

**To:** Licensing & Registration Sub Committee

**Date:** 30 July 2012 **Item No:**

**Report of:** Head of Environmental Development

**Title of Report:** Breach of Street Trading Consent Conditions – Mr Houssain Elouath

## Summary and Recommendations

**Purpose of report:** To consider 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:** Daniel Smith

**Policy Framework:** Street Trading Policy  
A vibrant and sustainable economy

**Recommendation(s):**

**Committee is recommended to determine what action to take in relation to Mr Elouath's Street Trading Consent, taking into account the details in this report and any representations made at this Sub Committee meeting.**

## **Legislative Background/Legal Framework**

1. In 1986 the Council resolved that Schedule 4 to the local Government (Miscellaneous Provisions) Act 1982 should apply to its area. Under Schedule 4 of the Act the Council can manage street trading by designating streets as "consents streets", "licence streets" or "prohibited streets". The Sub Committee may grant a Consent if it "thinks fit". When exercising this general power Members should only take into account relevant considerations; must give each applicant a fair hearing and should give reasons for their decision.
2. The Sub-Committee may attach any conditions to a consent that it considers "reasonably necessary".

## **Policy Considerations**

3. The Street Trading Policy was adopted by Council in July 2010 and came into force on 1<sup>st</sup> January 2011 for existing traders. Paragraph 5.2 of the Policy states that the Head of Environmental Development is authorised to:

“5.2(c) refer applications to the Licensing and Registration Sub Committee where there has been a complaint about the trader of the trader has broken the conditions of their Street Trading Consent.”

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

4. The Consent has been referred to the Sub-Committee in accordance with paragraph 5.2 of the Policy as Mr Elouath has failed to make payments at the agreed quarterly periods and is currently in arrears to the sum of £3,657.50. He is therefore in breach of condition 24 of the General Conditions for Annual Street Trading Consents.

“24 Installments are required quarterly, in advance. On or before the following dates 1st April, 1st July, 1st October and 2nd January. Annual fees may be paid in advance.”

5. Mr Elouath signed and dated an acceptance form to agree to pay the street trading fees in 4 payments of £1,828.75 (Appendix A).
6. Glynis Thompson, Incomes Officer, wrote to Mr Elouath on 21<sup>st</sup> May 2012 in respect of the arrears on his account for missing his first quarterly instalment (See Appendix B) giving him 7 days to clear the account.
7. Samantha Howell, Licensing Officer, wrote to Mr Elouath on 22<sup>nd</sup> June 2012 in respect of the arrears on his account giving him 7 days to clear the account or revocation of Street Trading Consent would be looked at (see Appendix C).
8. Glynis Thompson, Incomes Officer, wrote to Mr Elouath again on 11<sup>th</sup> July 2012 in respect of arrears on his account for missing the first and second quarterly instalments giving him a further 7 days to clear the account (see Appendix D).
9. Mr Elouath has not responded to any correspondence from either Officer. Mr Elouath's account remains in arrears of his first two quarterly instalments amount to £3,657.50.

## **Financial Implications**

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

## **Legal Implications**

11. Street trading consents may be revoked with good reason at any time. Any breach of condition, including the condition to pay the appropriate fee, may be a reason for revocation. 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 terminate Street Trading Consents may be subject to a judicial review and if termination is held to be unreasonable then compensation may result.
10. Any decision to revoke a Consent or refuse a renewal application must be proportionate taking into account all relevant circumstances and the consent holder's right to a fair hearing. A Consent should not be revoked nor an application refused arbitrarily and without clear reasons.

## **Human Rights Act Considerations**

13. 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 considered a possession in law and the protection in Article 1 is therefore not directly engaged.
14. Nevertheless, with the advice of Law & Governance and in the interests of fairness, the Licensing Officer has taken the Human Rights Act 1998 into account and considers that the potential interference with the rights of the applicant would be proportionate, in the public interest and subject to the conditions provided for by law.

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### **Background papers:**

Appendix A – Acceptance Form

Appendix B – Letter from Incomes Officer 21<sup>st</sup> May 2012

Appendix C – Letter from Licensing Officer 22<sup>nd</sup> June 2012

Appendix D – Letter from Incomes Officer 11<sup>th</sup> July 2012

**Version number: 1**

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