

To: General Purposes Licensing Casework Sub Committee

Date: 17th January 2023

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 inform the determination of a Street Trading consent application is for longer than three months.
Corporate Priority:	Enable an inclusive economy Support thriving communities
Policy Framework:	Council Strategy 2020-2024
Recommendation(s): That the General Purposes Licensing Casework Sub-Committee resolves to:	
1.	Determine the application, taking into account the details in this report and any representations made at this Sub-Committee meeting.

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 Street Trading Policy 2020 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 as per point 4 above.
6. Mrs Momo Fujita-Clarkson is an established Street Trader who has held Consent for a City Council approved site on Woodstock Road for some years. Her business, 'I'm Japanese' sells cooked Japanese food and drinks.
7. In order to expand her business, Mrs Momo Fujita-Clarkson has identified two additional sites which she believes are suitable for new street trading pitches. These two additional sites are Refeyn Ltd, Unit 9, Trade City Oxford, Sandy Lane West, OX4 6FF and Advanced Research Clusters, Oxford Works, 4650 Kingsgate, Oxford Business Park, OX4 2SU. Mrs Fujita-Clarkson subsequently made an application for each new site in August 2022 (See Appendix A and B). These sites are not existing or established pitches and are on private land (written permission from the relevant land owners can be seen in Appendix A and B), therefore neither is listed in Annex 1 'Approved Street Trading Sites' in the Oxford City Council Street Trading Policy.
8. No concerns or comments were received from stakeholders in relation to either application during the Consultation period, which began on Tuesday 16th August 2022 and ended at midnight on Tuesday 30th August 2022.
9. Temporary 3 month Consents were issued for both sites on 15th September 2022 and are valid from 1st October 2022 until 31st December 2022. (See Appendix C and D).
10. Ian Wright, Head of Regulatory Services and Community Safety authorised the issue of two further 3 month temporary Consents valid from 1st January 2023 to 31st March 2023 (See Appendix E and F). This is due to the fact no further meetings of the General Purposes Licensing Casework Sub Committee were scheduled prior to the initial Consents expiring on 31st December 2022.
11. Mrs Fujita Clarkson 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 or concerns in relation to the business.
12. If granted, Mrs Fujita-Clarkson's Consent for Refeyn Ltd, Unit 9, Trade City Oxford, Sandy Lane West, OX4 6FF would allow her to operate Tuesdays between 11:30 and 14:00 hours.

13. If granted, Mrs Fujita-Clarkson's Consent for Advanced Research Clusters, Oxford Works, 4650 Kingsgate, Oxford Business Park, OX4 2SU, would allow her to operate Wednesdays between 11:30 and 14:00 hours.
14. The Consents would run for 12 months from 1st April 2023 in line with all of the other Street Trading Consents issued by Oxford City Council. If granted, the Consents would be subject to the General Conditions for Street Trading Consents. Officers believe these are sufficient and do not propose any additional conditions.

Policy Considerations

15. 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.

16. Officers have reviewed the measures provided by the applicant in the application and consider that adequate provision has been made to address the Policy considerations (a) – (g) above.

Financial implications

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

Legal issues

18. 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.

19. 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

20. 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.

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Appendices	
Appendix A	Momo Fujita-Clarkson Street Trading Consent Application Pack in relation to Refeyn Ltd, Unit 9, Trade City Oxford, Sandy Lane West, OX4 6FF.

Appendix B	Momo Fujita-Clarkson Street Trading Consent Application Pack in relation to Advanced Research Clusters, Oxford Works, 4650 Kingsgate, Oxford Business Park, OX4 2SU.
Appendix C	Covering letter and initial 3 month Street Trading Consent, valid 01/10/2022 – 31/12/2022. In relation to Refeyn Ltd, Unit 9, Trade City Oxford, Sandy Lane West, OX4 6FF.
Appendix D	Covering letter and Initial 3 month Street Trading Consent, valid 01/10/2022 – 31/12/2022. In relation to Advanced Research Clusters, Oxford Works, 4650 Kingsgate, Oxford Business Park, OX4 2SU.
Appendix E	Covering letter and further 3 month Street Trading Consent, valid 01/01/2023 – 31/03/2023 in relation to Refeyn Ltd, Unit 9, Trade City Oxford, Sandy Lane West, OX4 6FF.
Appendix F	Covering letter and further 3 month Street Trading Consent, valid 01/01/2023 – 31/03/2023. In relation to Advanced Research Clusters, Oxford Works, 4650 Kingsgate, Oxford Business Park, OX4 2SU.

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