

# Cheltenham Borough Council

## Licensing Committee – Sub Committee (Miscellaneous)

### Local Government (Miscellaneous Provisions) Act 1982

#### Application for a Street Trading Consent

**Mr Mehmet Yilmaz**

#### Report of the Licensing Officer

### 1. Summary and recommendation

- 1.1 We have received an application from Mr Mehmet Yilmaz for a street trading consent to sell hot food and hot/cold drinks from a Kebab Van measuring 2.1m x 3.6m.
- 1.2 Mr Yilmaz has applied to trade on the Promenade. **Appendix 1** shows the location of the proposed trading pitch.
- 1.3 Mr Yilmaz has applied for an annual consent on the following days and times:

Monday	18:00 - 04:00
Tuesday	18:00 - 04:00
Wednesday	18:00 - 04:00
Thursday	18:00 - 04:00
Friday	18:00 - 04:00
Saturday	18:00 - 04:00
Sunday	18:00 - 04:00

- 1.4 An image of the trading unit is shown in **Appendix 2**.
- 1.5 **The Committee can:**
- 1.5.1 **Approve the application because Members are satisfied that the location is suitable, or**
- 1.5.2 **Refuse the application because it does not comply with the provisions of the Street Trading Policy and/ or they have concerns in respect of issues raised by those objecting to the application and/ or other reasonable grounds.**

## 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 11 February 2020. A copy of the policy is attached **Appendix 3**.

## 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

3.3. 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; and
4. encourage inward investment.

3.4 In doing so, 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 All objections against the application received are attached as **Appendix 4** including objections from the Cheltenham Business Improvement District, Environmental Protection, and 6 additional local businesses.

## 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 must note that this location is outside of a permitted zone for street trading. Therefore the default position is that this application should be refused as it does not comply with policy in that respect. For clarification, if an application is to be sited in such a designated zone there is a presumption for grant, unless other concerns exist.

- 5.5 In addition, and notwithstanding the street trading policy does not make a great deal of reference to the issues of crime and disorder, it would be not in the public interest to ignore such issues if they could be considered relevant. The policy although listing assessment criteria could not be expected to cover all eventualities and all concerns that might arise. Many applications for street trading relate only to daytime hours and are less likely to raise concerns in respect of crime and disorder but as can be seen from comments received this application has given rise to such concerns from respondents.
- 5.6 Although the licensing authority has not received an objection from the police, it must be noted that such a business would be sited very close to the main taxi rank which operates throughout the night and therefore is somewhat of a 'hot spot' in it's own right due to the location being a hub for people to travel home after a night working in the town or enjoying the night time economy. It is considered that the location of a takeaway unit during the evening and into the small hours of the following day would be likely to exacerbate any potential issues that might exist already and/or create more likelihood of issues arising.
- 5.7 It should also be noted the size of this vehicle and the likely weight of it. The Highways Department again have not responded, but it is known that there have been concerns about vehicles being parked on this paved area in the past. An update will be sought for Members in respect of this point.
- 5.8 Further considerations which do not seem to have been raised which members should be aware of will include the following.
- The possible implications of this trader being on site during race meetings at Cheltenham Racecourse, when the town centre has a higher footfall in the evenings, particularly during the March meeting.
  - The fact that a number of events/markets/festivals use this space during weekends or at other times throughout the year. In many instances these existing attractions would have a hot food offer and clearly would not wish to see this trader in operation during their events.
- 5.9 Finally, members should consider if they are minded to refuse an application whether the attachment of conditions could mitigate any concerns to a satisfactory extent. If conditions are to be attached, they should be proportionate, appropriate, and enforceable.
- 5.10 Members are reminded that clear and cogent reasons should be given for decisions made by the committee particularly where the decision is contrary to adopted policy and/or is in conflict with representations made to the authority.
- 5.11 Mr Yilmaz has been advised prior to submitting his application in full that the chosen location would be likely to draw objections and that the location is used for emergency vehicle access and so likely to be unsuitable.

**Case Officer**

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