

To: General Purposes Licensing Casework Sub Committee

Date: 23 May 2022

Report of: Head of Regulatory Services & Community Safety

Title of Report: Street Trading application for Consent for longer than three months

Summary and recommendations	
Purpose of report:	To consider an application for Street Trading Consent for a period of longer than three months.
Corporate Priority:	Enable an inclusive economy Support thriving communities
Policy Framework:	None
Recommendation(s):	That the General Purposes Licensing Casework Sub-Committee notes the contents of this report

Introduction and background

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”.

Determination of Applications for Consent

3. Prior to a Consent being granted or refused, the application is subject to a 14 day consultation period with stakeholders being given the opportunity to share observations and concerns. Our stakeholders include Oxfordshire County Council Highways Authority, Thames Valley Police, Oxford City Council Planning Service,

Oxford City Council Environmental Health Services (Commercial Pollution and Food Safety) and Ward Councillors. All comments received are taken into consideration when determining the grant of a Consent.

4. The Policy requires that, for new Street Trading applications for longer than three months, and in the absence of representations, the application will be referred to the Council's General Purposes Licensing Casework Sub-Committee who will use the criteria listed in The Policy to make their determination of the application. A range of Criteria are listed, with each case being assessed on its merits and individual circumstances, where appropriate, may be taken into consideration. When there are representations, the Responsible Head of Service acting under delegated powers may refuse an application.

Reason for referral to Licensing Sub Committee

5. This application is referred to the Licensing Sub Committee because it is for longer than three months.

Background

6. Mr Blaine Morris-Smith identified a site on Grenoble Road he felt was suitable for a new pitch, and subsequently applied for Consent in September 2020. The site is not an existing/established pitch, and is therefore not listed in Annex 1 'Approved Street Trading Sites' in the Oxford City Council Street Trading Policy
7. Thames Valley Police and Oxfordshire County Council Highways Authority raised concerns in relation to trading in the evenings on Oxford United match fixture days.
8. Mr Morris-Smith amended his submitted application for Consent to address the concerns raised in point 7, by agreeing that his pitch would be vacated by 17:00hrs on match days. This application was sent to stakeholders for Consultation on 11th February 2021 (see appendix A).
9. No objections were subsequently received from stakeholders, although the County Council Highways Authority had to grant permission specifically to Mr Morris-Smith, for the use of the parking bay at the site. Written permission was provided by Highways Technical Officer, Steve Walker, on 4th April 2021 (see appendix B). Blaine was informed his application for Street Trading Consent was successful, and as a result he could proceed with the purchase and fit out of his vehicle.
10. Fit out of the van was completed and an initial 3 month Consent issued in December 2021, valid until 31st March 2022 (see Appendix C).
11. Due to the Consent year ending on 31st March 2022, Mr Morris-Smith was required to submit a 'Street Trading Renewal Application' before 31st March 2022 (see Appendix D).
12. A further 3 month Consent was issued as a result of Mr Morris-Smith's renewal application (see Appendix E)
13. Mr Morris-Smith has maintained regular contact with Licensing Officers in the Business Regulation Team, has paid all relevant fees on time and we have received no complaints in relation to the business.

14. Officers were unable to refer Mr Morris-Smith's application for Consent to the Licensing Sub Committee sooner than May 2022, due to administrative and time constraints.
15. If granted, Mr Morris-Smith's Consent would allow him to operate between the hours of 06:00 and 14:00 Monday and Tuesday, 06:00 and 20:00 Wednesday to Friday and 07:00 and 16:00 Sunday. Consent would include a Condition that the pitch must be vacated by 17:00 on weekday match/fixtures at Kassam Stadium.

Policy Considerations

16. The Policy requires that when determining an application for the grant or renewal of a Consent, the Council will consider the following factors:

(a) Public safety

Whether the street trading activity represents, or is likely to represent, a substantial risk to the public. Factors taken into account will include: 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) Avoidance of public nuisance

Whether the street trading activity represents, or is likely to represent, a substantial risk of nuisance to the public, particularly in residential areas.

(d) Appearance of the stall or vehicle

The stall or vehicle must be maintained in good condition, be of smart appearance and meet the 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. The general appearance of the vehicle or stall will also be considered in order to determine that the unit will not detract from the appearance of the surrounding area.

(e) Needs of the area

The demand for the articles for sale and the geographical location of the proposed site.

(f) Environmental sustainability

Measures to minimise the impact of the proposed operation on the local environment including street surfaces and materials, power supply, carbon footprint, supply chain, packaging, waste minimisation, recycling and waste disposal.

(g) Food safety and food offer

Applicants to trade in hot or cold food must be able to demonstrate a good understanding of food safety and be registered as a food business with the relevant local authority. As a minimum, food handlers must hold a current Level 2 Award in Food Safety in Catering accredited by The Chartered Institute of Environmental Health or The Royal Institute for Public Health. Consideration will be given to applicant's ability to meet SUGAR SMART Oxford criteria (see Annex 3 for guidance).

(h) Highway safety 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.

Financial implications

15. The Council collects fees for Street Trading Consents. Predicted income from Consent fees are included in the Council's budget.

Legal issues

16. The Sub Committee may grant a Street Trading Consent if it 'thinks fit'. 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.

17. 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

18. 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.

Report author	Claire Siddle
Job title	Business Regulation Compliance Assistant
Service area or department	Regulatory Services & Community Safety
Telephone	01865 252901
e-mail	csiddle@oxford.gov.uk

Appendix A – Blaine Morris-Smith amended Street Trading Consent Application Pack.

Appendix B – Email from Oxfordshire County Highways Technical Officer, Steve Walker, granting permission for Blaine Morris-Smith to park and trade from parking bay.

Appendix C – Initial 3 month Street Trading Consent.

Appendix D – Blaine Morris-Smith Street Trading Consent Renewal Application Pack.

Appendix E – Further 3 month Street Trading Consent and grant letter.