

To: Licensing & Registration Sub Committee

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

Report of: Head of Environmental Development

Title of Report: Application for a new site.

Summary and Recommendations

Purpose of report: To seek determination of an application proposing a new street trading location.

Report Approved by:

Finance: Paul Swaffield

Legal: Daniel Smith

Policy Framework: Street Trading Policy
A vibrant and sustainable economy

Recommendation(s):

Licensing and Registration Sub Committee is recommended 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.

The Application

1. The Miscellaneous Licensing Team have received an application for Street Trading Consent from Mr Mehmet Yilmaz. Mr Yilmaz has applied to trade from a new proposed site. The site he has proposed to trade from is on Warneford Lane, Oxford.
2. A full copy of Mr Yilmaz's application can be found at Appendix A of this report. Mr Yilmaz has attached a map and photos of the proposed site.

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 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.

4. The Sub Committee may attach any 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. Delegation is laid out in the Council’s Constitution. Paragraph 5.2 of the Policy states that the General Purposes Licensing Committee appoints a Licensing and Registration Sub Committee to decide street trading applications that are longer than three months.

6. Paragraph 5.4 of the Street Trading Policy states:

“5.4 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 or sketches, including dimensions, must be provided with all new applications and requests for approval of changes to or replacement of a 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 minimisation, 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) Highway

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."

Reason for Referral to Licensing & Registration Sub Committee

7. This matter has been referred to Licensing & Registration Sub Committee as Mr Yilmaz has approached the Council with a new site proposal. Mr Yilmaz has applied for a 12 month Consent.
8. His application is for hot and cold food, including breakfast in the morning and kebabs, burgers, chips, hot and cold drinks in the afternoon/late evening.
9. Mr Yilmaz wishes to trade from Warneford Lane, Monday to Sunday 0700 to 0300 the following day.
10. Upon receiving the application, Miscellaneous Licensing carried out a consultation with Thames Valley Police, Oxfordshire County Council Highways, Environmental Development and Ward Councillors. During the 14 day consultation one response was received from Oxfordshire County Council Highways who had no objections (see Appendix B).

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. The Sub Committee may grant a Street Trading Consent if it 'thinks fit', see paragraph 3 above. 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.

13. 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

14. Article 6 of the European Convention on Human Rights provides that every person is entitled to a fair hearing in determination of a civil right or obligation. Applicants should be given a fair opportunity to present their case and respond to any representation against them.

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Background papers:

Appendix A – Application from Mr Mehmet Yilmaz
Appendix B – Consultation Response Oxfordshire County Council Highways

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