

**To:** Licensing & Registration Sub Committee

**Date:** 22 August 2016

**Report of:** Head of Planning & Regulatory Services

**Title of Report:** Application for a 12 month Street Trading Consent – Mr John Irvin

## Summary and Recommendations

<b>Purpose of the report:</b>	To seek determination of an application proposing a new street trading location
<b>Report Approved by:</b>	
<b>Finance:</b>	Jonathan Marks
<b>Legal:</b>	Daniel Smith
<b>Policy Framework:</b>	Street Trading Policy A vibrant and sustainable economy
<b>Recommendation(s):</b>	That the Licensing & Registration Sub Committee resolves to determine the application received and decide whether to grant a Street Trading Consent, taking into account the details in this report and any representations made at this Sub Committee meeting.

## Appendices

Appendix A – Application Form and Trial Street Trading Consent

Appendix B – Confidential

## The Application

1. The Business Regulation Team has received an application for Street Trading Consent from Mr John Irvin. Mr Irvin has applied to trade from a new site alongside Carphone Warehouse, Market Street, Oxford. Mr Irvin has previously been granted a three month trial Street Trading Consent by the Head of Planning & Regulatory Services under the delegation of functions in the Street Trading Policy. The site has been a success for Mr Irvin and he wishes to apply for a twelve month Street Trading Consent.
2. A full copy for Mr Irvin's application and trial Street Trading Consent can be found at Appendix A 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 decisions.
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 April 2015 and came into force on 14 April 2015 for existing traders. Paragraph 5.2 of the Policy states that the General Purposes Licensing Committee appoints a Licensing and Registration Sub Committee to decide street trading application that are longer than three months.
6. Paragraph 5.8 of the Street Trading Policy states:

“5.8 In considering applications for the grant or renewal of a Street Trading Consent the following factors will be considered:

(a) 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.

(b) Public Order

Whether the street trading activity represents, or is likely to represent, a substantial risk to public order.

(c) The Avoidance of Public Nuisance

Whether the street trading activity represents, or is likely to represent, a substantial risk of nuisance to the public from noise or misbehaviour, particularly in residential areas.

(d) Appearance of the stall or vehicle

The stall or vehicle must be of smart appearance and meet criteria, including size, laid down in the standard consent conditions. Photographs, sketches, including dimensions, must be provided with all new applications and requests for approval of changes to or replacement of stall or vehicle.

(e) Needs of the Area

The demand for the articles for sale, and the geographical location of the proposed site.

(f) Environmental Credentials

The impact of the proposed operation on the local environment including street surfaces and materials, power supply, carbon footprint, supply chain, packaging waste disposal and waste created by customers. Mitigating measures to minimise the environmental impact of the proposed operation

(g) Food Traders

Applicants to trade in hot or cold food must hold a current Level 2 Food Hygiene Certificate accredited by The Chartered Institute of Environmental Health, or The Royal Society of Health, or The Royal Institute of Public Health and Hygiene.

(h) Highways

The location and operating times will be such that the highway can be maintained in accordance with the Oxfordshire County Council's requirements and that there are no dangers to those who have a right to use the highway and no obstruction for emergency access."

### **Reasons for Referral to Licensing & Registration Sub Committee**

7. This matter has been referred to Licensing & Licensing Sub Committee as Mr Irvin has completed his three month Street Trading Consent trial. The trial period at the Market Street location was arranged by the Council as a temporary relocation following the redevelopment of the Westgate Shopping Centre. Mr Irvin has now applied for a twelve month Street Trading Consent.
8. The trial Consent allowed Mr Irvin to sell greeting cards, balloons, gift wrap, toys and souvenirs as per his original location on Queen Street outside the Westgate Shopping Centre.
9. Mr Irvin has applied to the trade from the area as per Appendix A, alongside Carphone Warehouse, Market Street, Oxford Monday to Sunday 08:00 – 21:00 hours.
10. Upon receiving the application, the Business Regulation Team carried out a consultation with Thames Valley Police, Oxfordshire County Council Highways Authority, Environmental Health, Planning and Ward Councillors. During the fourteen day consultation, comments were received from officer of Oxfordshire County Council Highways Authority, Thames Valley Police and Ward Councillors.
11. Oxfordshire County Council Highways Authority, Thames Valley Police and Ward Councillors had no objections to the initial three month trial application.
12. No complaints have been received regarding the location of the new site during the agreed trial period. Oxfordshire County Council Highways Authority and Thames Valley Police are in support of a twelve month Street Trading Consent being issued.
13. Condition 22 of the General Conditions for Street Trading Consents requires that any employee or person other than the Consent Holder who operates the stall or van must have authorisation from the Council. The Council may refuse a request for authorisation or rescind an existing authorisation if it considers there are grounds to do so. Appendix B contains exempt information relating to the employee application for employee one.

## **Financial Implications**

14. The Council collects fees for the street trading function. Predicted income from licence fees are included in the Council's budget.

## **Legal Implications**

15. The Sub Committee may grant a Street Trading Consent if it 'thinks fit', see paragraph 3 above. Consent may be revoked at any time. 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). However, any decision to refuse an application or terminate Street Trading Consents may be subject to a judicial review and if held to be unreasonable then compensation may result.
16. Any determination of an application for Consent 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**

17. 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.

Nevertheless, with the advice of Law & Governance and in the interest 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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