

To: General Purposes Licensing Casework Sub
Committee

Date: 27th July 2021

Report of: Head of Regulatory Services & Community Safety

Title of Report: Breach of Street Trading Consent Conditions –
Mr Michael Hall

Summary and Recommendations

Purpose of the report: To consider a Street Trading Consent where the street trader has breached the conditions of their consent and the Street Trading Policy.

Report Approved by:

Finance:

Legal: Daniel Smith (solicitor) Law and Governance

Policy Framework: Street Trading Policy 2020

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

Appendices

Appendix A

- i) Street Trading Consent and Conditions 2021-2022 for van K244UKR
- ii) Street Trading Consent and Conditions 2020-2021 for van K244UKR
- iii) Street Trading Consent and Conditions 2021-2022 for van YP56VVA

Appendix B

- i) Redacted email and photographs from a member of the public received 31.03.2021

- ii) Redacted email received from a member of the public 19.04.2021
- iii) Redacted email and photographs from a member of the public received 30.04.2021
- iv) Redacted email and photo received from the Principal of Oxford Spires Academy, Glanville Road 24.06.2021
- v) Redacted email received from a member of staff at Oxford Spires Academy, Glanville Road 28.06.2021
- vi) Signed statement of Michael Watson, Licensing Officer, Oxford City Council Business Regulation Team, including time and date stamped photographs exhibited as MEW1 and MEW2.
- vii) Signed statement of Claire Siddle, Compliance Assistant, Oxford City Council Business Regulation Team.

Appendix C

- i) Redacted email chain received 07.04.2021 to 08.04.2021
- ii) Redacted email with photographs received 07.04.2021

Appendix D

- i) Signed statement of Claire Siddle, Compliance Assistant, Oxford City Council Business Regulation Team, including time and date stamped photographs exhibited as CLS/1.

Appendix E

- i) Extract of minutes of a meeting of the General Purposes Licensing Casework Sub-Committee on Wednesday 30th May 2018.

Appendix F

- i) Warning letter emailed to Mr Michael Hall by Michael Watson 08.07.2021
- ii) Mr Michael Hall's response to Michael Watson's warning letter 13.07.2021

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 2020 and came into force on 1st April 2020 for existing traders. Paragraph 5.2 of the Policy states that the Head of Regulatory Services and Community Safety is authorised to:

“5.2(c)(i) Refer Consent holders to the General Purposes Licensing Casework Sub-Committee: when there has been a complaint about the trader or the trader has breached the conditions of their Street Trading Consent.”

Reasons for Referral to Licensing & Registration Sub Committee

4. Mr Michael Hall holds four Street Trading Consents in total for the following sites and vehicles: an Ice Cream Trike on Catte Street, an Ice Cream Trailer at Magdalen College, a Ford Transit Van registration YP56 VVA and a Ford Transit Van registration K244 UKR. Mr Hall has held these Consents for over five years.
5. The current Consent for ice cream van K244 UKR was issued on 1st April 2021 and will expire on 31st March 2022. Mr Hall is permitted to trade as a Peripatetic Consent holder, Monday to Sunday 12:00-21:00hrs selling ice cream, confectionary and cold drinks. The previous year’s Consent was issued on 31st March 2020 and expired on 31st March 2021.
6. This matter has been referred to the Sub Committee in accordance with paragraph 5.2 of the Policy due to three complaints received by the Business Regulation Team from:

- The Principal of Oxford Spires Academy School
- An individual who holds a Street Trading Consent
- A concerned member of the public

Contravention 1 – Oxford Spires Academy

7. The first complaint was received on Wednesday 31st March 2021 from a member of the public who resides at an address on Glanville Road. The complaint was regarding Mr Hall's ice cream van K244 UKR trading daily from outside Oxford Spires Academy, Glanville Road, Cowley. The member of the public advised that the van was parking directly outside the school and idling for up to an hour. The complainant submitted photographic evidence showing the vehicle in situ on Monday 29th March 2021, Thursday 22nd April 2021 and Friday 30th April 2021.
8. The complainant independently contacted the Principal at Oxford Spires Academy to ascertain whether they had invited Mr Hall to trade outside their premises – the Principal's PA responded to the complainant to advise they had not (Appendix B(i))
9. Oxford City Council Licencing Officer, Michael Watson subsequently made contact via telephone with the Principal's Office at Oxford Spires Academy to request clarification on whether they had invited Mr Hall to trade outside their premises.

Appendix B(iv) details Marianne Blake, School Principal's response. It advises the van is frequently parked approximately 25 metres from the gate and for more than 20 minutes at any one time. She subsequently advises they would like the trader to cease this activity.

Appendix B(v) is a further email from a member of staff at Oxford Spires Academy advising that the trader continued to park uninvited, within 25 metres of the school gates and for longer than 20 minutes at a time.

10. In response to the complaints received from the member of the public, two separate observations were undertaken by the current Business Regulation Team Licensing Officer, Michael Watson and Compliance Assistant, Claire Siddle. These observations took place on Thursday 10th June 2021 and Thursday 24th June 2021. On both occasions, the van with registration mark K244 UKR was witnessed parking

no more than 50 meters from the gates of Oxford Spires Academy, and remained stationary for a period of more than 20 minutes. Statements and photographs by Michael Watson and Claire Siddle are included in Appendices B(vi) and B(vii).

11. The evidence clearly shows Mr Hall has breached the following Conditions Specific to Peripatetic Traders, to which his consent is subject.

“33. The vehicle must not trade within 100 metres of the boundary of any school or college between the hours of 07:30 and 18:00 (without formal invitation from the establishment).”

“34. The vehicle must not wait in one location for more than twenty minutes.”

Contravention Two – Port Meadow

12. The second complaint was received on Wednesday 7th April 2021 from another Street Trading Consent holder. The complaint was regarding Mr Hall's ice cream van K244 UKR trading from Port Meadow over the Easter Weekend on Friday 2nd April 2021 and Saturday 3rd April 2021.

13. Mr Hall's Consent for vehicle index K244 UKR permits him to trade within the areas specified on the Consent attached as Appendix A(i) and Appendix A(ii) of this report. The Consent does not include Port Meadow.

14. Mr Hall has therefore breached 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.”

Contravention Three – Pembroke Square

15. The current Consent for ice cream van YP56 VVA was issued on 1st April 2021. It is valid from 1st May 2021 and will expire on 31st August 2021. Mr Hall is permitted to trade from Pembroke Square in the ice cream van with registration YP56 VVA, Monday to Sunday between the hours of 12:00 and 18:00; selling ice cream and cold drinks.

16. These matters have been referred to the Sub Committee in accordance with paragraph 5.2 of the Policy due to a Council Officer witnessing a breach of Street Trading Consent.
17. On Monday 14th June 2021 at 14:35 hours, a Claire Siddle witnessed a van other than YP56 VVA parked at the Pembroke Square Street Trading Pitch. The van parked, as if to trade from this Street Trading pitch was Mr Hall's van, registration K244 UKR. See Appendix D(i).
18. Mr Hall's Consent permits him to trade from the vehicle specified, within the area specified on the Consent found at Appendix A(iii) of this report. The Consent only permits the van with the registration mark YP56 VVA to trade from Pembroke Square, and does not authorise any other vehicle to trade from this site.
19. Mr Hall therefore breached 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.”

History

20. Prior to the breaches reported in the subheadings 'Contravention One', 'Contravention Two', and 'Contravention Three', the minutes of the General Purposes Licensing Casework Sub-Committee on Wednesday 30th May 2018 (Appendix E(i)), show that Mr Hall received a verbal warning from the previous Licensing Officer, Samantha Broome on Wednesday 14th March 2018. The warning was in relation to breaches of Conditions 3 and 33. He was also reminded of a previous verbal warning he received in 2017. He then attended a face to face appointment with Samantha Broome on Monday 30th April 2018 to discuss further reports he had breached the conditions of his Consent. He was advised his Consent was to be put before the Sub-Committee as per the Street Trading Policy.
21. Mr Hall attended the General Purposes Licensing Casework Sub-Committee Meeting on Wednesday 30th May 2018. The Sub-Committee discussed the matters and voiced their concern that two further breaches of the conditions of Street Trading Consent had been reported a matter of weeks after Mr Hall received a verbal warning for similar breaches. They agreed not to revoke Consent but made it clear that

should further breaches be committed, this would require Mr Hall's Consent being brought before the Sub-Committee to reconsider. See Appendix E(i).

Summary and Conclusion

22. As evidenced above, Mr Hall has received previous verbal warnings from a Licensing Officer, and subsequently attended a General Purposes Licensing Casework Sub-Committee meeting in 2018 in relation to similar breaches of the conditions of Street Trading Consent.
23. Mr Hall has a history of non-compliance and has breached conditions of the Street Trading Consents he holds in relation to vehicles K244 UKR and YP56 VVA on at least three occasions since last appearing at the Sub Committee.
24. Mr Hall was informed of the most recent reports and breaches in a letter sent by Michael Watson via email on 8th July 2021. The letter is listed in Appendix F(i) and advises Mr Hall that the matters would be referred to a Sub-Committee Meeting for their consideration.
25. Mr Hall responded to Michael Watson's letter on Tuesday 13th July by email – see Appendix F(ii).

Financial Implications

26. The Council collects fees for Street Trading Consents. Predicted income from Consent fees are included in the Council's budget.
27. Local Government (Miscellaneous Provisions) Act 1982 Schedule 4, paragraph 7 (10) states the council may remit or refund, as they consider appropriate, the whole or a part of any fee paid for the grant or renewal of the licence when a Consent is revoked.

Legal Implications

28. The Sub Committee may grant a Street Trading Consent if it 'thinks fit', see paragraph 1 above. Local Government (Miscellaneous Provisions) Act 1982 Schedule 4, paragraph 7 (10) states a Street Trading 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 revoke

a Street Trading Consent may be subject to a judicial review and if held to be unreasonable then compensation and legal costs may result.

29. Any revocation of 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

30. 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.

31. 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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