

**To:** Licensing & Registration Sub Committee

**Date:** 26<sup>th</sup> November 2013 **Item No:**

**Report of:** Head of Environmental Development

**Title of Report:** Breach of Street Trading Consent Conditions – Mr Haroon Khan

## 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 Haroon Khan'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 the Council can manage street trading by designating streets as "consents streets", "licence streets" or "prohibited streets". All streets within Oxford are currently designated "consent streets" and any trading requires the grant of a street trading consent. Street trading consent may be granted as the Council "thinks fit". When exercising the power to grant and enforce consents the Sub Committee 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. Street trading consent is granted subject to the Council's standard conditions. The Sub Committee may amend or attach any additional 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 1<sup>st</sup> 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. Mr Haroon Khan holds the Street Trading Consent for Street Trading Site 7, New Road opposite County Hall Car Park. The Consent was issued on 1<sup>st</sup> April 2013 and will expire on 31<sup>st</sup> March 2014. Mr Khan is permitted to trade Monday to Sunday 18:30 – 03:00hrs and sells hot food and soft drinks.
5. The Consent has been referred to the Sub-Committee in accordance with paragraph 5.2 of the Policy as Mr Khan has been observed by Council Officers trading outside of his permitted hours on three separate occasions over a three month period. Mr Khan is therefore in breach of Condition 2 of the General Conditions for Annual Street Trading Consents.

"2 The operational hours shall be:  
Between the hours of 18:30 and 03:00 on Monday  
Between the hours of 18:30 and 03:00 on Tuesday  
Between the hours of 18:30 and 03:00 on Wednesday  
Between the hours of 18:30 and 03:00 on Thursday  
Between the hours of 18:30 and 03:00 on Friday  
Between the hours of 18:30 and 03:00 on Saturday  
Between the hours of 18:30 and 03:00 on Sunday"

A full copy of Mr Khan's Street Trading Consent and General Conditions for Annual Street Trading Consents can be found at Appendix A of this report.

6. On 4<sup>th</sup> April 2013 a letter was sent to all Street Trading Consent holders regarding an allegation of Street Trading Consent Holders trading longer than their permitted hours (see Appendix B). The letter reminded all traders of the implications if they were caught trading out of hours. The letter also urged traders to contact Miscellaneous Licensing if they were

unclear about the letter. No contact was received from Mr Khan following the letter.

7. On Sunday 18<sup>th</sup> August 2013 at 03:10hrs two Council Officers from Environmental Development's out of Hours Service observed Mr Khan trading outside of his permitted hours. As a result Samantha Howell, Licensing Officer wrote to Mr Khan on 28<sup>th</sup> August setting out the offence committed (see Appendix C). The letter offered an appointment to discuss the matter further and discuss the option of extending the current trading times if necessary.
8. Mr Khan attended an appointment on Tuesday 10<sup>th</sup> September with Samantha Howell. At this meeting both Mr Khan's Street Trading Consent and Premises Licence were discussed and it was confirmed that Mr Khan only had permission to trade until 03:00hrs Monday to Sunday. Samantha Howell gave advice on how to apply to extend the hours on Mr Khan's Premises Licence by way of a variation under the Licensing Act 2003. It was explained that if the variation was successful the Street Trading Consent would then be amended to reflect the extended hours. Mr Khan left with the appropriate application form, guidance and contact details for the General Licensing Team.
9. On Sunday 13<sup>th</sup> October 2013 at 03:28hrs two Council Officers from Environmental Development's out of Hours Service observed Mr Khan Trading outside of his permitted hours. No application had been submitted or approved to extend his hours of trading.
10. On Saturday 26<sup>th</sup> October 2013 at 03:20hrs two Council Officers from Environmental Development's out of Hours Service observed Mr Khan Trading outside of his permitted hours.
11. To date no application has been received by the General Licensing Team to extend the hours on Mr Khan's Premises Licence.

### **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. A Consent may be revoked at any time. 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.
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.

Breach of a condition of a street trading consent is an offence for which the holder may be separately prosecuted.

### **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 generally considered to be 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 Sub Committee should consider whether any proposed action 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 – Letter to all Traders re Trading out of Permitted Hours 4<sup>th</sup> April 2013

Appendix C – Letter re Breach of Street Trading Consent Conditions 28<sup>th</sup> August 2013

**Version number: 3**