

To: General Purposes Licensing Casework Sub
Committee

Date: 30 May 2018

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

Title of Report: Breach of Street Trading Consent Conditions –
Mr Shakeel Iqbal

Summary and Recommendations

Purpose of the 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: Jonathan Marks

Legal: Daniel Smith

Policy Framework: Street Trading Policy
A vibrant and sustainable economy

Recommendation(s): Sub-Committee is requested to determine what action to take in relation to Mr Shakeel Iqbal's Street Trading Consent, taking into account the details in this report and any representations made at this Sub-Committee meeting.

Appendices

Appendix A – Street Trading Consent and General Conditions

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 "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.

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 April 2015 and came into force on 14 April 2015 for existing traders. Paragraph 5.2 of the Policy states that the Head of Planning, Environmental Development & Regulatory Services 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 Shakeel Iqbal holds Street Trading Consent for ice cream van BD52 WFO. The Consent was issued on 1st April 2018 and will expire on 31st March 2019. Mr Iqbal is permitted to trade as a peripatetic Consent holder, Monday to Sunday 12:00-20:00hrs selling ice cream, confectionary and cold drinks.
5. This matter has been referred to the Sub Committee in accordance with paragraph 5.2 of the Policy due to a complaint from a member of the public to the Business Regulation Team. The complaint was regarding Mr Iqbal’s ice cream van BD52 WFO trading from Parks Road on Saturday 21st April 2018 14:00-17:00hrs. The van was parked on double yellow lines, obstructing the footpath and road. Oxfordshire County Council confirmed that a parking fine had been issued on 21st April 2018 at 14:17hrs for BD52 WFO on Parks Road.

6. Mr Iqbal's Consent permits him to trade within the areas specified on the Consent found at Appendix A of this report. The Consent does not include Parks Road or allow him to trade for longer than 20 minutes in one location. Mr Iqbal is therefore in breach of condition 3 under the General Conditions for Annual and Weekly Street Trading Consent.

“3. Street Trading Consent relates only to the area/site vehicle or stall specified on the Certificate of Street Trading Consent.”

7. Prior to the breach of condition, Mr Iqbal attended an appointment on Wednesday 22nd March 2018 with Samantha Broome. At this meeting Samantha Broome reminded Mr Iqbal of the advice and verbal warning he received in 2017 regarding Parks Road. It was explained to Mr Iqbal that immediate enforcement action would be taken if complaints were received during the 2018 trading period.
8. Following receipt of the complaints, Mr Iqbal attended an appointment on Wednesday 9th May 2018 with Samantha Broome. At this meeting Samantha Broome explained to Mr Iqbal that his Consent would be put before the Sub-Committee as per the Policy.

Financial Implications

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

Legal Implications

10. The Sub Committee may grant a Street Trading Consent if it 'thinks fit', see paragraph 1 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.

11. 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

12. 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.
13. 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.

Name and contact details of the author: Samantha Broome
Tel: 01865 252558
Email: sjbroome@oxford.gov.uk

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