

To: Licensing & Registration Sub Committee

Date: 21st January 2013 **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 "consent streets", "licence streets" or "prohibited streets". In 2011 the Council resolved to designate all streets within the City as "consent streets". The Sub Committee may grant a Consent if it "thinks fit". A consent may be revoked at any time. When exercising this general power Members should only take into account relevant considerations; must give each applicant or consent holder 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. It was resolved at Licensing and Registration Sub Committee on the 29th October 2012 “that in the interests of public safety, an inspection of Mr and Mrs Karrouchi’s business shall take place before the end of November 2012. Should any breaches of condition be found, the matter will be reported forthwith to the Licensing and Registration Sub Committee for further consideration and determination.” A copy of Mr and Mrs Karrouchi’s Consent and Conditions can be found at Appendix A.
5. The Consent is being referred back to the Sub Committee in accordance with paragraph 5.2 of the Policy as during the re inspection of Mr and Mrs Karrouchi’s business on 14th November 2012, they were found to be in breach of conditions 6, 13, 17 and 18:

“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.”

“13 The Consent Holder must take adequate precautions to prevent the risk of fire at the stall or vehicle. All hot food vans/trailers are required to comply with the current legislation on fire safety. Where gas cylinders are used an annual gas safety certificate is required to ensure the safety of all gas cooking and heating equipment. A serviceable fire blanket and a foam fire extinguisher shall be provided in all vehicles selling hot food.”

“17 The Consent Holder must be the principal operator and have day to day control of the stall/vehicle and shall notify the Head of Environmental Development of 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.”

6. Samantha Howell, Licensing Officer, completed the re inspection of Mr and Mrs Karrouchi’s business as requested by Licensing and

Registration Sub Committee on 14th November 2012. A copy of the Street Trading Inspection Report can be found at Appendix B. Working on the vehicle that evening was Mr Huseyin Cacan who is a registered employee and Mr Bilal Ali who is not a registered employee. Mr Bilal Ali submitted a registered employee application to Miscellaneous Licensing on 9th August 2012. Unfortunately Mr Bilal Ali could not be authorised by the Head of Environmental Development to work for Mr and Mrs Karrouchi as his Home Office UK Border Agency Residence Permit expired on 15th March 2012. Mr Huseyin Cacan, who is a registered employee and the manager in charge of Mehdi's kebab van, was informed that Mr Bilal Ali could not be authorised to work until we saw his current Residence Permit.

7. Section 57(2) and (4) of the Licensing Act 2003 stipulates:

“(2) The holder of the premises licence must secure that the licence or a certified copy of it is kept at the premises in the custody or under the control of—

(a) the holder of the licence, or

(b) a person who works at the premises and whom the holder of the licence has nominated in writing for the purposes of this subsection.”

“(4) The holder of a premises licence commits an offence if he fails, without reasonable excuse, to comply with subsections (2) or (3).”

Mr Cacan was asked to produce Part A of the Premises Licence for Mehdi's kebab van during inspection but was only able to produce the first page.

8. During the inspection Mr Cacan produced his Safer Food Better Business pack to evidence that he is now completing and recording temperature checks. However Mr Cacan had falsified these records as the temperature for the 15th November 2012 had already been entered and the inspection took place on the 14th November 2012. It appeared to the Licensing Officer that the whole week's temperature recordings had been filled out in advance.
9. Mr Cacan was asked to show Samantha Howell, Licensing Officer, where the fire extinguisher and fire blanket were kept on the vehicle. The fire blanket was kept in a cupboard which is not good practice and no fire extinguisher was available as per the conditions of Consent.

Relevant Background Information

10. During a Council lead Multi Agency Operation on 8th February 2012 Mehdi's kebab van was inspected. At this time two unregistered employees were found working on the van and the generator in use was observed as very loud. Mr and Mrs Karrouchi were invited in to discuss the breach of street trading condition on 6th February 2012 with Samantha Howell, Licensing Officer. Mr and Mrs Karrouchi were given advise regarding resolving the breaches of condition.

11. 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 C for the full Decision Notice.
12. Mr and Mrs Karrouchi's Consent was put before Licensing and Registration Sub Committee on 29th October 2012. This was due to breaches of conditions 6 and 9 in relation to non compliance with a Food Hygiene Notice. See Appendix D for the full Decision Notice.

Financial Implications

13. The Council collects fees for the Street Trading function. Predicted income from licence fees are included in the Council's budget. In the case of a revoked or surrendered consent the Council may remit or refund any fee paid, in whole or in part, as it considers appropriate.

Legal Implications

14. 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.
15. 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

16. 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.
17. 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 consent holder from any action against the consent 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 – Inspection Report 14th November 2012

Appendix C – Decision Notice from Licensing and Registration Sub
Committee 20th March 2012

Appendix D – Decision Notice from Licensing and Registration Sub
Committee 29th October 2012

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