

To: General Purposes Licensing Casework Sub Committee

Date: 16 April 2018

Report of: Head of Planning, Sustainable Development & Regulatory Services

Title of Report: Application for the renewal of Street Trading Consent – Mr John Irvin

Summary and Recommendations

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

Report Approved by:

Finance: Jonathan Marks

Legal: Daniel Smith

Policy Framework: Street Trading Policy
A vibrant and sustainable economy

Recommendations: The Sub-Committee is requested to determine Mr John Irvin's application to renew his street trading consent, taking into account the details in this report and any representations made at this Sub-Committee meeting.

Appendices

Appendix A – Application Form

Appendix B – Consent and General Conditions

Appendix C – Enforcement History

The Application

1. The Business Regulation Team has received a renewal application for Street Trading Consent from Mr John Irvin for the period 1st April 2018 to 31st March 2019. The site is adjacent to Carphone Warehouse, Market Street, Oxford. The application can be found at Appendix A.
2. Mr Irvin has held Street Trading Consent for the period 1st April 2017 to 31st March 2018. A copy of Mr Irvin's Consent 2017/2018 and General Conditions for Annual

Street Trading Consents can be found at Appendix B of this report. The renewal is being referred to the Sub Committee in accordance with the Street Trading Policy as complaints have been received by the Council regarding the site during the 2017/2018 Consent period.

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 the Council can manage street trading by designating streets as “consent 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 decisions.
4. 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

5. The Street Trading Policy was adopted by Council in April 2015 and came into force on 14 April 2015 for existing traders. Paragraph 5.17 of the Street Trading Policy states:

“5.17 Where a renewal application has been made and there have been complaints or enforcement issues or fees have not been paid on time, then the application will be referred to the Licensing and Registration Sub-Committee.”

Reasons for Referral to Licensing & Registration Sub Committee

6. This matter has been referred to the Sub Committee in accordance with paragraph 5.17 of the Policy due to two separate complaints received from businesses in the vicinity of Mr Irvin’s site concerning obstruction and size of the stall. The first complaint is regarding the obstruction of marketing on commercial premises due to the stall’s location. The second complaint is regarding obstruction of the line of visibility of commercial premises due to the positioning and overall size of the stall.
7. Upon receipt of the complaints, visits were made to the site. It was noted that the stall had exceeded the size permitted by the Consent and that freestanding racks and displays were in use which is in breach of condition 8 under the General Conditions for Annual and Weekly Street Trading Consent.

“8 The Consent Holder shall ensure that the stall/vehicle is positioned only in the allocated space (which may be marked on the ground) in the Consent Street for which the Street Trading Consent is issued. All goods shall be displayed on the stall and no freestanding racks or displays are permitted. If I Consent Holder or operator/assistant is request to move the vehicle/stall by an authorised Council Officer or Police Officer they shall immediately comply with that request.”

8. Mr Irvin was advised of the breach, and required to reduce the size of the stall, which he complied with initially. However, the stall has increased in size again in recent weeks.

Enforcement History

9. Mr Irvin was first granted consent to trade in Market Street in 2016. Prior to this he traded from a site on St Ebbes Street where he was also subject to complaints over the size of his stall and breaches of condition concerning the use of freestanding displays. He appeared before the Licensing and Registration Sub-Committee in 2011 and 2012 over these matters and the decisions from those hearings are attached at Appendix C.

Financial Implications

10. The Council collects fees for the street trading function. Predicted income from licence fees are included in the Council's budget.

Legal Implications

11. The Sub Committee may grant a Street Trading Consent if it 'thinks fit', see paragraph 3 above. Consent may be revoked at any time. 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.
12. 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

13. 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.
14. Nevertheless, with the advice of Law & Governance and in the interest 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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