

To: Licensing & Registration Sub Committee

Date: 20th March 2012 **Item No:**

Report of: Head of Environmental Development

Title of Report: Application for the renewal of a Street Trading Consent – Miss Arzu De Jesus Neves

Summary and Recommendations

Purpose of report: To seek determination of an application to renew a Street Trading Consent.

Report Approved by:

Finance: Paul Swaffield

Legal: Daniel Smith

Policy Framework: Street Trading Policy
A vibrant and sustainable economy

Recommendation(s):

Licensing & Registration Sub Committee is requested to determine the application for the renewal of the Street Trading Consent made by Miss De Jesus Neves for Street Trading Site 5 located at the junction of New Inn Hall Street and Queen Street; taking into account the details in this report and any representations made at this Sub Committee meeting.

The Application

1. An application has been submitted to renew the Street Trading Consent for the period 1st April 2012 to 31st March 2013 for street trading site 5 located at the junction with New Inn Hall Street and Queen Street, Oxford. The applicant is Miss De Jesus Neves (Appendix A).

2. Miss De Jesus Neves currently holds the Street Trading Consent under the Local Government (Miscellaneous Provisions) Act 1982 Schedule 4 authorising the sale of hot food and drinks. The renewal is being referred to the Sub Committee in accordance with the Street Trading Policy as the consent holder has not traded during the last year.

Legislative Background/Legal Framework

3. In 1986 the Council resolved that Schedule 4 to the local Government (Miscellaneous Provisions) Act 1982 should apply to its area. Under Schedule 4 of the Act the Council can manage street trading by designating streets as “consents streets”, “licence streets” or “prohibited streets”. The street trading site in question is on a street designated as a "consent street". The Sub Committee may grant a consent if it “thinks fit”. A consent may be granted for a maximum of one year and may be revoked at any time. When exercising this general power Members should only take into account relevant considerations; must give applicants a fair hearing and should give reasons for their decision.
4. The Sub Committee may attach any conditions to a consent that it considers “reasonably necessary”.

Policy Considerations

5. The Street Trading Policy was adopted by Council in July 2010 and came into force on 1st January 2011 for existing traders. Paragraph 5.7 of the Policy states:

“5.7 Applicants should resubmit their application if they wish to continue to trade at least one month before the expiry of their current consent. At this renewal time, the Council may consult further to determine if the street trader is a cause for concern or has been the subject of complaints.”
6. The Council's Corporate Plan 2011-15 identifies the promotion of a *vibrant, sustainable economy* as a priority.

Reasons for Referral to Licensing & Registration Sub Committee

7. This application has been referred to Sub Committee in accordance with paragraph 5.7 of the policy due to Miss Neves failure to take up her street trading consent and trade from the site. The site is a prime location for street trading and we have received a number of enquires for it.
8. In June 2010 Environmental Health Officers carried out a food hygiene inspection of Miss Neves' kebab van and found it unsatisfactory – please see food hygiene inspection report at Appendix B. General condition 8 for annual street trading consents states:

“The Consent Holder shall 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 Act 1974 and the Food Safety Regulations 1995”

9. Shortly after that inspection the van was seriously damaged through an arson attack and is not fit for use for street trading. In February 2011 Miss Neves’ renewal application for a street trading consent was granted on the understanding that although she was going through personal difficulties the damaged van would be replaced in a reasonable amount of time – please see letter at Appendix C. A replacement van has not been purchased to date.

Financial Implications

10. The Council collects fees for the Street Trading function. Predicted income from licence fees are included in the Council’s budget.

Legal Implications

11. Street Traders cannot be said to enjoy security of tenure. There is no legitimate expectation in law that a consent will be indefinitely renewed 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 terminate a street trading consent or refuse an application may be subject to judicial review and if the decision were held to be unreasonable then compensation may result.
12. Any decision to revoke a consent or refuse a renewal application must be proportionate taking into account all relevant circumstances and the applicants, or consent holder’s, right to a fair hearing. An application should not be refused, or consent revoked, arbitrarily or without clear reasons.

Human Rights Act Considerations

13. 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 considered a possession in law and the protection in Article 1 is therefore not directly engaged.
14. Nevertheless, with the advice of Law & Governance and in the interests of fairness, the Licensing Officer has taken the Human Rights Act 1998 into account and considers that the potential interference with the rights of the applicant would be proportionate, in the public interest and subject to the conditions provided for by law.

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Background papers: Appendix A – Application form
Appendix B – Food hygiene inspection report
Appendix C – Letter to Miss Neves

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