

To: General Purposes Licensing Casework Sub-Committee

Date: 03 February 2020

Report of: Head of Regulatory Services and Community Safety

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: Barbara Smolonska

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 & 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 J7 0RH. The Consent was issued on 1st April 2019 and will expire on 31st March 2020. Mr Shakeel Iqbal also holds Street Trading Consent for ice cream van BD52 WFO. The Consent was also issued on 1st April 2019 and will expire on 31st March 2020. 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 Report has been referred to the Sub Committee in accordance with paragraph 5.2 of the Policy due to three complaints made to the Business Regulation Team.
6. On 15th July 2019 Mr L was involved in an incident whilst driving an ice cream van registration J7 0RH for which Mr Iqbal holds Street Trading Consent for. Thames Valley Police notified the Business Regulation Team of the incident. Investigation found that Mr L was not registered as an employee, contrary to the general conditions of Street Trading Consent.
7. A second complaint was made to the Business Regulation Team by a member of the public regarding the behaviour of the driver of Mr Iqbal's ice cream van BD52 WFO. which was trading from Walton Well Road on Saturday 3rd August 2019. Investigation found that the driver of the van also was not registered as an employee contrary to the general conditions of Street Trading Consent.
8. Conditions 21 and 22 of the General Conditions for Annual and Weekly Street Trading Consent require that a Consent holder must notify the Council of the name and address of any person he wishes to employ to work on his stall or vehicle. Anyone who operates a stall or vehicle other than the consent holder must be authorised by the Council. Mr Iqbal is therefore in breach of these conditions.

“21. The Consent Holder must be the principal operator and have day to day control of the stall/vehicle. The Consent Holder may employ any other person to assist in operating the stall/vehicle and shall notify the Head of Planning and Regulatory Services of the name and address of that person.”

“22. Anyone who operates a stall/vehicle other than the Consent Holder must be authorised by the Head of Planning and Regulatory Services.

9. On the 5th September 2019 the Business Regulation Team received a complaint from a member of the public regarding ice cream van registration J7 0RH. The vehicle was observed parked on double yellow lines on Franklin Road, outside of Rye St Anthony School at approximately 15:50 hrs. Mr Iqbal is therefore in breach of condition 7 under the General Conditions for Annual and Weekly Street Trading Consent.

“7. The Consent Holder’s vehicle shall be maintained in a roadworthy condition, taxed, insured and with a current MOT Certificate. Vehicle movements must be carried out legally and must not present a risk to people and structures. The Consent Holder shall not drive or park a vehicle on any part of the footway.”

10. Prior to the breaches of conditions, Mr Iqbal received a verbal warning on 2nd May 2019 reminding him he must trade within his conditions of Consent. Mr Iqbal received a formal written warning on 18th June 2019, the letter reminded Mr Iqbal of condition 7. It was explained to Mr Iqbal that further enforcement action would be taken if further complaints were received during the 2019 trading period.

11. Following receipt of the complaints in this report, Mr Iqbal attended an appointment on Friday 13th September 2019 with Samantha Broome and Lucy Longford. At this meeting Samantha Broome explained to Mr Iqbal that his Consent would be put before General Purposes Casework Committee Sub-Committee as per the Street Trading Policy.

Other Relevant Information

12. On 30th May 2018 Mr Iqbal appeared before General Purposes Licensing Casework Sub-Committee following a complaint regarding his ice cream van BD52 WFO being parked on double yellow lines and trading outside the permitted areas on his Street Trading Consent. The Sub-Committee resolved Mr Iqbal should keep his Street Trading Consent but that another breach would necessitate his appearance before a further meeting of the Sub-Committee.

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. 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.

15. 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

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 generally considered to be 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 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: sbroome@oxford.gov.uk

Version number: 3