

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 – Mr Mehdi Karrouchi and Mrs Wadeya Karrouchi

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 and Mrs Karrouchi'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 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 Mr and Mrs Karrouchi have failed to comply with a legal notice served on them by Lyndsey Key Environmental Health Officer from the Commercial Regulation Team. Mr and Mrs Karrouchi are therefore in breach of conditions 6 and 9 of the General Conditions for Annual Street Trading Consents. A copy of Mr and Mrs Karrouchi’s Consent and Conditions can be found at Appendix A.

“6 The Consent Holder shall comply with all statutes, statutory instruments and byelaws currently in force. Consent Holders must pay particular attention to the requirements of the Health & Safety at Work Act 1974, the Food Safety (General Food Hygiene) Regulations 1995.”

“9 The Consent Holders vehicle/stall shall be kept in a clean, safe and well maintained condition and be of a presentable appearance.”

5. Lyndsey Key, Environmental Health Officer, wrote to Mr and Mrs Karrouchi on 26th March 2012 following a routine food hygiene inspection. A number of contraventions were found during the inspection. These contraventions included issues with Mr and Mrs Karrouchi’s food safety management system, food business registration, fridges and freezers at home, hot holding, disinfecting water containers, hot water supply, washing vegetables, over clothing, hand washing, chopping boards and waste (see Appendix B).
6. Lyndsey Key, wrote to Mr and Mrs Karrouchi again on 13th June 2012 following a revisit to the premises. The majority of food safety legislation contraventions from the original inspection had not been addressed and as a result Hygiene Improvement Notices were served (see Appendix C).
7. In spite of the assistance offered to Mr and Mrs Karrouchi by Lyndsey Key, as of 5th October 2012 the Hygiene Improvement Notices still

remain only partly complied with. A legal case is currently being compiled by the Commercial Regulation Team.

Relevant Background Information

8. The renewal application submitted by Mr and Mrs Karrouchi, for the period April 2012 – March 2013, was put before Licensing and Registration Sub Committee on 20th March 2012. This was due to a noise complaint and breaches of conditions. See Appendix D for the full Decision Notice.

Financial Implications

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

Legal Implications

10. 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 a judicial review and if the decision were held to be unreasonable then compensation may result.
11. 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

12. 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.
13. 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.

Name and contact details of author: Samantha Howell
Tel: 01865 252558
Email: showell@oxford.gov.uk

Background papers:

Appendix A – Consent and Conditions

Appendix B – Letter re Contraventions 26th March 2012

Appendix C – Letter re Contraventions & Hygiene Improvement Notices 13th
June 2012

Appendix D – Minutes of Licensing and Registration Sub Committee 20th
March 2012

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