer

1. Summary and recommendation

- 1.1 We have received an application from Miss Melissa Hobbs for a street trading consent to sell Refreshments, coffee, tea, ice creams, cakes, toasties, waffles and fruit pots from a Mobile unit measuring 4.4m x 2.2m. Height 2.7m.
- 1.2 Miss Hobbs has applied to trade on the Beeches Playing Field, Sappercombe Lane, Charlton Kings in front of the Pavilion. **Appendix 1** shows the location of the proposed trading pitch.
- 1.3 Miss Hobbs has applied for a 9 month consent for the following days and times:-

Monday	07:00 - 18:00
Tuesday	07:00 - 18:00
Wednesday	07:00 - 18:00
Thursday	07:00 - 18:00
Friday	07:00 - 18:00
Saturday	07:00 - 18:00
Sunday	07:00 - 18:00

- 1.4 An image of the trading unit is shown in **Appendix 2**.
- 1.5 **The Committee can:-**
- 1.5.1 **Approve the application if they think it is appropriate to do so after considering the application and any objections, whilst having regard to the Street Trading Policy (Policy) or**
- 1.5.2 **Refuse the application if they think it is appropriate to do so after considering the application and any objections, whilst having regard to the Street Trading Policy.**
- 1.5.3 **In having regard to the Policy, Members must consider its relevance to the application, but they may depart from it, if they feel it is appropriate to do so. The Policy cannot fetter the Committee's discretion, but instead it provides a framework for decision making to ensure a coherent and consistent approach is taken by the Licensing Authority in determining applications. If Members depart from the Policy they should provide reasons for doing so.**

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.

Contact officer: One Legal
E-mail: legalservices@tewkesbury.gov.uk
Tel no: 01684 272015

2. Background

- 2.1 The current Policy was adopted by Council on 11 February 2020. A copy of the Policy has previously been circulated to Members and it is available on the council's website at - https://www.cheltenham.gov.uk/downloads/file/8050/street_trading_policy_feb_2020

3. Purpose of the Policy

- 3.1 This Policy sets out Cheltenham Borough Council's ("the authority") framework and approach for the management of street trading in the borough.
- 3.2 Through the street trading scheme the authority aims to control:-
1. the location of street traders;
 2. the number of street traders; and
 3. the types of goods to be sold or offered for sale.
- 3.3 The scheme also aims to:-
1. prevent unnecessary obstruction of the highway by street trading activities;
 2. sustain established shopkeepers in the town;
 3. maintain the quality of the townscape and add value to the town;
 4. encourage inward investment and
 5. promote quality markets
- 3.4 The authority recognises the importance of licensed businesses to the local economy and the character of the area whilst trying to ensure that the activities do not cause public or statutory nuisance to the people in the area.
- 3.5 This Policy will guide the authority when it considers applications for street trading consents. It will inform applicants of the criteria against which applications will be considered.

Assessment Criteria

- 3.6 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 No objections were received from the following consultees:-

Cheltenham Business Improvement District - No Objections
GCC Streetworks - No Objections
GCC Highways / Amey - No Objections
Planning Enforcement - No Objections
Public Spaces CBC - No Objections
Townscape CBC - No Objections
Ubico - No Objections

5. Other Objections and Applicant's Response

- 5.1 It was clear from feedback received from the consultation process that there had been an objection to the disposal by Cheltenham Borough Council of the lease to locate a unit for the purpose of street trading at the Beeches. It seemed appropriate to highlight the fact that this application was in consultation, in the interests of transparency and to ensure no perception of potential bias in determining this application by the council.
- 5.2 An objection was received from the owner of a local business, and his comments are attached at **Appendix 3**.

- 5.3 The applicant has submitted additional information to support their application, and this is attached at **Appendix 5** (her email from 11.03.21), **Appendix 5 a** (a copy of their proposed menu) and **Appendix 5 b** (screenshots of comments from social media in support of the application).

6. Licensing Comments

- 6.1 The Local Government (Miscellaneous Provisions) Act 1982 (the 1982 Act) Schedule 4 prescribes the regulation of street trading.
- 6.2 Street trading can be controlled through the issue of 'licences' or 'consents' and the two permissions are treated differently through the 1982 Act. Paragraph 7 of Schedule 4 of the 1982 Act sets down the regulation of street trading through 'consents' and Cheltenham Borough Council controls street trading through the consent scheme.
- 6.3 The grounds to consider when determining an application for a consent are not clearly specified in the 1982 Act. However, paragraph 4 sub – paragraph 4 states a council may attach such conditions 'as it considers reasonably necessary'. Furthermore, sub – paragraph 5 goes on to state that conditions may be used (inter alia) to prevent:-
- Obstruction of the street or danger to persons using it; or
 - Nuisance or annoyance (whether to persons using the street or otherwise).
- 6.4 Cheltenham Borough Council has adopted a Policy to make clear the approach it takes to carrying out its responsibilities in regulating street trading, as explained in Section 3 of this report above. The Committee must have regard to these considerations and should refer to them in their decision making.
- 6.5 The Committee must determine the application with a view to promoting the principles set down in the council's adopted Policy and Members should not arbitrarily deviate it.
- 6.6 The policy lays down certain 'Permitted Locations', but it should be noted that these are entirely located within the town centre. Members should consider whether this policy principle should be followed in the circumstances of this case when determining this application.
- 6.7 The objector to the application makes a number of arguments in his representation, but the main point is that the grant of this consent will not help sustain established businesses. He argues that the grant of this consent will harm his own business due to the cross over between the offer of his own business and that to be provided by the business making this application. He suggests that the application will harm his own due to the proximity of it to his own.
- 6.8 The Committee must consider relevant objections and weight the arguments made in them appropriately, but it must also consider potential benefits brought to the local community through an application i.e. does an application 'add value to the town (including the local community surrounding a proposed location)'?
- 6.9 Ultimately, the Committee must act in the public interest in considering this application and forensically assess any potentially negative impacts and any potential benefits to the community as discussed in the Policy, as far as is practicable. There will be constraints to this assessment as the commercial interests of the applicant and objector cannot be fully discussed in a public arena as this would not be appropriate to do so. However, the Committee can think through the practical impact of the potential grant of the consent in a thorough manner by considering known facts, in particular with reference to the geography of the local area and the potential benefits to the community.
- 6.10 The case officer visited the location on Thursday 18th March 2021 to provide further evidence to the Committee in respect of the key issues in play for this application. The findings from that visit are summarised below:-

- The proposed location is shown on area maps at **Appendix 4 a, b and c**. The proposed location for the consent is adjacent to the skatepark on The Beeches and the objector's business is located in Church Piece towards the top left of each map.
- The two possible routes for a person to walk between the location for the consent and the objector's business are shown as Route A and Route B, by way of a line with markings on the maps.
- Route A is a distance of approximately 0.44 km (481 yards) and took approximately 4.50 minutes to walk.
- Route B is a distance of approximately 0.49 km (536 yards) and took approximately 4.30 minutes to walk.
- Immediately adjacent to the proposed location for consent there are three popular areas – the allotments, the skate park and a playground. This could mean that customers using those areas may use the street trader that would not necessarily have walked to the 'village centre' for refreshments, if an almost 10 minute round trip by foot was required.
- The street trader would offer more of an outdoor experience with less cover due to its location and the unit to be used and will be more affected by adverse weather conditions than the existing business.
- It seems unlikely that potential customers using the village centre will walk to the Beeches specifically to purchase a coffee, unless that is on their way home, due to the time/ distance involved.

These points are helpful in determining the extent to which unfair competition may arise and explaining how the businesses concerned may satisfy different customer requirements.

- 6.11 The findings from this visit suggest the Committee must ask itself whether the potential benefit to the community of having a trader selling refreshments immediately adjacent to the three popular areas named above and for the wider community having access to such a facility are outweighed by the potentially adverse impact on the objector's business.
- 6.12 However, the street trading regime should not be used as a tool to stifle or stop genuine competition between businesses, as this is a natural part of the UK's economy, but it can be a helpful tool to reduce the impact of unfair competition which can damage the local economy.
- 6.13 If the consent is granted it will attract an annual fee of approximately £3600 (or a pro rata amount for a lesser period) and there will be a charge associated with the lease for using the land concerned. Members should consider these factors in assessing the potential for unfair competition to arise, as similar products are sold by both businesses.
- 6.14 The Committee may wish to consider the potential impact of the ongoing health pandemic on people's behaviours. It is difficult to predict but it seems likely for local green spaces in Cheltenham to remain popular and attract people from their local community throughout this summer with restrictions on holidays abroad and the subsequent additional pressure on popular holiday destinations in the UK.
- 6.15 Finally, a business being situated in this area may have a beneficial impact in respect of preventing crime and disorder and anti – social behaviour and would provide an additional facility for people to socialise in the open air locally.
- 6.16 Whilst the Policy creates a presumption against the grant of an application if the application does not comply with it, this must 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.
- 6.17 Members are reminded that clear and comprehensive reasons should be given for decisions made by the Committee particularly where the decision is contrary the Policy.
- 6.18 It should be noted that this application is not a re – run of the process to dispose of public open space that was recently undertaken by the council. That has led to a 9 month trial being permitted for this venture, in respect of the use of the land. It is understood that an adverse impact on the objector's business will be considered in respect of that trial. The decision from that process is attached at **Appendix 6**.

7. Officer recommendation

- 7.1 An officer recommendation is not given for the reasons given below and to ensure no appearance of bias in determining the consent, as it relates to council owned land.

However, the Committee must act in the public interest by ensuring full and proper consideration of the potential merits of the application for the local community whilst deciding whether unfair competition will be facilitated through granting this consent.

Reason(s): The permitted locations contained within the Street Trading Policy are all within the town centre. It seems a pragmatic and sensible approach to limit street trading in a busy town centre area to particular areas of it. However, it is unlikely that the council's intention was to effectively prohibit all trading away from the town centre, particularly given the vibrancy and individual nature of the many communities in Cheltenham. It would seem to have been impractical to create permitted areas throughout the borough, and so this aspect of the Policy is seen as less helpful in determining this application due to the location being away from the town centre. It is also clear from the number of enquiries to the Licensing Team during the health pandemic that traders are looking to operate away from the town centre and utilise green space.

Background Papers

Service Records

Case Officer

Contact officer: Mr Jason Kirkwood
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 775200

