

To: Licensing & Registration Sub Committee

Date: 20 April 2015

Report of: Head of Environmental Development

Title of Report: Breach of Street Trading Consent Conditions – Mr Haroon Khan

Summary and Recommendations

Purpose of report: To seek determination of an application for a street trading consent where the street trader has not adhered to the conditions of the Street Trading Policy.

Report Approved by:

Finance: Paul Swaffield
Legal: Jeremy Franklin

Policy Framework: Street Trading Policy
A vibrant and sustainable economy

Recommendation: That the Sub-Committee determines Mr Khan's application to renew his street trading consent, taking into account the details in this report and any representations made at this Sub-Committee meeting.

Appendices:

- Appendix A - Renewal Application
- Appendix B - Street Trading Consent and conditions for 2013/14 period
- Appendix C - Food Hygiene Inspection Report
- Appendix D - Food Hygiene Inspection Report
- Appendix E- Food Hygiene Inspection Report

The Application

1. An application has been submitted to renew the street trading consent for the period 1st April 2015 to 31st March 2016 for street trading site 7 located on New Road opposite County Hall Car Park, Oxford. The applicant is Mr Haroon Khan (Appendix A).

2. Mr Khan held Consent for the period 1st April 2014 to 31st March 2015. A full copy of Mr Khan's Street Trading Consent 2014/2015 and General Conditions for Annual Street Trading Consents can be found at Appendix B of this report.

Legislative Background/Legal Framework

3. In 1986 the Council resolved that Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 should apply to its area. Under Schedule 4 the Council can manage street trading by designating streets as "consent streets", "licence streets" or "prohibited streets". All streets within Oxford are currently designated "consent streets" and any trading requires the grant of a street trading consent. Street trading consent may be granted as the Council "thinks fit". When exercising the power to grant and enforce consents the Sub Committee should only take into account relevant considerations; must give each applicant or consent holder a fair hearing and should give reasons for their decision.
4. Street trading consent is granted subject to the Council's standard conditions. The Sub Committee may amend or attach any additional conditions to a Consent that it considers "reasonably necessary".

Policy Considerations

5. The Street Trading Policy was adopted by Council in July 2010 and came into force on 1st January 2011 for existing traders. Paragraphs 5.7 and 5.10 of the Policy state:
 - "5.7 Applicants should re-submit their application if they wish to continue to trade at least one month before expiry of their current Consent.'
 - "5.10 Where a renewal application has been made and there have been complaints or enforcement issues or fees have not been paid on time, then the application will be referred to the Licensing and Registration Sub-Committee."

Reasons for Referral to Licensing & Registration Sub Committee

6. The renewal application has been referred to the Sub-Committee in accordance with paragraphs 5.7 and 5.10 of the Policy as Mr Khan has failed to make a valid renewal application at least one month prior to the expiry of his previous Consent and because enforcement issues have been raised by Environmental Health regarding food safety breaches.
7. During the trading period 2014/2015 Mr Khan was in breach of conditions 6, 9 and 17 of the General Conditions for Annual Street Trading Consents:

- 6 The Consent Holder shall comply with all statute, statutory instruments and byelaws currently in force. Consent Holders must pay particular attention to the Health & Safety at Work Act 1974 and the relevant Food Safety legislation.
 - 9 Consent Holder's vehicle shall be kept in a clean, safe and well maintained condition and be of a presentable appearance.
 - 17 The Consent Holder must be the principle operator and have day to day control of the vehicle. The Consent Holder may employ any other person to assist with operating the vehicle and shall notify the Head of Environmental Development of the name and address of that person.
8. On 31st August 2013, a routine food hygiene inspection was carried out by Lyndsey Key, Principal Lead Environmental Health Officer. At this time a large number of legal contraventions were found and the food business was awarded a Food Hygiene Rating of 1 which means 'Major Improvement Necessary'. Mr Khan was not present at the time of the inspection. Advice was given to the employees present on the vehicle during the inspection and a hand written inspection report was left detailing the legal requirements. A copy of the report was sent to the Consent holder Mr Khan by post and a copy emailed to the business email address provided for the business. However no contact was made by the Consent Holder to discuss the inspection (See Appendix C).
 9. On 23rd November 2013, Lyndsey Key revisited the vehicle and found that a number of improvements had been made. However a number of legal contraventions still had not been addressed. Further advice was given to the employee present at the inspection and a hand written report left detailing the requirements. A copy of the report was sent to the Consent holder Mr Khan by post and a copy emailed to the business email address provided for the business. However no contact was made by the Consent Holder to discuss the visit (See Appendix D).
 10. On 4th October 2014, a representative of the Food Standards Agency visited the vehicle to provide a food safety and hygiene coaching session. The free coaching session was provided as part of a pilot scheme run by the Food Standards Agency in Oxfordshire to help support poorly performing food businesses. Mr Khan was not present but his employees received the coaching.
 11. On 14th March 2015, a routine food hygiene inspection was carried out by Lyndsey Key. Once again a number of legal contraventions were found and due to the lack of confidence in management, the mobile was awarded a Food Hygiene Rating of 0 which means 'Urgent Improvement Necessary'. An unregistered employee was also found working on the vehicle. The registered employee present at the inspection made the decision to close the vehicle and not trade again until improvements had been made. A letter was written to the Consent Holder Mr Khan and

also sent to the registered employees. However no contact was made by the Consent Holder to discuss the inspection (See Appendix E).

Relevant Information

12. On 16th December 2013 Mr Khan was brought before the Licensing and Registration Sub Committee due to breaches of Street Trading Consent conditions. The Chair issued Mr Khan with a warning from the Sub Committee concerning his future conduct.

Financial Implications

13. The Council collects fees for the Street Trading function. Predicted income from licence fees are included in the Council's budget.

Legal Implications

14. A Street Trader cannot be said to enjoy security of tenure and there is no requirement for the Council to give compensation for the loss of any consent (other than any refund of consent fees paid in advance). Any decision to terminate a street trading consent may be subject to a judicial review. If termination is held to be unreasonable then compensation may result.
15. Any decision to refuse a renewal application must be proportionate taking into account all relevant circumstances and the consent holder's right to a fair hearing. An application should not be refused arbitrarily and without clear reason.

Human Rights Act Considerations

16. Article 1 of the first Protocol of the European Convention on Human Rights provides that every person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law. However a street trading consent is not generally considered to be a possession in law and the protection in Article 1 is therefore not directly engaged.
17. Nevertheless, with the advice of Law & Governance and in the interests of fairness, the Sub Committee should consider whether any proposed action would be proportionate, in the public interest and subject to the conditions provided for by law.

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Background papers: None