

To: General Purposes Licensing Casework Sub Committee

Date: 14 October 2024

Report of: Head of Planning & Regulatory Services

Title of Report: Consideration of Street Trading Consent: Breach of Conditions.

Summary and recommendations	
Purpose of report:	To inform the Sub-Committee in their response to breaches of street trading consent by a consent holder.
Corporate Priority:	Enable an inclusive economy Support thriving communities
Policy Framework:	Street trading Policy 2023 Council Strategy 2020-2024
Recommendation(s): That the General Purposes Licensing Casework Sub-Committee resolves to:	
1.	Determine a course of action, taking into account the details in this report and any representations made at this Sub-Committee meeting, considering whether to delegate action, issue a warning or vary, suspend, or revoke the consent.

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”.
2. 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.
3. 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 it considers “reasonably necessary”.

4. Section 5.3 of the Oxford City Council Street Trading Policy 2023 notes that the scheme of delegation for Street Trading Consent includes delegated responsibility for the General Purposes Licensing Case Work Subcommittee to “*Decide cases referred by the Head of Planning and Regulatory Services, whether to reinstate, suspend, extend suspension, vary or revoke a Street Trading Consent.*”
5. Street Trading regulatory matters are serviced on behalf of the Head of Service for Planning and Regulatory Services by the Business Regulation Team (BRT).
6. Mr Hooshang Kaveh is the street trading consent holder for McCoys, trading at Pembroke Square, Oxford between 6.30pm and 03.00 (Sunday-Wednesday) and 04.00 (Thursday-Saturday). He has held a consent for this purpose during most years since 2011. A copy of the current Consent issued to Mr Kaveh is attached at **Appendix A**.
7. A complaint was received from a member of the public, alleging that Mr Kaveh was operating in breach of several Consent conditions. An investigation into the allegations was carried out and, whilst the allegations were not all substantiated, the following conditions were found to have been breached.
8. An evening officer site visit on Friday 2nd August 2024 found that the McCoys vehicle was being operated by three persons for whom he had not obtained authorisation from the Council, contrary to Condition 20, which states:

20. Anyone who operates a stall/vehicle other than the Consent Holder must be authorised by the Council.
9. This matter was brought to Mr Kaveh’s attention on 15th September, and he has subsequently requested authorisation of three persons from BRT.
10. The food for sale on Mr Kaveh’s vehicle is produced at [REDACTED]. The vehicle is driven to and from the trading pitch primarily by [REDACTED], who is resident at [REDACTED] and is stated by Mr Kaveh to be an employee and a person authorised under Section 20. The food business known as McCoys is registered by Vale of White Horse DC for the purposes of the Food Hygiene Rating Scheme, in the name of [REDACTED], rather than Hooshang Kaveh. The food safety team at Vale of White Horse DC have advised that: “*We have always dealt with a person known as [REDACTED]. Our last communication was in July 2023 where we received back a self-assessment questionnaire from an email address that appears to be [REDACTED]. We have had no communication with anyone by the name of Hooshang Kaveh.*”
11. This situation is not compliant with Consent Standard Condition 31, which states that:

31 Food businesses must be registered as a food business with the Local Authority where the van/stall is kept overnight. Food businesses registered outside of the Oxford City Council area must be able to demonstrate food business registration, e.g. by written confirmation from the relevant local authority or by providing a copy of the latest inspection letter or report. Any changes in registration details must be notified to the relevant Local Authority
12. Mr Kaveh and [REDACTED] have stated that the person responsible for McCoys is Mr Kaveh and not [REDACTED]. This matter has been reported to the Principal Lead Officer for food safety in BRT and also to their equivalent colleague at Vale of White Horse DC.

13. Mr Kaveh's vehicle is licensed as a Heavy Goods Vehicle (HGV). It is a legal requirement of the Driver and Vehicle Standards Agency (DVSA) that the owner of a HGV obtains a goods vehicle operator's licence (HGVOL). The operating centre for said licence is where a HGV is normally kept when not in use. It was alleged that the site used for the operating centre declared by Mr Kaveh in his correspondence with BRT had closed and that the HGVOL, therefore is invalid. Contact with the land agent for the operating centre site confirmed this to be the case. Mr Kaveh has stated that he has applied to the licensing authority for HGVOLs, to register another operating centre site. This situation is not compliant with Condition 11, which states:

11. The Consent Holder must comply with all statutes, statutory instruments and byelaws currently in force. Consent Holders must pay particular attention to the requirements of the Health & Safety at Work etc. Act, 1974 and the Food Safety and Hygiene (England) Regulations 2013 (where relevant). Advice on these requirements is available from the Business Regulation Team.

14. The situation, as understood by BRT, has been reported to the DVSA, the enforcing licensing authority for HGVOLs.

Reasons for Referral to Sub-Committee

15. Mr Kaveh has breached 2 of the conditions of his Street Trading Consent, namely conditions 20 and 31. He might also be in breach of DVSA requirements regarding his vehicle and thereby also in breach of Condition 11.

16. Members are requested to determine a course of action, taking into account the details in this report and any representations made at this Sub-Committee meeting, considering whether to delegate action, issue a warning or vary, suspend, or revoke the consent.

Policy Considerations

17. The following Policy points are of particular relevance in this matter:

- a. *8.1: When determining an application for the grant or renewal of a Consent, the council will consider all relevant information relating to the suitability of the applicant and any employees including... Failure to pay the Council's Street Trading Consent fees.*
- b. *18.5: Failure to comply with one or more of the standard conditions of the Consent may lead to suspension, variation, revocation or non-renewal of the Street Trading Consent.*
- c. *19.1: The Council may revoke a Street Trading Consent at any time, on any reasonable grounds. This may be for a variety of reasons including breach of conditions, non-payment of fees or when the site location is no longer suitable/accessible e.g. due to emergency repairs in the street or construction /redevelopment work.*

Financial implications

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

Legal issues

19. 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.
20. 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. A consent should not be revoked or altered arbitrarily and without clear reason.

Human Rights Act Considerations

21. 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	David Stevens
Job title	Principal Lead Officer
Service area or department	Planning & Regulatory Services
e-mail	dstevens@oxford.gov.uk

Appendices	
Appendix A	Current Street Trading Consent for Mr Hooshang Kaveh