

To: Licensing & Registration Sub Committee

Date: 29th October 2012 **Item No:**

Report of: Head of Environmental Development

Title of Report: Breach of Street Trading Consent Conditions – Miss Arzu De Jesus Neves

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 Miss Arzu De Jesus Neves 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 “consent streets”, “licence streets” or “prohibited streets”. The street trading site in question is on a street designated as a “consent street”. The Sub Committee may grant a Consent if it “thinks fit”. A Consent may be granted for a maximum of one year and may be revoked at any time. When exercising this general power Members

should only take into account relevant considerations; must give applicants 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 1st 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; (i) when there has been a complaint about the trader or the trader has broken the conditions of their Street Trading Consent.”

Reasons 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 Miss De Jesus Neves has failed to act as the principal operator and have day to day control of the vehicle she holds a Street Trading Consent for and has allowed unauthorised employees to operate her vehicle. These issues have raised concerns as to who is the principal operator of Chefs Corner and whether the pitch is being sub let. Miss De Jesus Neves is therefore in breach of condition 16, 17 and 18 of the General Conditions for Annual Street Trading Consents. A full copy of Miss De Jesus Neves’s Consent and Conditions can be found at Appendix A.

“16 A Street Trading Consent cannot be transferred or sold to another person except that the Consent may be transferred to a member of the Consent Holder’s immediate family in the event of the Consent Holder’s death or incapacity on payment of a fee. The sub letting of a pitch is prohibited”

“17 The Consent Holder must be the principal operator and have day to day control of the stall/vehicle. The Consent Holder may employ any other person to assist in operating the stall/vehicle and shall notify the Head of Environmental Development with the name and address of that person. An Administration fee will be payable.”

“18 Anyone who operates a stall/vehicle other than the Consent Holder must be authorised by the Head of Environmental Development.”

5. Licensing Officer, Samantha Howell visited Site 5 Queen Street, known as Chefs Corner on 20th September 2012 as part of a Council lead Multi Agency inspection evening. Upon inspection Miss De Jesus Neves was not available. Two males identified as Mr Adrian Babei and Mirek

Mirochna were working within the vehicle. Mr Babei and Mr Mirichna are not registered as employees with the Council as required by conditions 17 and 18 of the consent. When Samantha Howell asked the whereabouts of Miss De Jesus Neves that evening, the two men had no comprehension of whom Miss De Jesus Neves was and explained that they worked for Mr Ulas. Mr Ulas is a registered employee at Site 14 Queen Street. The two men were able to produce the Street Trading Consent for the vehicle at Site 5, but did not understand what it was. A copy of the Street Trading Inspection Report can be seen at Appendix B.

6. Environmental Health Officer, David Stevens was also in attendance that evening as part of the Multi Agency Inspection. He inspected the van and found food safety contraventions regarding food storage, temperature recording and witnessed a lack of food hygiene training and it was apparent to him that basic business practices needed to be improved.
7. Samantha Howell asked Mr Babei and Mr Mirochna to call whoever was in charge of the vehicle and request them to attend the site. Mr Ulas arrived shortly after the phone call and explained that Miss De Jesus Neves was away and he was helping in the interim.
8. Prior to the Multi Agency Inspection evening, colleagues Mandy Wallington and Daniel Barker, Environmental Enforcement Officers, had passed intelligence to Miscellaneous Licensing that over a four week period - from 23rd August 2012 to 13th September 2012 - they had not witnessed Miss De Jesus Neves presence during evening compliance checks at the vehicle. The Officers noted that two men had been in attendance each time the vehicle was observed.
9. Miss Neves attended an appointment with Samantha Howell on Monday 1st October to discuss the Multi Agency inspection. Miss Neves was reminded of her conditions and the importance of asking for advice if she is unclear on following them.

Relevant Background Information

10. The renewal application submitted by Miss Neves, for the period April 2012 – March 2013, was put before Licensing and Registration Sub Committee on 17th April 2012. This was due to Miss Neves failure to take up her street trading consent and trade from the site and concerns regarding a previous unsatisfactory food hygiene inspection. See Appendix C for the full Decision Notice.

Financial Implications

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

Legal Implications

12. Street Traders cannot be said to enjoy security of tenure. There is no legitimate expectation in law that a consent will be indefinitely renewed 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 a street trading consent or refuse an application may be subject to judicial review and if the decision were held to be unreasonable then compensation may result.
13. Any decision to revoke a consent or refuse a renewal application must be proportionate taking into account all relevant circumstances and the applicants, or consent holder's, right to a fair hearing. An application should not be refused, or consent revoked, arbitrarily or without clear reasons.

Human Rights Act Considerations

14. 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.
15. 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 – Consent and Conditions
Appendix B – Street Trading Inspection Report
Appendix C – Decision Notice 17th April 2012

Version number: 2