

# Cheltenham Borough Council

## Licensing Committee – 1 November 2013

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

**Mr Raviv Hadad**

### Report of the Licensing & Business Support Team Leader

#### 1. Summary and recommendation

- 1.1 An application has been received from Mr Raviv Hadad for a street trading consent to sell Deli items such as breads, traditional pastries, falafel mix, harissa dressing, aubergine dip, tahina sauce and other traditional cooked salad from a mobile trike measuring 190cm x 90cm.
- 1.2 The application is to trade on the High Street between Thomas Cook and USC in two primary locations. Location one is proposed to be used for most of the year on the High Street outside Monsoon and Warehouse. Over the Christmas period only location two is proposed on the High Street outside Thomas Cook on the following days and times:

Monday	11.00 - 16.00
Tuesday	11.00 - 16.00
Wednesday	11.00 - 16.00
Thursday	11.00 - 16.00
Friday	11.00 - 16.00
Saturday	11.00 - 16.00
Sunday	11.00 - 16.00

- 1.2 An image of the proposed trike is attached at **Appendix A** and location maps are attached at **Appendix B**.
- 1.3 **The Committee is recommended to resolve that:**
- 1.3.1 **The application be refused because it does not comply with the Council's policy in relation to street trading in conservation areas, or**
- 1.3.2 **The application be approved because Members are satisfied that it does comply with the Council's policy in relation to street trading in conservation areas.**

#### 1.4 Implications

- 1.4.1 Financial                      **Contact officer: Sarah Didcote**  
**E-mail: sarah.didcote@cheltenham.gov.uk**  
**Tel no: 01242 26 4125**
- 1.4.2 Legal                              No right of appeal

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

## 2. Consultation and Feedback

- 2.1 Consultation was undertaken in accordance with the Council's normal consultation procedure for street trading applications.
- 2.2 Six objections were received in respect of this application from:
- 2.2.1 Warehouse Clothing Store (166-168 High Street)
  - 2.2.2 John Forward, Regent Arcade Manager
  - 2.2.3 Mr Roberts, Director at Canada Life Investments
  - 2.2.4 Mr Ralph, Associate Director at DTZ (Managing agents of the Regent Arcade)
  - 2.2.5 Martin Quantock, Manager, Cheltenham Business Partnership
  - 2.2.6 Wilf Tomaney, Urban Design Manager
- 2.3 Members' attention is drawn to **Appendix C** which contains copies of the above objections.
- 2.4 Members will note from the objections received that there is a strong objection that the grant of this application will have a detrimental effect on the proposed section of the High Street, particularly due to the significant investment in that part of the High Street. There is also a strong suggestion that future investment in the town could be compromised because itinerant street traders seem to want to capitalise on the increased footfall produced by investment and developments.
- 2.5 Members will note in particular from the Canada Life objection, that they have recently invested £20,000,000 to refurbish and extend Regent Arcade to improve the High Street entrance of the Arcade and are concerned that the grant of this application will obscure the new entrance and the design of the actual stall will not be in keeping with the new enhanced streetscape.
- 2.6 There has been additional concern that the grant of this consent will conflict with proposed work Gloucestershire Highways is due to undertake incorporating the proposed trading location due to start during the next financial year.
- 2.7 One objector has also commented that that section of the High Street has reached saturation point in terms of street trading.

## 3. Considerations

### Policy

- 3.1 The Council's current policy in respect of street trading was implemented on the 1<sup>st</sup> of April 2013.
- 3.2 The current street trading 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 avoid duplication with other statutory provisions and the Council's commitment to work in partnership with other enforcement agencies.

- 3.3 The proposed trading location is situated in a designated conservation area. The Council has adopted a more restrictive approach to street trading in the conservation areas of a type which could positively enhance the enjoyment of the town as a tourist and leisure destination.
- 3.4 To this end, the Council will normally only permit street trading where an applicant can satisfy the Council that the type of street trading they have applied for will enhance the town's reputation as a tourist and leisure destination and where the type of trading and pitch is in keeping with the streetscape.

### **Licensing Probity Guide**

- 3.5 Cheltenham Borough Council's Licensing Committee operates in a quasi-judicial way in determining contentious licensing applications, policy issues and related matters.
- 3.6 The decisions that the Committee makes are significant and weighty. The Committee operates, for the most part, under its extensive delegated powers and it, rather than any other part of the Council, actually makes the decisions. The decisions can have a considerable effect on the value of premises or other capital assets, on the amenities of people living near licensed premises and on the lives of applicants. Furthermore if the Committee makes a wrong or irrational decision this may mean that the Council will face substantial costs if there is a successful appeal against the decision or if the decision is the subject of a legal challenge from an aggrieved third party.
- 3.7 Some licensing legislation specifies procedures to be followed but in all cases human rights and natural justice considerations dictate that the Committee adheres to the following principles in that decisions must:
- Be made on the individual merits of a case.
  - Have regard to all relevant national and local guidance.
  - Be made impartially and in good faith.
  - Be made by the body that receives all the relevant information and evidence.
  - Relate to the issue or question placed before the committee.
  - Be based only on consideration of relevant and material matters.
  - Be rational and reasoned.
  - Be made in a way that does not give rise to public suspicion or mistrust.
- 3.8 Licensing Committee Members must vote in the best interests of the Borough as a whole and must not vote on the basis of local ward interests that may be contrary to a balanced licensing assessment in the light of the evidence before the members and wider policies and guidance.
- 3.9 Licensing applications must be determined on the basis of the documents and information that have been formally submitted and where all parties have had a proper opportunity to consider them.
- 3.10 Members must read and carefully consider the content of the circulated report before the meeting and they must have regard to its contents in reaching their decisions.
- 3.11 Where Members propose to make a decision contrary to the officer recommendation clear licensing reasons must be established and these must be seconded and minuted.

### **Corporate Priorities**

- 3.12 The Council has set out a commitment to ensure Cheltenham's natural and built environment is enhanced & protected and the town has a strong and sustainable economy.

## **5. Licensing Comments**

- 5.1 This application must be determined on individual merits in accordance with the Council's policies and giving due regard to consultation feedback.
- 5.2 The legislation is not very prescriptive in terms of that the Committee can, and cannot, take into account when determining street trading applications therefore it has a very wide discretion to take in to account anything it considers relevant.
- 5.3 The Council's current policy makes it clear that it will adopt a more restrictive approach to street trading in conservation areas of the town. The Committee must seek to promote its own policy and only deviate where there are sufficient and justifiable reasons for doing so.
- 5.4 The committee must satisfy itself that this application conforms to the policy and the onus will be on the applicant to satisfy the committee that the type of street trading they are proposing will enhance the town's reputation as a tourist and leisure destination and that the type of trading and pitch is in keeping with the streetscape.
- 5.5 Particularly in relation to the nature of objections raised, the Committee's attention is drawn to para. 3.8 of this report.
- 5.6 Finally, the Committee should also take into account the wider Council priorities when determining applications. In light of the objections received, the relevant extracts from the Council's current corporate strategy are outlined in paragraph 3.12.

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**Background Papers**

Policy on Measures to Control Street Scene Activities in Cheltenham: Street Trading, Objects on the Highway and Charitable Collections.

**Report Author**

**Contact officer:** Mr Louis Krog  
**E-mail:** [licensing@cheltenham.gov.uk](mailto:licensing@cheltenham.gov.uk)  
**Tel no:** 01242 264217