

Cheltenham Borough Council

Licensing Committee – 26 July 2013

Local Government (Miscellaneous Provisions) Act 1982 Application for a Street Trading Consent

Mr Richard Brabin

Report of the Senior Licensing Officer

1. Summary and recommendation

- 1.1 We have received an application from Mr Richard Brabin for a street trading consent to sell hot and cold food and drink from a mobile catering bicycle measuring 8ft (L) x 3ft (W) in the High Street and Promenade.
- 1.2 The proposed trading location of the mobile unit is between the High Street junction meeting Berkeley Street and the full length of the Promenade including Montpellier Street and Montpellier Walk.
- 1.3 The requested trading period and days are :-

Monday	10.00 - 17.00
Tuesday	10.00 - 17.00
Wednesday	10.00 - 17.00
Thursday	10.00 - 17.00
Friday	10.00 - 17.00
Saturday	10.00 - 17.00
Sunday	NONE

- 1.4 An image of the Mobile Catering Bicycle is attached at **Appendix A** and a location map is attached at **Appendix B**.
- 1.5 **The Committee is recommended to resolve that:**
- 1.5.1 **The application be approved because Members are satisfied that the location is suitable, or**
- 1.5.2 **The application be refused because it does not comply with the provision of the Street Scene policy as the proposed location(s) are deemed unsuitable.**

1.3 Implications

1.3.1 Financial

Contact officer: Sarah Didcote
E-mail: sarah.didcote@cheltenham.gov.uk
Tel no: 01242 26 4125

1.3.2 Legal

No right of appeal.

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.

Consent can be revoked at any time. An existing trader or a trader who has previously traded from a location does not have a legal right to any consent being automatically renewed or granted.

Any application should be considered in line with the Council's policy on Street Trading.

Contact officer: Vikki Fennell
E-mail: vikki.fennell@teWKesbury.gov.uk
Tel no: 01684 272015

2. Background

- 2.1 The current policy for *Town Centre Street Activities: Street Trading & Objects on the Highway* was approved on 1st April 2013. A copy of the whole 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:

- To have a clear & transparent policy governing street trading activities in the Borough.
- To enable the Council to manage all street trading activities in order to provide effective control measures.
- To ensure that all street trading activities meet the required quality standards, pose no risk to public health, safety & protection and do not prejudice the Council's efforts to improve the image, perception and attractiveness of the Town as a tourist and leisure destination, and is in keeping with the streetscape.
- To ensure that all objects placed on the highway meet the required quality standards, pose no risk to public health, safety & protection and to ensure that these objects do not obstruct the highway.
- To avoid duplication with other statutory provisions and the Council's commitment to work in partnership with other enforcement agencies.

3.1 Site Assessment

Consent from static locations will not normally be granted where:

- A significant effect on road safety would arise either from the siting of the trading activity itself, or from customers visiting or leaving the site,

- There would be a significant loss of amenity caused by traffic, noise, rubbish, potential for the harbourage of vermin, odour or fumes,
- There is a conflict with Traffic Orders such as waiting restrictions,
- The site or pitch obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use for street trading purposes,
- The site does not allow the consent holder, staff and customers to park in a safe manner,
- The street trading activity is carried out after dusk and the site is not adequately lit to allow safe access and egress from the site for both customers and staff.

3.2 Public Safety

In the interests of highway safety, no activity will be permitted within a minimum of 2 metres of a kerb.

3.3 Conservation Areas

The scope of this part of the policy covers the entire borough. However, the town centre, amongst a number of other areas in the borough, has conservation area status and as a result the Council will adopt a more restrictive approach to applications for these areas in particular.

3.4 Town Centre & Conservation Area

Despite this, the Council would not wish to prevent a modest amount of street trading in these areas of the town of a type which could positively enhance the enjoyment of the town as a tourist and leisure destination. To this end, street trading will generally be permitted in these areas where it enhances the town's reputation as a tourist and leisure destination, and is in keeping with the streetscape.

The appearance of a trader's business must enhance, or at least not be detrimental, to the street scene.

3.5 Street Trading Consent Conditions

In all cases, consent will only be given if the following detailed criteria are satisfied:

Not to trade or operate the Unit in such a way as to cause obstruction of the Street or danger or annoyance to persons using the Street.

3. Consultee Comments:

3.1 Responsible Authorities

Cheltenham Business Partnership Manager – I would object to this application for the following reasons:

There would be no control on where the bike may be parked to sell the food and drink within the area the applicant intends to trade and therefore could be open to trade in totally inappropriate places such as outside premises whose business could be adversely affected for example: another food retailer, a top end quality clothes retailer, etc.

It would prove difficult to police the applicant to ensure there is no cause of obstruction or interference to other retailers in the area in which trade is taking place.

The bike looks rather unstable, particularly if the large canister is full of liquid.

The bike looks unattractive and would detract from the surrounding street scene and environment.

The food and drink that would be sold does not appear to be seasonal or synonymous with the seasons.

A precedent may be set for other street traders to apply to trade in this way. We have worked very hard to clear the town of pedlars and this type of trading, on the face of it, looks very similar in terms of how the public could conceivably view it.

Highways Enforcement Officers - Gloucestershire Highways would have concerns with where on the public highway the unit would be stopping to trade. Concerns would include possible obstruction being caused to users of the footway/highway, blocking of visibility splays etc.

Environmental Health and Cleansing - No Comments

Gloucestershire Constabulary - No Comments

Planning Enforcement Officer – The application is wholly inappropriate in Conservation Area.

3.2 Interested Parties

M.Maizia (La Scala investments co ltd, Beechwood Shopping Centre, High Street, Cheltenham) - I am writing to object about the mobile catering bicycle application 13/01040/STA.

The reasons for my objection is not for competition but for unfair competition which allows people to cherry pick the best time and location to trade in where we have to keep open all the time regardless of the weather or the trend of business just to cover the occupational costs . I also find this idea not feasible and impossible to trace or police should any breach of the rules and regulations, It is not in my habit or the way I operate to object for the sake of it for example I do find the the bicycle outside the municipal offices as a very descent and presentable offer which doesn't interfere with any other businesses. I would not object to this application if it's granted on the basis of being fixed not mobile and in a location where it is not affecting any other traders.

Amer Awan (Butler's Restaurant, 78-High Street Cheltenham) - This has came to my notice that some one has applied the licence for Mobile Catering Bicycle, I would like to give my opinion on that , first of all I would like to introduce my self, I own a Cafe Restaurant at High Street top end side, we are registered with council and pay £853 a month in business rates, which is a lot of money, we have invested in the business, and our intention is to continue the business as long as no fear or threat of unfair competition , this mobile catering idea had came up with a serious threat to existing food businesses of town . If it starts trading near my business I will be losing costumers, Obviously if it offers cheap coffee or hot or cold drinks, who will come to our place then, Also if it starts selling sandwiches or food then what would I do , Also a potential risk of health and safety , by causing more litter in town, Also potential risk of drink or food quality compromised by due to limited means of electricity and water. Keeping in view of all the above and possibly more which I can't think of at the moment I would strongly object to issue licence to this type of catering idea. I look forward to see our local council take steps to protect the existing business of the town.

Alun Griffiths (Spectre, 73-75 High Street, Cheltenham) – The traditional Pub Spectre is located on the High Street, I would like to bring to your attention my objection to a license application that has been handed in to you (13/01040/STA) the application is for a mobile catering bicycle to openly sell hot and cold food anywhere from Montpellier to the High St. This application if given would enable this seller to basically pitch up outside my venue and detract customers from entering my premises by basically stealing my custom, as a business that is well established and run to the highest of standards I feel this would be a travesty.

Mark Daniel (Montpellier Resident) - As a Montpellier resident, I oppose this application for innumerable reasons. It will be unsafe. It will slow traffic. There is no evidence that it will be selling bona fide local food from local suppliers. It will be in direct competition with rival traders who have paid business rates and freehold prices. It will further obstruct pavements which, thanks to the shiftlessness of the Council, are already perilous to pedestrians thanks to cyclists, illegal parking athwart pavements and uneven surfaces. Above all, if a licence were granted, the Council can expect immediate legal action from those who applied

for licences for rickshaws (demonstrably safe, visually attractive, not laden with scalding liquids, providing a valuable service and exclusively on the roads) and were refused on the grounds that Councillor Jeffries and others could not be bothered to research the necessary licensing provisions and who therefore lost substantial sums of money. This ugly mobile food trolley will slow traffic, solicit business on public walkways and run – and cause – far greater risks than the more mobile rickshaws.

Robert Evans (Kitchenkind LLP, 1A Queen’s Circus, Montpellier, Cheltenham) - I would like to object to this trading application. Street Trading Consultation (13/01040/STA) I am the owner of a high quality Kitchen studio in Montpellier. Our business would be adversely affected if this trader were to set up outside our studio. It would also detract from the quality feel of the area and deprive rate paying food retailers of revenue. Finally it would be very difficult to check that the vendor is abiding by their licence and not blocking the footpaths. Do we really want to lose our cafes and restaurants in favour of a fleet of bicycle vendors?

Gavin Thompson (Gusto, 12 Montpellier Walk, Cheltenham) - I write in concern about the application for a bike to be selling hot drinks and food in Montpellier. This would be in direct competition with mine and many other businesses in Montpellier. There are already many cafes, bars and restaurants. I have had to go through stringent applications for my business and considering the negative comments I received I have no doubt that this would be frowned upon by the council. The bike in the picture certainly wouldn't add anything to the visual appeal of the area. I'm not sure how they would plan to monitor the congestion which I know from first hand experience is a concern of the council!

Michele Pemberton (L’una Design Ltd, 6 The Courtyard, Montpellier Street, Cheltenham) - Generally we do not object to applications but on this occasion we completely agree and object as follows:

There would be no control on where the bike may be parked to sell the food and drink within the area the applicant intends to trade and therefore could be open to trade in totally inappropriate places such as outside premises whose business could be adversely affected e.g: another food retailer, a top end quality clothes retailer, etc. It would prove difficult to police the applicant to ensure there is no cause of obstruction or interference to other retailers in the area in which trade is taking place. The bike looks rather unstable, particularly if the large canister is full of liquid. The bike looks unattractive and would detract from the surrounding street scene and environment. The food and drink that would be sold does not appear to be seasonal or synonymous with the seasons.

Showcase (Fancy Dress Shop 13 Montpellier Arcade Cheltenham) – I wish to object to the application for a cycle to sell food around the town, especially in our lovely Montpellier area. The cycle would be totally unsuitable for the streets and we have more than enough food outlets already within the town. Surely we are trying to not have this type of mobile trading within the town – we do appear to have got rid of quite a few pedlars – bit of a pain!!

4. Licensing Comments

- 4.1 The Committee must determine the application with a view to promoting the Council’s adopted policy.
- 4.2 This report has been brought to member’s attention as prescribed in the scheme of delegation set out in the Street Scene Policy (page 6) adopted on 1st April 2013, whereby all new street trading applications are referred to the Licensing Committee.
- 4.2 Members are to note that the comments made by the Highways Enforcement Officer are in relation to the location(s) applied for by the applicant. The current policy attaches conditions to street trading consent which state that a street trader may 'not trade or operate the Unit in such a way as to cause obstruction of the Street or danger or annoyance to persons using the Street. Members must also consider the emergency vehicle route which must remain clear at all times on the High Street and Promenade. Bearing this in mind members must be mindful to ensure that that location is suitable for such a unit to be positioned.

- 4.3 The proposed trading location(s) of the mobile unit include the High Street and Promenade pedestrianised areas. Gloucestershire Highways have advised that there are currently traffic orders in place that do not permit cycles from using the pedestrianised areas and any change to the current rules would require these orders to be amended. This would therefore mean that if consent were to be granted the unit would not be permitted to be ridden but must be dismantled and pushed.
- 4.4 Officers also have concerns that the High Street and Promenade already have a high volume of street trading and tables and chairs consents that may be an obstruction for a mobile unit. The High Street currently has the following street traders licensed:

Stall Type	Stall Location
Flower Stall	High Street outside HMV
Fruit Barrow	High Street outside Beechwood Shopping Centre
Ice Cream Cart	High Street outside C&G
Children's Roundabout (School holidays)	High Street outside French Connection
Ice Cream Cart	High Street outside Marks and Spencer
Turkey Van (Christmas Only)	High Street outside Monsoon and Oasis
Flower Stall	Corner of High Street and Pittville Street
Farmers Markets	Promenade outside Cavendish House
Arts and Crafts Markets	Promenade outside Cavendish House
Continental Markets	Promenade outside Cavendish House
Christmas Market	Promenade outside Cavendish House
Coffee Van	Promenade outside Cavendish House and Long Gardens
Flower Stall	Promenade/Ormond Terrace

- 4.5 In light of the above members must consider if a unit measuring 8ft (L) x 3ft (W) would be able to pass in restricted locations such the small area of pavement outside C&G. The pavement at this particular point for example is no more than 16ft wide, the ice cream cart measures 8.2ft x 3.3ft which leaves little room for pedestrians and the mobile catering unit to pass without being forced to walk on Rodney Road.
- 4.6 Officers have concerns that the use of pedestrianised areas by a mobile street trading unit might cause accidents and injury to pedestrians.
- 4.7 Traffic congestion is also a huge concern, in particular the use of the Promenade leading up to Montpellier due to the incline and the bottle neck caused by the central reservations on the road by the Queens Hotel. Congestion would potentially cause tailbacks, other road users being unable to overtake which in turn could result in frustrated road users and the increased risk of collisions and accidents as a result of reckless overtaking by motorists.
- 4.8 Members must determine this application in respect of the location as shown at **Appendix B**. A full consultation has taken place based on this location only. Alternative locations must be subject to an individual consultation process.
- 4.9 In accordance with the current Street Scene Policy members must determine and consider if an application of this type positively enhances the enjoyment and reputation of the town as a tourist and leisure destination whilst being in keeping with the streetscape.

Report Author

Contact officer: Mrs Amelia Byres
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 264217