

Item 8 Consideration of a Street Trading Consent Application

Report of the Head of Housing and Environmental Health (Portfolio: Housing, Health and Communities)

Recommended:

That the Licensing Committee consider the application in conjunction with the evidence, submitted by the applicant and the Environmental Health Manager, and determine whether to proceed with the granting of the Consent.

SUMMARY:

- The Council's Street Trading Policy allows an applicant for a Street Trading Consent to make a representation to the Licensing Committee for it to consider the application. Such a representation has been received from an applicant who is not satisfied with the decision of the Environmental Health Manager not to proceed with the granting of the Consent.
- The applicant held a Consent from 25 April 2011 – 25 October 2011. During that time the conditions relating to the position of the trading vehicle and the hours of trading were breached. Therefore when the applicant applied for the Consent to be renewed the Environmental Health Manager made the decision not to proceed with the granting of the Consent.

1 Introduction

- 1.1 Under the provisions of Local Government (Miscellaneous Provisions) Act 1982 the Council resolved that for the purposes of controlling Street Trading all current and future streets (adopted or unadopted highway), Council car parks including all forecourts, roads, footways or other areas adjacent to streets referred to in the resolution for a distance of 10 metres be designated as 'consent streets'. (Annex 1 of this Report – Street Trading Policy).
- 1.2 This resolution required that in order for a person to trade within the Test Valley area an application for a Street Trading Consent must be made to the Council and before a Street Trading Consent is granted or renewed the Council will carry out a consultation process with various persons and groups as listed in the Policy. The Environmental Health Manager, acting on delegated powers will determine any Street Trading Consents using the criteria listed in the Policy. Similarly any objections received will be considered against these criteria. All should normally be satisfied, with equal weight applied to the criteria listed. Each case will be assessed on its merits and individual circumstances, where appropriate, may be taken into consideration.

- 1.3 The Environmental Health Manager may approve applications meeting the criteria and on approving the application the Council will issue a Street Trading Consent to which conditions will be attached. The Consent will also contain specific terms such as days and hours when street trading is permitted, the goods that may be sold and the Council's standard conditions are attached to the Street Trading Consent. The conditions attached to the Consent form part of the approval to carry out street trading in the Borough of Test Valley. They must be complied with at all times and failure to do so could lead to the Consent being either revoked, or not renewed.
- 1.4 A Street Trading Consent for any particular site will be issued for a maximum period of 6 months for the first year and thereafter for 12 months providing there have been no problems.
- 1.5 If the Environmental Health Manager is unable to grant or renew a Street Trading Consent the applicant will be notified in writing within 21 days and will be offered a meeting with them to discuss the reasons for a potential refusal of the application. At the meeting the applicant will be informed of the criteria that have not been met. The applicant will be given an opportunity to discuss any relevant matters in relation to the application that has been made. If after the meeting the Environmental Health Manager is still unable to proceed with the granting of Consent, the outcome of the meeting with the applicant will be confirmed in writing within 5 working days of the meeting taking place.
- 1.6 If the applicant is not satisfied with the decision they may make representation, in writing within 28 days, to the Licensing Committee for it to consider the application. The role of the Licensing Committee as regards Street Trading Consents is to hear representations from applicants in cases where the application has been refused or revoked by the Environmental Health Manager. The person making the application is expected to attend the hearing and can be represented by a solicitor, or supported by a friend or colleague.

2 Background

- 2.1 A Street Trading Consent was issued to the Applicant in April 2011. In accordance with the Policy this Consent was for 6 months, 25 April 2011 to 25 October 2011. The Consent permitted the applicant to trade from his vehicle on Premier Way, Romsey and the permitted hours were 16:00hrs to 23:00hrs.
- 2.2 In July 2011 complaints were received by the Environmental Health Team that the Applicant had moved his vehicle so that it was positioned close to Luzborough Lane (A27), Romsey. In response an officer visited the area and advised the Applicant that he had to move his vehicle back along Premier Way.

- 2.3 In August the Environmental Health Team received complaints that the Applicant was trading later than 23:00hrs. In response an officer wrote to the Applicant advising of the complaints and the consequences if the breaches continued. The Applicant responded to this refuting the complaints. On the 18 August, 19 August and 20 August observations were carried out by officers of the Environmental Health Team and it was noted that the Applicant was trading after 23:00hrs.
- 2.4 The Applicant applied for the renewal of his Consent as it expired on the 25 October 2011, however in view of the fact that breaches of the Consent had occurred namely moving of the vehicle to Luzborough Lane and the trading after 23:00hrs the Environmental Health Manager advised the Applicant that she intended to refuse the application. The Applicant then requested a meeting with her in accordance with the Policy Appeals Procedure. This meeting was held on the 23 November 2011 and the Environmental Health Manager remained minded to refuse the application as the Applicant appeared to be unable to refute the evidence of the breaches. This decision was confirmed in writing and the Applicant was advised of his right to ask the Licensing Committee to consider his application.

3 Corporate Objectives and Priorities

- 3.1 The issuing of Street Trading Consent permits the Council to control the number, location and types of trader within the Council area, through a consultation process with those agencies and individuals who control public safety, road safety, specific legislative requirements (food hygiene, nuisance control) and the economic needs of an area.

4 Consultations/Communications

- 4.1 In addition to the meeting with the Environmental Health Manager the Applicant has received a copy of the Street Trading Policy and a copy of the evidence to be produced by the Environmental Health Manager at the Licensing Committee.

5 Option Appraisal

- 5.1 The only option for members is either to grant or refuse the application.

6 Resource Implications

- 6.1 There are no direct resource implications associated with this report.

7 Legal Implications

- 7.1 The relevant provisions of the Local Government (Miscellaneous Provisions) Act 1982 do not allow any legal appeals against the decision of the Council in relation to the refusal of Street Trading Consents. A person aggrieved by a decision of the Council may seek a Judicial Review of the decision, should it be felt necessary.

8 Equality Issues

- 8.1 The Street Trading Policy promotes consistency, equality and transparency in the procedure for determining applications for Street Trading Consents.

9 Other Issues

- 9.1 Community Safety – none other than as mentioned in paragraph 3.1
- 9.2 Environmental Health/Sustainability Issues – none other than mentioned in paragraph 3.1
- 9.3 Property Issues – none specific.
- 9.4 Wards/Communities Affected – Romsey Extra.

10 Conclusion

- 10.1 A Street Trading Consent is only granted once the consultation process has been completed and the criteria for approval have been satisfied. Therefore the holder of the Consent is expected to comply with the terms of the Consent as they have been consulted upon and agreed.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
The Local Government (Miscellaneous Provisions) Act 1982 The Test Valley Borough Council Street Trading Policy			
<u>Confidentiality</u>			
It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
No of Annexes:	1		
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