

To: Licensing & Registration Sub Committee

Date: 24th July 2013 **Item No:**

Report of: Head of Environmental Development

Title of Report: Review of a Street Trading Consent – Mr Yilmaz

Summary and Recommendations

Purpose of report: To seek determination of an application to review a Street Trading Consent.

Report Approved by:

Finance: Paul Swaffield

Legal: Daniel Smith

Policy Framework: Street Trading Policy
A vibrant and sustainable economy

Recommendation(s):

Licensing & Registration Sub Committee is requested to review the Street Trading Consent held by Mr Mehmet Yilmaz for the Street Trading Site located on Warneford Lane, Headington in light of complaints received by Oxford City Council; taking into account the details in this report and any representations made at this Sub Committee meeting.

The Application

1. Mr Mehmet Yilmaz currently holds a Street Trading Consent under the Local Government (Miscellaneous Provisions) Act 1982 Schedule 4 authorising the sale of hot and cold food and canned drinks from a Street Trading site on Warneford Lane. The Consent is being referred to the Sub Committee in accordance with the Street Trading Policy as there have been complaints and concerns about the operation of the hot food van during the current duration of Consent.

Legislative Background/Legal Framework

2. 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.
3. The Sub Committee may attach any conditions to a consent that it considers "reasonably necessary".

Policy Considerations

4. 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(c) of the Policy states:

'5.2(c) The Head of Environmental Development is authorised to refer applications to the Licensing and Registration Sub Committee (i) where there has been a complaint about the trader or the trader has broken conditions of their Street Trading Consent in the past year.'

Reasons for Referral to Licensing & Registration Sub Committee

5. This application has been referred to the Sub Committee in accordance with paragraph 5.2(c) of the Policy as a number of complaints have been received.
6. A copy of the Street Trading Consent issued for April 2013 to March 2014 can be found at the Appendices of this report.
7. We received the initial complaint from Mrs Jolie Kirby, Head of Cheney School in Headington on 16th May 2013. The nature of the complaint is:
 - The close proximity of the Street Trader to Cheney School
 - The unhealthy food available being contradictory to the healthy food curriculum/ agenda the school has in place and champions
 - The additional congestion on an already busy street and road safety

Cheney School Oxford is a secondary school for pupils between 11-18 years old. Most pupils are not allowed to leave the school premises during school hours with the exception of Year 13, age range 17-18 years old. Cheney School have concerns regarding pupils visiting the van before and after school.

8. Subsequently 22 further complaints were received by Miscellaneous Licensing between 16th May – 12th June. The complaints have been made by parents of children attending Cheney School, teachers from Cheney School, Public Health Nutritionist professionals, the Department of Public Health University of Oxford, the Department of Primary Care Health Sciences and the Functional Food Centre at Oxford Brookes University. All of the complaints echo the concerns raised by the Head of Cheney School. Copies of the complaint emails can be found at the Appendices of this report.
9. The current policy for new applications is to consult with the relevant statutory bodies, Thames Valley Police, Environmental Health, Oxfordshire County Council Highways Authority and City Ward Councillors for a period of 14 days. As such there was no requirement for the school to be consulted regarding a proposed new trader.
10. The Highways Authority did not raise any concerns during the consultation period, neither have they done so during the current Consent period.
11. Oxford City Council do not currently have a condition of Consent preventing street trading taking place within a specified distance of a school.
12. All other Street Trading Consents issued in the City for road side hot food sales restrict permission to trade to between 18:30-04:00 Monday to Sunday.

Financial Implications

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

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 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 – Mr Yilmaz Street Trading Consent
Appendix B – Log of Complaints

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