

To: Licensing & Registration Sub Committee

Date: 13 August 2014

Report of: Head of Environmental Development

Title of Report: Review of a Street Trading Consent – Mr Matthew Barlow and Mr Timothy Chapple

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:

The Licensing & Registration Sub Committee is requested to review the Street Trading Consent held by Mr Matthew Barlow and Timothy Chapple for the Street Trading Site located on Broad Street in light of complaints received; taking into account the details in this report and any representations made at this Sub Committee meeting.

Introduction

1. Mr Matthew Barlow and Mr Timothy Chapple currently hold a Street Trading Consent under the Local Government (Miscellaneous Provisions) Act 1982 Schedule 4 authorising the sale of hot fish and chicken goujons, fries and hot/cold drinks from a Street Trading site on Broad Street. 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.'
5. The Sub-Committee should have regard to the Policy when making its decision and in particular the objectives in paragraph 5.4 which state:

"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."

Background and reasons for referral to Licensing & Registration Sub Committee

6. This consent 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.
7. A copy of the Street Trading Consent issued for May 2014 to March 2015 can be found in Appendix A of this report.
8. Street Trading Consent was issued following a hearing of the Licensing and Registration Sub-Committee held on 7th October 2013. The report and decision notice from that Sub-Committee can be found at Appendix B of this report. Although permission was granted on 7th October 2013 the Consent holders did not start to trade until 30th May 2014.
9. The initial complaint was received on 4th June 2014. The nature of the complaint was noise from the generator.

10. Officers investigated and found that during the first two days of trading, the generator used at the goujon van broke down and a temporary generator was installed. The temporary generator was found to be excessively noisy. This issue was quickly resolved by the Consent holders and the generator replaced.
11. Subsequently 4 further written complaints were received by the Business Regulation Team between the 4th and 17th June. The complaints were made by local retailers on Broad Street. Copies of the complaint emails can be found at Appendix C of this report.
12. Corporate Assets have also raised concerns on behalf of their leaseholders and the potential impact on their ability to re-let any vacant units in Broad Street.
13. The current policy for new applications is to consult with the relevant stakeholders, 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 retail premises on Broad Street to be directly consulted regarding a proposed new trader.
14. None of the stakeholders raised any concerns during the consultation period, neither have they done so during the current Consent period.
15. The Business Regulation Team investigated the complaints received. 10 separate visits were made to the site by officers between 4th and 18th June. No odour nuisance or noise nuisance was observed during any of these visits.

Financial Implications

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

Legal Implications

17. 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.
18. 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.

19. The concerns raised by Corporate Assets are not relevant matters that the Committee can take into consideration when making a decision, so far as they concern the Council's commercial interests as landlord. Relevant concerns must be linked to the Licensing Objectives or the Street Trading Policy.

Human Rights Act Considerations

20. 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.

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Background papers: Appendix A – Mr Matthew Barlow and Mr Timothy Chapple Street Trading Consent
Appendix B – Sub-Committee Report and Decision Notice from 7th October 2013
Appendix C – Log of Complaints

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