

## Notice of Meeting

# Licensing Committee

**Date:** Thursday 12 January 2023  
**Time:** 5.30 pm  
**Venue:** Conference Room 1, Beech Hurst, Weyhill Road, Andover SP10 3AJ

**For further information or enquiries please contact:**  
Sally Prior - 01264 368000  
sprior@testvalley.gov.uk

**Legal and Democratic Service**  
Test Valley Borough Council,  
Beech Hurst, Weyhill Road,  
Andover, Hampshire,  
SP10 3AJ  
[www.testvalley.gov.uk](http://www.testvalley.gov.uk)

The recommendations contained in the Agenda are made by the Officers and these recommendations may or may not be accepted by the Committee.

### **PUBLIC PARTICIPATION SCHEME**

***If members of the public wish to address the meeting they should notify the Legal and Democratic Service at the Council's Beech Hurst office by noon on the working day before the meeting.***

### Membership of Licensing Committee

#### MEMBER

#### WARD

|                                       |                        |
|---------------------------------------|------------------------|
| Councillor G Bailey (Chairman)        | Blackwater             |
| Councillor C Donnelly (Vice-Chairman) | Andover Downlands      |
| Councillor I Andersen                 | Andover St Mary's      |
| Councillor J Budzynski                | Andover St Mary's      |
| Councillor T Burley                   | Andover Harroway       |
| Councillor J Burnage                  | Romsey Cupernham       |
| Councillor N Daas                     | Romsey Abbey           |
| Councillor A Dowden                   | Valley Park            |
| Councillor D Drew                     | Harewood               |
| Councillor N Gwynne                   | Romsey Cupernham       |
| Councillor M Hatley                   | Ampfield & Braishfield |
| Councillor L Lashbrook                | Charlton & the Pentons |
| Councillor P Lashbrook                | Bellinger              |
| Councillor R Meyer                    | Andover Winton         |
| Councillor C Thom                     | Valley Park            |

**Licensing Committee**

Thursday 12 January 2023

**AGENDA**

**The order of these items may change as a result of members  
of the public wishing to speak**

- 1 Apologies**
- 2 Public Participation**
- 3 Declarations of Interest**
- 4 Urgent Items**
- 5 Minutes of the Licensing Committee held on 18  
August 2022**
- 6 Minutes of the Licensing Sub-Committee held on 24  
October 2022**
- 7 Street Trading Consent Determination - Nidge's  
Artisan Pizza Kitchen** **4 - 41**

To consider an appeal of a decision to refuse a Street  
Trading Consent.



- 1.2 This case relates to an application made on 6 September 2022 by Mr Nigel Male of NEM catering, trading as Nidge's Artisan Pizza Kitchen, for a Street Trading Consent in order to sell food and drink from a mobile van between 4pm -8pm one day per month (unspecified day of the week) in the car park adjacent to The Hexagon and Hexagon Stores, Andover, SP10 3PR.
- 1.3 Following a consultation process (see below for details), an objection was received on 6 October 2022 from the three elected members for the Millway Ward, namely Cllr Brooks, Cllr Ecclestone and Cllr Neal. The application was subsequently refused, on 13 October 2022, by the Environmental Health Manager under delegated powers.
- 1.4 The objection from Cllr Brooks, Cllr Ecclestone and Cllr Neal cites the three following policy grounds for objection:
- "1 A significant effects on road safety would either from the siting of the trading activity itself, or from customers visiting or leave the site.*
- 3 There would be a significant loss of amenity caused by traffic, noise, rubbish, potential for the harbourage of vermin, odour of fume*
- 9 The site does not allow the Consent Holder, staff, and customers to park or access in a safe manner."*
- 1.5 The above grounds correspond to bulletin points 1, 3 and 9 of Section 5 of the Council's Street Trading Consent policy which is a list of circumstances where a Street Trading Consent will not normally be granted.
- 1.6 Prior to refusal, the Environmental Health Manager spoke to the applicant on 6 October 2022 to notify him of the objection, notify him of his preliminary decision to refuse the application and invite a response / representation to that objection within 7 days. No such representation from the applicant was received and accordingly confirmation of refusal was sent on 13 October 2022.
- 1.7 In deciding to refuse, the Environmental Health Manager considered that the three cited grounds of objection appeared to be valid grounds for objection in accordance with the Council's policy, in particular the loss of parking spaces and amenity implications of added customer traffic to the area. The Environmental Health Manager placed weight on the local knowledge of the ward councillors concerned in such matters. Also taken into account was the lack of response from the applicant at the time to the objection. Another factor was the observation of an Environmental Health Officer who visited the area at around 16:30hrs on Wednesday 12 October 2022, observing that the car park in question was around three quarters full at that time, suggesting the potential for vehicle congestion at peak times. The precise comments are given in paragraph 4.1 below. It should be noted that the proposed trading day, including whether it will be a weekday or a weekend day, is not clear from the application which states: "TBC, possibly a Tuesday or Thursday".

1.8 In accordance with the Council's constitution and procedures, one function of the Licensing Committee is to hear representations from applicants whose street trading consent has been refused by the Environmental Health Manager under delegated powers. The applicant has since submitted a representation effectively appealing the decision to refuse the application. Therefore, the Licensing Committee is requested to consider the matter and make a final decision as to whether the Street Trading Consent applied for ought to be granted or refused.

1.9 Reference information for consideration is provided in the Annexes to this report as follows:

Annex 1 – A copy of the application form (personal information redacted)

Annex 2 – An aerial plan indicative of the proposed trading location (as submitted with the application)

Annex 3 – A photograph of the trailer (as provided by the applicant)

Annex 4 – A location plan of the car park in question (provided by TVBC)

Annex 5 – Photographs of the car park in question (provided by TVBC, taken around 11.30am on 29 September 2022)

Annex 6 – Objection email dated 6 October 2022

Annex 7 – Notification of refusal dated 13 October 2022 (personal information redacted)

Annex 8 – Representation email dated 2 November 2022 from the applicant

Annex 9 – Street Trading Consent Policy

## **2 Background**

2.1 The Council has adopted provisions under section 3 of the Local Government (Miscellaneous Provisions) Act 1982 which give local authorities the power to adopt the street licensing provisions. A Council resolution was passed in 2005 defining what constitutes street trading and further details of this are provided on the first page of the Council's Street Trading Consents policy.

2.2 The effect of the resolution is that it makes it an offence, in most cases, to trade within 10 metres of any street without a valid consent, or to trade in breach of any of the conditions attached to the consent. Standard conditions are generally applied, though additional conditions can also be attached to a consent. A new application has to be made every year because, under the legislation, the licence duration cannot be for longer than 12 months. The Council's street trading policy is that new applications be granted for no more than 6 months in the first year and in subsequent years will be granted for 12 months.

- 2.3 A Street Trading Consent is required to trade in the car park in question because it is adopted highway. It has a one way entry and exit (entry from the north-east and exit to the south-west) and a row parking spaces each side of the access road. The parking spaces are restricted at certain times of the day but not restricted during the proposed times of trading.

### 3 Corporate Objectives and Priorities

- 3.1 The purpose of street trading controls is to prevent trading in inappropriate locations and prevent unacceptable impacts arising.
- 3.2 A corporate objective is to support the Borough's business community and create the conditions for new and existing businesses to thrive.

### 4 Consultations/Communications

- 4.1 Following receipt of the application, a consultation process was undertaken between 6–27 September 2022. A summary of the consultees and their responses is given below.

| Consultee                   | Representation Received? | Nature of Representation   |
|-----------------------------|--------------------------|--|
| Hampshire Highways          | Yes                      | No objections  |
| Andover Town Council        | Yes                      | No objections  |
| Local Ward Councillors      | Yes                      | Objection – see Annex 6  |
| TVBC Health Protection Team | Yes                      | No objections<br>A subsequent observation was made: "I dove (sic) past the site at about 16:30 yesterday [Wednesday 12 October]. .....what I would say (although just from one observation) was that the points made about how busy the area can be at that time of the day are warranted. The car park was about $\frac{3}{4}$ full and if there had been a pizza van there attracting additional custom I think that could be an issue as the Councillor anticipates." |

| <b>Consultee</b>                   | <b>Representation Received?</b> | <b>Nature of Representation</b>   |
|------------------------------------|---------------------------------|---|
| TVBC Environmental Protection Team | Yes                             | No objections, but subject to the following observation:<br>“Although in principle, I have no objections for the above application. I would prefer that it was located the other side of road, so as to be further away from the residential properties.” |
| Environmental Services             | Yes                             | No objections   |
| TVBC Property & Asset Management   | No                              |   |
| Hampshire Police                   | No                              |   |

## **5 Options**

- 5.1 The options are to grant or refuse the consent.
- 5.2 Paragraph 7(2) of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 states that, subject to limited circumstances when a consent must not be granted (none of which apply in this case), “the Council may grant a consent if they think fit”. In other words, there appears to be wide scope for discretion.
- 5.3 If minded to grant, it should be noted that, in accordance with paragraph 4(4) of the Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, the Council may attach such conditions “as appear to them to be reasonable”. The Council’s Street Trading Policy (Section 8) indicates that extra conditions may be attached, in addition to the standard ones that are applicable, if “special circumstances apply”.
- 5.4 If minded to grant the Street Trading Consent, the Licensing Committee is requested to follow the advice of the Council’s Environmental Protection team who did not object but did state a preference (see paragraph 4.1 above) to the effect that the trading location be confined to the row car parking spaces on south-eastern side (i.e. the side closest to Salisbury Road) of the car park access road. The reason for this was discussed further with the Environmental Health Manager who understands the reasoning to be in order to increase the separation distance from nearest dwellings and thereby minimise the potential for inconvenience to local residents, such as noise from customers. The trading position could be controlled by condition.



## **6 Option Appraisal**

- 6.1 It is important that the Licensing Committee considers the representation from the applicant and the whole application having regard to the Council's Street Trading Consent policy. The most relevant parts of this policy are sections 5 and 7.
- 6.2 Consideration should be given to not only whether the grounds for objection are relevant to the Council's policy, but also whether the extent of the impacts is considered sufficiently significant or impactful so as to warrant refusal.
- 6.3 It should be taken into account too that, if granted, the period of the first Consent would be six months only and would thereafter require annual renewal.

## **7 Resource Implications**

- 7.1 No significant implications have been identified.

## **8 Legal Implications**

- 8.1 There is no right of appeal against a decision to refuse a street trading consent application though such decisions may potentially be subject to Judicial Review.

## **9 Equality Issues**

The Council must comply with its duties under the Equality Act 2010 when making any decision. In assessing the representation and making a decision it must have "due regard" (this means consciously consider or think about) to the following needs:

- To eliminate unlawful discrimination, harassment and victimisation;
- To advance equality of opportunity between people who share a protected characteristic and those people who don't share it; and
- To foster good relations between people who share a protected characteristic and those who don't.
- The second and third requirements refer to protected characteristics. These are: age, disability, gender reassignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation.

It is not considered that the recommendations in this report will have any adverse impact on anyone with one or more protected characteristics set out above.

Human Rights Act 1998

The Act 1998 makes it unlawful for the Council to act in a way incompatible with any of the Convention rights protected by the Act unless it could not have acted otherwise. Careful consideration has been given to the rights set out in the European Convention on Human Rights including Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), Article 14 (prohibition of discrimination in enjoyment of convention rights) and Article 1 of the first Protocol (the right to peaceful enjoyment of possessions). It is not considered that the contents of this report interfere with any such rights or beyond which are necessary and proportionate to the legitimate aim and in the public interest.

9.1 None identified.

## 10 Other Issues

10.1 Community Safety – None identified.

10.2 Environmental Health Issues – No additional issues identified.

10.3 Sustainability and Addressing a Changing Climate – None identified.

10.4 Property Issues – None identified.

10.5 Wards/Communities Affected – No additional issues identified.

## 11 Conclusion

11.1 To follow the Council's policy on dealing with Street Trading Consents it is necessary for the Licensing Committee to review the application in light of the applicant's representation and decide whether the Consent ought to be granted or refused.

11.2 If minded to grant the Consent, a restriction by way of condition in trading location as set out above should also be considered in order to increase the separation distance to nearest homes and restrict any amenity impacts associated with the trading.

|  |  |       |                 |
|--|--|-------|-----------------|
| <u>Background Papers (Local Government Act 1972 Section 100D)</u>  |  |       |                 |
| None   |  |       |                 |
| <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:   | 9                                      |       |                 |
| Author:  | Mark Lee, Environmental Health Manager | Ext:  | 8035            |
| File Ref:  | 21/00157/COMM                          |       |                 |
| Report to:   | Licensing Committee                    | Date: | 12 January 2023 |

TEST VALLEY BOROUGH COUNCIL

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982  
SCHEDULE 4

APPLICATION FOR STREET TRADING CONSENT

1. Name of Applicant (the person or company in whose name the consent is to be issued):  
.....

2. Trading Name (if applicable): NEW CATERING / NIDGES ARTISAN PIZZA KITCHEN

3. Address of Applicant: .....  
.....  
.....

4. Name of the person completing this application form (if not the applicant in whose name the street trading consent will be issued):.....

5. The capacity in which I am completing this application is (tick whichever applies):

As the person who will operate the street trading business:

On behalf of another person, company or organisation that will operate the street trading business:

6. Contact details of the person completing this form:

Telephone number(s): .....

E-mail address:.....

7. Is this an application for a new trading activity or the renewal of an existing activity (tick whichever applies)?

New Application  Renewal

If it is a renewal of an existing consent then please state the expiry date of the consent:  
.....

8. Goods/articles to be sold: WOOD FIRED PIZZA

9. Date from which consent is required:..... ASAP .....

10. If the trading position is on private land, do you have permission from the landowner to trade there? (Note: You will need to obtain such permission prior to gaining the street trading consent; this is the applicant's responsibility to do)

Yes  No  Not Applicable

11. Description of stall, vehicle etc (including registration number of vehicle if appropriate)

..... 6' x 6' custom built catering trailer .....  
..... as inspected by TUBC July 2021 .....

Please include 2 colour photographs of the outside of the stall/vehicle and 2 colour photographs of the inside of the vehicle (one from either end of the vehicle showing facilities, e.g. sink, wash basin, work surface provision, chilled storage provision etc).

12. Address where stall, vehicle etc is kept when not trading (if different from 3 above)

.....  
.....

13. At what precise location(s) do you wish to trade from? Please attach a copy of a map or other image that clearly identifies the exact location of the proposed site.

..... car park at the Hexagon Street .....  
..... Address ALREADY PROVIDED .....

14. Do you wish to trade all year round or just for a short period only?

All year round  7 days or less only

Other time period (specify):..... 1 Day per month .....

15. On what day(s) of the week do you wish to trade?..... TBC, possibly Tuesday .....  
..... or Thursday .....

16. Between what times do you wish to trade?..... 4-8pm .....

Please note that, as well as applying for a Street Trading Consent, any burger van or similar mobile food unit which trades from a fixed location and sells hot food and/or hot drinks at any time between 2300 and 0500 hours will also need a Premises Licence issued under the Licensing Act 2003 for the provision of late night refreshment. Information on Premises Licences is available on the Council's website here

<https://www.testvalley.gov.uk/business/licensingandregulation/licensing/alcoholentertainment/late-night-refreshment/premises-licence> where you can also download an application form and guidance notes.

17. If you propose to sell food, is the food business registered with any local authority already?

Yes

No

Not Applicable

Name of that local authority: TVBC

18. What documented food safety management system do you use, e.g. SFBB/NCASS?

NCASS

19. If you intend to cook food, will you be using gas (LPG) for cooking purposes?

Yes

No

Not Applicable

If yes, please attach a copy of the most recent gas safety check record which should be from a Gas Safe registered engineer who is approved to work on commercial catering LPG. It is not necessary to submit such evidence in the case of applications for street trading of 7 days or less.

20. Do you intend to use a diesel generator to provide power?

Yes

No

21. Will you be providing a litter bin for customers to dispose of their rubbish?

Yes

No

22. How do you intend to dispose of the waste from the business (including customer litter)?

I have commercial wheelie bin contract

23. Who is your waste contractor? Briffa

24. What toilet facilities do you use whilst trading? NONE

25. Do you already have public liability insurance?

Yes

No

If yes, please provide a copy of your current public liability insurance certificate.

If no, do you intend to obtain public liability insurance before starting to trade (note: this is a requirement for granting the Consent)?

Yes

No

26. Fee enclosed - Cheques should be made payable to Test Valley Borough Council, or you can pay by debit card by telephoning 01264 368000.

£44.70 (7 days or less)

£486.45 (All other periods up to 12 months)

Note: See below for additional compliance checking fee to be paid after you have been informed Consent will be granted)

Notes

**Short Term Consent (up to seven days as a block)**

Fee payable: £44.70

**All Other Periods (up to 12 months)**

The charges comprise two elements, an application fee and a compliance checking fee. The application fee is payable at the time of making the application. If you are advised that Consent will be granted an additional compliance checking fee is payable for the duration of the Consent (6 months for the first application and normally 12 months for subsequent renewal Consents). The Consent will only be issued on payment of the compliance checking fee.

Application Fee: £486.45

Compliance Checking Fee: £248.35 for food traders / £70.50 for non-food traders

*All personal information collected through this application will be held on file (either manually or electronically) by Test Valley Borough Council and be used for purposes in connection with Street Trading administration and management. Additionally, information may be provided upon request to other Test Valley Borough Council Services for the purposes of the prevention and detection of fraud and crime.*

Do you consent to the following contact details being given to consultees in case any of the consultees have any queries about your application? If you do consent, please indicate by ticking the 'Yes' box below. If you do not consent, please tick the 'No' box.

Your contact telephone number(s) given: Yes  No

Your contact email address given (if any): Yes  No

I declare that the information provided above is to the best of my knowledge correct. I declare also that, to the best of my knowledge, all work activities in connection with the street trading activity will be conducted by workers who have the legal right to work in the UK.

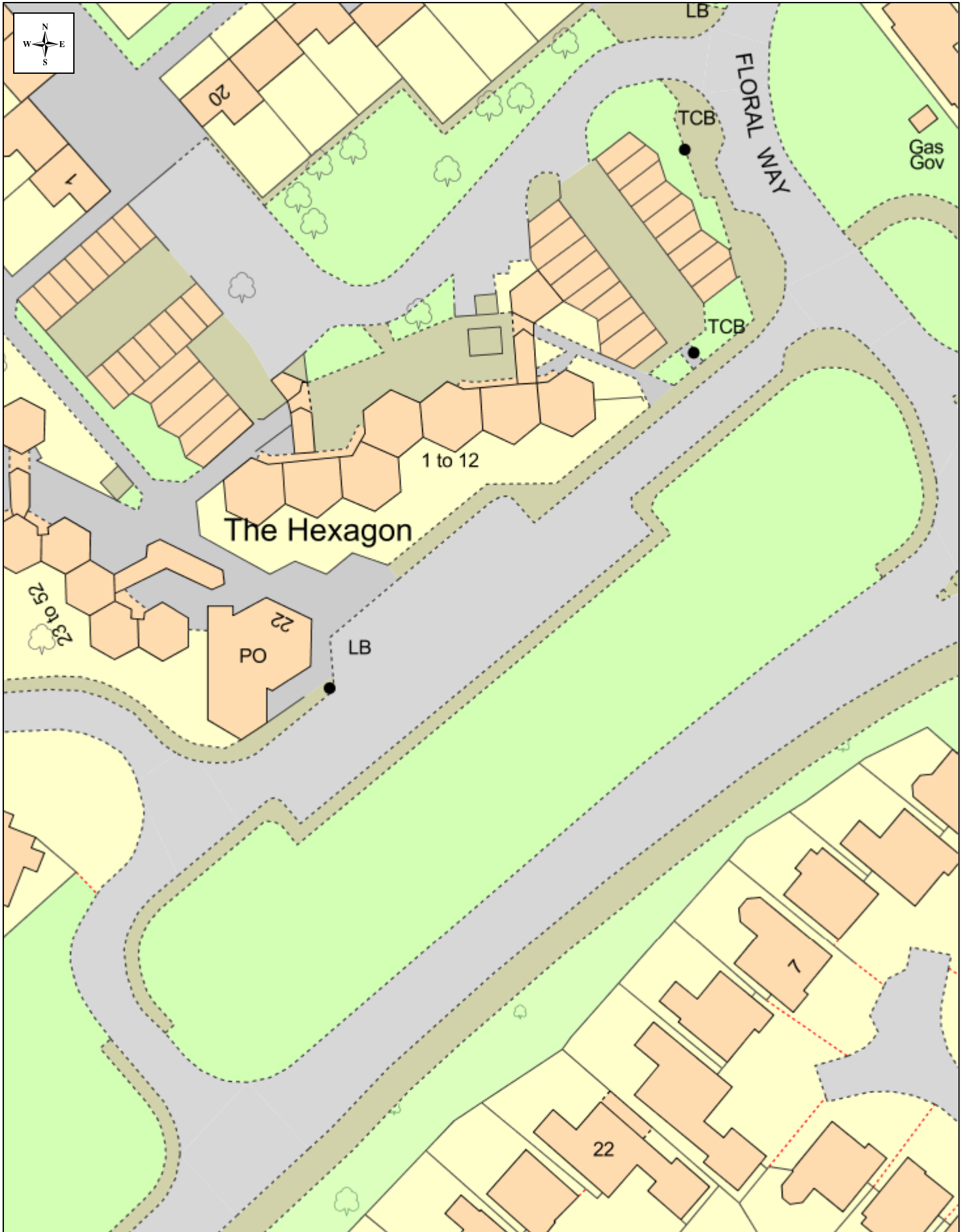
Date: 6/9/22 Signature of Applicant: .....







# ArcGIS Web Map



Date: 03/11/2022

Scale: 1:625

Author: Test Valley Borough Council

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Photographs





**From:** Cllr Brooks, Zilliah <CllrZBrooks@testvalley.gov.uk>

**Sent:** 06 October 2022 10:18

**To:** Lee, Mark <MLee@TestValley.gov.uk>; Cllr Brooks, Zilliah <CllrZBrooks@testvalley.gov.uk>; Cllr Ecclestone, Christopher <cllrcecclestone@testvalley.gov.uk>; Cllr Neal, Jim <cllrjneal@testvalley.gov.uk>

**Subject:** Pizza application

Dear Mr Lee,

The Millway Ward councillors have the following 3 Policies reasons for refusal on the license application from a Pizza company near the Hexagon car park.

1 A significant effects on road safety would either from the siting of the trading activity itself, or from customers visiting or leave the site.

3 There would be a significant loss of amenity caused by traffic, noise, rubbish, potential for the harbourage of vermin, odour of fume

9 The site does not allow the Consent Holder, staff, and customers to park or access in a safe manner.

The Pizza van will be occupying several parking spaces, which will take spaces from the customers for the local shop. (Taking trade away from local Business) this convenience store has a thriving post office/bank which used by local businesses at the end of a Business day

If spaces are unavailable for customers, this will force them to drive to another shop, this will have an impact on the environment, which we all are trying to avoid.

A Major factor is the location of four schools in Floral Way, infants two primaries and a secondary and this parking area was upgraded a few years ago by HCC at the request of local Ward councillors to encourage parents to drop off their children so they could walk to school and be collected at the end of the school day.

This decision was taken by HCC to stop hundreds of parents parking near the schools

Taking parking space creating additional traffic problems at a busy time of the day in pick-up time of children from after school clubs. Parents being parking in this area from 2.25 on any school day disregarding the allotted permitted parking periods and blocking access to post office and store.

The siting of this food van is proposed on the opposite side to the store parallel to the footpath and facing the grass verge. To access the van, children/ customers must cross the site access road, between vehicles closely parked on both sides. It is also important to note that the proposed application is for trading to begin at 4pm during the autumn and winter months it will be dusk/dark with added to road safety.

The Government addressing the need to avoid children consuming high level of fat and sugar in canned drinks, alongside fast food

The Pizza Van will be in situ when the children are walking home from after school activities, many of the older students are unsupervised and this temptation will be beyond resistance after taking part in a very active sport.

Council is already working hard with their communities to live healthier and more active lives, including initiatives such as healthy food scheme in school. Having a pizza van near a school would be defeating the object.

Kind regards,

Cllr Z Brooks  
Cllr J Neal  
Cllr C Ecclestone

Millway Ward  
Test Valley Borough Council

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Mr Nigel Male  
NEM Catering

Housing & Environmental Health Service  
Beech Hurst  
Weyhill Road  
Andover, Hants SP10 3AJ  
Telephone 01264 368000  
Fax 01264 368499  
Minicom 01264 368052  
Web site [www.testvalley.gov.uk](http://www.testvalley.gov.uk)

Contact: Mark Lee  
Telephone: 01264 368035  
E-mail: [mlee@testvalley.gov.uk](mailto:mlee@testvalley.gov.uk)  
Your ref:  
Our ref: 21/00157/COMM  
Date: 13 October 2022

By post and e-mail to:

Dear Mr Nigel Male

**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982  
STREET TRADING CONSENT APPLICATION: NEM CATERING, T/A NIDGE'S ARTISAN  
PIZZA KITCHEN  
PROPOSED TRADING LOCATION – CAR PARK AT THE HEXAGON, ANDOVER, SP10  
3PR**

Further to your application for a Street Trading Consent at the above location and my email dated 6 October 2022 in which I set out my preliminary decision to refuse the application and inviting any further representation from you within 7 days, I have not received any further representation from you.

Therefore, as person delegated by the Head of Housing & Environmental Health to determine such applications in accordance with the Council's Street Trading Policy, I confirm my preliminary decision and hereby **REFUSE** to grant a Street Trading Consent in this case.

The reasons for the refusal were set out in my email dated 6 October 2022, a copy of which accompanies this letter. The objections were received from the three elected councillors for the Millway Ward, Cllr Z Brooks, Cllr C Ecclestone and Cllr J Neal. You should also be aware that a colleague of mine visited the car park at around 16:30 hrs on Wednesday 12 October 2022 and observed the car park to be around three quarters full and remarked how busy the area was, thereby lending weight to some of the concerns raised in the objection.

For your reference, the Council's Street Trading Policy is published on the Council's website at:  
<https://www.testvalley.gov.uk/business/licensingandregulation/licensing/street-traders>

Should you be dissatisfied with that decision then, in accordance with this policy, it would be open to you to request that the matter be referred to the Council's Licensing Committee for a final decision as to whether your application is granted or refused.

If you wish the matter to be determined by the Council's Licensing Committee then please write, no later than 28 days of my final decision letter, to:

The Head of Legal & Democratic Services  
Test Valley Borough Council  
Beech Hurst  
Weyhill Road  
Andover  
Hampshire  
SP10 3AJ

Alternatively, you can email [complaints@testvalley.gov.uk](mailto:complaints@testvalley.gov.uk) marking it clearly 'Street Trading Consent Application Appeal – FAO Head of Legal & Democratic Services'.

Yours sincerely

Mark Lee  
Environmental Health Manager

Enc.

**From:** Lee, Mark

**Sent:** 06 October 2022 14:01

**To:**

**Subject:** Street Trading Consent Application - Nidges Artisan Pizza Kitchen, The Hexagon, Andover (Our ref. 21/00157/COMM)

Dear Nigel

I refer to our telephone conversation earlier today whereby I notified you of an objection received to your application seeking a Street Trading Consent to trade from a pizza van at the Hexagon. I reproduce the content of the objection, in red-coloured text, below:

“...the following 3 Policies reasons for refusal on the license application from a Pizza company near the Hexagon car park.

1 A significant effects on road safety would either from the siting of the trading activity itself, or from customers visiting or leave the site.

3 There would be a significant loss of amenity caused by traffic, noise, rubbish, potential for the harbourage of vermin, odour of fume

9 The site does not allow the Consent Holder, staff, and customers to park or access in a safe manner.

The Pizza van will be occupying several parking spaces, which will take spaces from the customers for the local shop. (Taking trade away from local Business) this convenience store has a thriving post office/bank which used by local businesses at the end of a Business day

If spaces are unavailable for customers, this will force them to drive to another shop, this will have an impact on the environment, which we all are trying to avoid.

A Major factor is the location of four schools in Floral Way, infants two primaries and a secondary and this parking area was upgraded a few years ago by HCC at the request of local Ward councillors to encourage parents to drop off their children so they could walk to school and be collected at the end of the school day.

This decision was taken by HCC to stop hundreds of parents parking near the schools

Taking parking space creating additional traffic problems at a busy time of the day in pick-up time of children from after school clubs. Parents being parking in this area from 2.25 on any school day disregarding the allotted permitted parking periods and blocking access to post office and store.

The siting of this food van is proposed on the opposite side to the store parallel to the footpath and facing the grass verge. To access the van, children/ customers must cross the site access road, between vehicles closely parked on both sides. It is also important to note that the proposed application is for trading to begin at 4pm during the autumn and winter months it will be dusk/dark with added to road safety.



The Government addressing the need to avoid children consuming high level of fat and sugar in canned drinks, alongside fast food

The Pizza Van will be in situ when the children are walking home from after school activities, many of the older students are unsupervised and this temptation will be beyond resistance after taking part in a very active sport.

Council is already working hard with their communities to live healthier and more active lives, including initiatives such as healthy food scheme in school. Having a pizza van near a school would be defeating the object.”

I am delegated the authority on behalf of Test Valley Borough Council to consider Street Trading Consent applications in accordance with Paragraph 7(2) of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 and the Council's policy.

A copy of the Council's Street Trading Consent policy is given on the Council's website at: <https://www.testvalley.gov.uk/business/licensingandregulation/licensing/street-traders>

Having considered the objections carefully in accordance with the Council's policy, I am MINDED TO REFUSE the application for the consent to trade at the above location because I am satisfied that some at least of the above grounds are relevant grounds for objection under our policy and appear to have at least some merit.

If you wish to respond to the above objection and make a further representation, I will have regard to that before making my final decision. As discussed, if you ask me to forward your representation on to the objectors then please indicate and I will ask if that alters their view and if they wish to either withdraw their objection or maintain it. In any case, please put forward any further information which you wish me to consider within 7 days.

I must emphasise that you are not obliged to contact me again or provide further information, but if you chose not to do so then I will confirm my preliminary decision to refuse the application after 7 days. Should you be dissatisfied with that decision then it would be open to you to request that the matter be referred to the Council's Licensing Committee for a final decision as to whether your application is granted or refused.

If you wish the matter to be determined by the Council's Licensing Committee then please write, no later than 28 days of my final decision letter, to:

The Head of Legal & Democratic Services  
Test Valley Borough Council  
Beech Hurst  
Weyhill Road  
Andover  
Hampshire  
SP10 3AJ

Alternatively, you can email [complaints@testvalley.gov.uk](mailto:complaints@testvalley.gov.uk) marking it clearly 'Street Trading Consent Application Appeal – FAO Head of Legal & Democratic Services'.

Kind regards

**Mark Lee**

Environmental Health Manager

Housing and Environmental Health Service

Test Valley Borough Council

Beech Hurst, Weyhill Road, Andover, Hampshire, SP10 3AJ

Tel. 01264 368035; Email. [mlee@testvalley.gov.uk](mailto:mlee@testvalley.gov.uk)

**From:** Nigel Male  
**Sent:** 02 November 2022 09:46  
**To:** Lee, Mark <MLee@TestValley.gov.uk>  
**Subject:** Street Trading Consent APPEAL (21/00157/COMM)

Dear Mark

(Could you please confirm receipt of this email.)

With regard to the rejection of my request for a Street Trading Consent Licence, I would like to submit the following comments in regard to the points that you raised in your correspondence, for an appeal.

Your rejection wording (I acknowledge taken from your Street Trading Policy document):-

1. A significant effects on road safety would either from the siting of the trading activity itself, or from customers visiting or leave the site

- **The car park has 38 spaces and is One way, so no sufficient effects will occur as there is a smooth movement of traffic through.**

3. There would be a significant loss of amenity caused by traffic noise, rubbish, potential for the harbourage of vermin, odour or fume.

- **There would certainly be no issue with noise, our generator, is very quiet, and would be on the road side therefore masked by the traffic noise. Our wood fired oven, Burns kiln dried logs therefore causes very little smoke or fume whilst in use. There may be a little smoke, when the oven is first lit.**
- **As we are a takeaway service, we don't envisage there being massive amount of used pizza boxes littered around the area. As people tend to take their food home eat it at home, and dispose of the packaging at home. However, I have a black sack available for rubbish, for use if necessary, which I take away with me at the end of trading.**
- **Also, at the end of trading we always sweep on completion of service to ensure there is no waste, or rubbish/litter in the area.**
- **We are only applying for a licence at this location for one evening a month for four hours.**

9. The site does not allow the Consent Holder, staff, and customers to park or access in a safe manner.

- **The car park has 38 spaces, so not an issue as ample amount of spaces**

The Pizza van will be occupying several parking spaces, which will take spaces for the local shop. (Taking trade away from local Business) this convenience store has a thriving post office/bank which used by local businesses at the end of a business day.

- **The car park has 38 spaces and is One way. We would only require two spaces, one for the trailer, and one for the support vehicle. I am unsure how this would “cause significant effect on the road safety. Hence this will not make any difference to people, not being able to park and use the shop therefore taking trade away from a local business.**
- **The post office closes at 5:30 pm. Which means that there would be an overlap of our trading time with theirs of half an hour.**
- Surely that it will be as on other locations where we operate, where there is a convenience store, that are an increase in footfall and turnover has been experienced by the shopkeepers, as people tend to order their food, and then say “I’m just popping into the shop” or go into the shop while they are waiting.
- **An order for a Pizza, takes longer for us to top the pizza, and pop into the oven to cook. A pizza will cook in 90 seconds. Therefore the turnaround time is very quick.**

If spaces are unavailable for customers, this will force them to drive to another shop, this will have an impact on the environment, which we are trying to avoid

- **The car park has 38 spaces, so not an issue as ample of spaces and this would be for after busy school time**
- **Being in the location we are proposing, it is hoped that the majority of our customers would walk to the site as it is so close to residential areas.**
- **On an average evening, we carry, and sell around about 50 pizzas. The majority of these are in orders of two or three. Therefore possibly 16 visitors, to the trailer during anyone trading period. The majority of our customers of other locations are walk in's**
- **Our online ordering facility, encourages people that are driving to pick up their food, to enter the registration details, they are then given a 15 minute window to arrive to collect their food. So there is very little time and people are hanging around waiting for food.**

A Major factor is the location of four schools in floral way, infants two primaries and a secondary and this parking area was upgraded a few years ago by HCC at the request of a local Ward councillors to encourage parents to drop off their children so they could walk to school and be collected at the end of the day.

- **Not an issue, as we would not be trading during this time of day. We are proposing not to arrive on site until 4.30pm and trading would start after 5pm. This is long after the chaos of school pick up time is complete, even if there is a**

**possibility of an afterschool event (which would still be very much smaller in numbers involved).**

This decision was taken by HCC to stop hundreds of parents parking near the schools.

- **As above**
- **We appreciate the decision was taken by HCC to stop hundreds of parents parking near the schools. But we will not be arriving till after the school rush. It is more likely the shop may lose trade by the continued use of the car park by the school run!!**

Taking parking space creating additional traffic problems at a busy time of the day pick-up time of children from after school clubs. Parents parking in this area from 2.25 on any school day disregarding the allotted permitted parking periods and blocking access to post office and store.

- **We would not be trading during this time**

The siting of this food van is proposed on the opposite side to the store parallel to the footpath and facing the grass verge. To access the van, children/customer must cross the site access road, between vehicles closely parked on both sides. It is also important to note that the proposed application is for trading to begin at 5pm during the autumn and winter months it will be dark/dusk with added to road safety

- **We are proposing we are cited in the car park. We have never had children come directly to us to purchase pizza!!**
- **We will light the area sufficiently to avoid any issues with health and safety.**
- **If this location is the only issue, then can be moved further down the Car parking spaces i.e., not parallel to the foot path nor close to the shop?**

The Government addressing the need to avoid children consuming high level of fat and sugar in canned drinks alongside fast food

- **We are NOT a fast food outlet, we do not sell cans of pop, we do not sell chips. If our customers wanted any canned drinks, they are available at the shop!**
- **We also have salads on our menu**
- **You claim that older students, who are unsupervised, will give into the temptation and this will be beyond resistance after taking part in a very active sport! This is absolute rubbish, they are more likely to fill up kinds of crisps, sweets and sugary canned drinks from the shop. Their food and snacks are more affordable to teenagers and schoolchildren.**

- **You say that the council is already working hard with communities to live healthier and more active lives. Hampshire County council schools serves pizza several times a week on its menu in all four of the schools!!**

In addition to the points above, I would also like to raise the following points:

- **The government is trying to get businesses' starting/growing to encourage growth of the country. This is irrelevant on the size of the Business. This rejection is limiting my growth.**
- **Even the Hampshire County Council and the Test Valley have web pages to the support/provide advise at the start up, GROWTH, and acceleration stage for Businesses**
- **The 'Pizza Kitchen' is a business that TVBC invested £750 into in the form of a new business initiative in March 2022. So why then is my small business application being declined?**
- A similar pizza service (Woodfired) Operated very successfully in the car park of the community centre at Burghclere down. The operators, of this Pizza business have since retired, we have taken over several of their locations. Sadly, due to our very busy schedule, we are unable to visit the car park on the days and sites, suggested by the parish council.
- **At the end of the day, we are proposing to provide a service to the community, one evening a month for four hours.**

I will be happy to meet with any of the counsellors on site/location to view and discuss the best location for us to operate from. I also invite any concerned member of the council, to visit us at any of our other locations, where we are outside shops, Saxon fields, the co-op at Picket 20, Greenfield park, or the Salto centre, to see exactly how we operate and what we actually do etc.

We are even willing to trial this for at least two months, just so that the Council can see, that the concerns detailed in the councillors Concerns are not be a problem in reality.

Hence, with respect to all the above points, I would therefore request that this application be reconsidered and/or referred further / to the Councils Licensing Committee.

I if you require any further information, please don't hesitate to contact me.

I look forward to hearing from you.

Yours Sincerely

Nigel Male



**Nidge's Artisan Pizza Kitchen**

## LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

### STREET TRADING

Test Valley Borough Council made the following resolution on 6 January 2005:

'That for the purposes of controlling street trading and in accordance with para. 2, Schedule 4, Local Government (Miscellaneous Provisions) Act 1982, all streets (present and future) within the administrative area of the Council, including any forecourts, car parks, roads, footways or other areas adjacent to the streets referred to in this resolution for a distance of 10 metres, be designated 'consent streets', with effect from 17<sup>th</sup> February 2005.'

### POLICY

This Policy will be applied to street trading activities in the Borough of Test Valley to ensure consistency in decision making. Each application will be considered on its own merits so that individual circumstances, where appropriate, are taken into consideration.

#### 1. **Definitions of terms used in these Guidelines**

Within the terms of the Borough Council of Test Valley's Street Trading Consent Scheme the following definitions apply:

- |                       |   |
|-----------------------|---|
| The Council:-         | The Borough Council of Test Valley.   |
| Street Trading:-      | The selling or exposing or offering for sale of any article (including a living thing) in any street.   |
| Street:-              | Includes:<br>(a) any road, footway, or other area to which the public have access without payment.<br>(b) a service area as defined in section 329 of the Highways Act 1980,<br>and also includes any part of a street. |
| Consent Street:-      | Means a street in which street trading is prohibited without the consent of the Council.  |
| Consent: -            | A consent to trade on a street granted by the Council, pursuant to Paragraph 7, Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.   |
| Consent Holder:-      | The person or company to whom the consent to trade has been granted by the Council.   |
| Authorised Officer: - | An officer of the Council authorised by it to act in accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1982.  |



## 2. Procedure for determining Street Trading Consent applications

The application and approval procedure normally comprises of the stages as set out below and in Appendix 1, though alternative arrangements for applications, consultations and site assessments may be made in the following circumstances:

- (a) Applications for trading on land owned or managed by the Council; and
- (b) Applications for trading for a period of 7 days or less.

All applications for Street Trading Consent will be determined in accordance with delegated powers of the Head of Housing & Environmental Health, except for Consents on land owned or managed by the Council, in which case the relevant Head of Service may issue the Consent or else refer the application back to the Head of Housing & Environmental Health for determination.

## 3. Submission of the application

An application for a Street Trading Consent must be made to the Council in writing. An application form will be made available for this purpose, though this may be dispensed with in the case of trading on land owned or managed by the Council where a broader consent process applies.

Applications will not be processed unless / until adequate information is provided to enable the application to be determined. Applications will be rejected if not accompanied by the applicable fee and may also be rejected if, where requested, all or part of the following information is not provided:

- (a) A completed Street Trading Consent application form (except if expressly told that one is not required), signed and dated.
- (b) Where the proposed street activity is from a fixed position, a copy of a map or plan. The map should clearly identify the proposed site position by marking the site boundary with a red line.
- (c) At least one colour photograph of the stall, van, barrow, cart etc that will be used for the street trading activity.
- (d) An in-date copy of the certificate of insurance that covers the street trading activity for third party and public liability risks (minimum cover to be set by the Head of Housing & Environmental Health).
- (e) For traders intending to sell food, the name of the local authority that the trader is registered with for food hygiene purposes and the current food hygiene rating score.
- (f) For street traders using gas appliances, an in-date copy of the most recent gas safety check record.
- (g) A signed declaration from the applicant that all work activities in connection with the street trading activity will be conducted by workers who have the legal right to work in the UK.
- (h) The arrangements for the disposal of litter and waste.

An applicant for an initial new Street Trading Consent should normally give a minimum of 30 working days notice of the application to provide sufficient time for consultation and determination.

#### 4. Consultations on applications made

Before a Street Trading Consent is granted or renewed, the Council may carry out a consultation process with various persons and groups. The extent of the consultation will be at the discretion of the Service issuing the consent and will depend upon the type of trade, the duration of the proposed consent, and location of the proposed street trading consent applied for. In particular the following organisations or persons may be consulted.

- Hampshire County Council Highways – area office
- The Test Valley Borough Council Property and Asset Management Service
- Hampshire Constabulary
- Local Councillor(s)
- The appropriate Parish or Town Council
- Test Valley Borough Council Environmental Services
- Test Valley Borough Council Health Protection Team
- Test Valley Borough Council Environmental Protection Team

Any written observations from such consultees will be taken into consideration when determining an application.

#### 5. Site Assessment

Street Trading Consents will not normally be granted where any of the following apply:

- A significant effect on road safety would arise either from the siting of the trading activity itself, or from customers visiting or leaving the site.
- Where there are concerns over the recorded level of personal injury accidents in the locality where the street trading activity will be sited.
- There would be a significant loss of amenity caused by traffic, noise, rubbish, potential for the harbourage of vermin, odour or fumes.
- There is already adequate like provision in the immediate vicinity of the site to be used for street trading purposes.
- There is a conflict with Traffic Orders such as waiting restrictions.
- The site or pitch obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use for street trading purposes.
- The trading unit obstructs the safe passage of users of the footway or carriageway.
- The pitch interferes with sight lines for any road users such as at road junctions, or pedestrian crossing facilities.

- The site does not allow the Consent Holder, staff and customers to park in a safe manner.
- The street trading activity is carried out after dusk and the site is not adequately lit to allow safe access and egress from the site for both customers and staff.
- In the case of a food business, it is rated a 0 (urgent improvement necessary), 1 (major improvement necessary) or 2 (improvement necessary) under the national food hygiene rating scheme, and/or is considered to present a significant food safety risk to the public, at the time of the application or renewal.
- The business presents a significant health and safety risk to the public or employees under the Health and Safety at Work etc. Act 1974.

## 6. Inspection of the Street Trading Unit

The vehicle, van, trailer, stall or other device to be used for the proposed street trading activity may be subject to compliance checking from time to time during the Street Trading Consent period and prior to the issue of any Street Trading Consent where this is reasonably practicable. The unit to be used for the street trading activity shall comply in all respects with the legal requirements relating to the type of street trading activity proposed.

## 7. Determination of the Application

The application will be determined using the criteria listed below. 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.

**a) Public Safety:** The location of the proposed street trading activity should not present a substantial risk to the public, for example in terms of road safety, obstruction, food safety, health & safety or fire hazard.

**b) Public Order:** The street trading activity should not present a risk to good public order in the locality in which it is situated. Observations from the Hampshire Constabulary will be taken into consideration.

**c) Avoidance of Nuisance:** The street trading activity should not present a substantial risk of nuisance from noise, rubbish, potential for the harbourage of vermin, smells or fumes to households and businesses in the vicinity of the proposed street trading site. Observations from Council Officers will be taken into consideration.

**d) Needs of the Area:** The sufficiency of other trading outlets will be taken into consideration in relation to:

- i. The presence of like outlets already existing in the immediate locality of the proposed street trading site.

- ii. The general needs of a locality, should no comparable outlets exist.

Applicants will have to demonstrate to the Council the need for the proposed street trading activity in relation to either points i. or ii. above, whichever applies.

**e) Compliance with legal requirements:** The proposed street trading activity should be carried out from a trading unit that complies with the relevant legislation.

**f) Consultees Observations:** In relation to points a) – d) above, consideration will also be given to written observations from consultees. Any objections made to the proposed street trading activity will be considered in terms of relevancy and appropriateness to the application that has been made.

**g) Trading Hours:** The Council may restrict trading hours in some cases where appropriate.

**h) Market days:** Those Street Consent Holders who have consent to trade in the town centres may not be permitted to do so on Market days.

## 8. Approval of Applications

The Head of Service may approve applications meeting the criteria contained within these guidelines.

On approving the application the Council will issue a Street Trading Consent to which standard conditions will normally be attached. The Consent may also contain specific terms such as days and hours when street trading is permitted, or the goods that may be sold. Additional conditions may be attached if special circumstances apply to the Consent being granted by the Council. The Consent will normally be issued within 21 days of the decision.

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.

Consent Holders are therefore requested to familiarise themselves with the terms and conditions attached to the Street Trading Consent and comply with the requirements.

## 9. Issue of Street Trading Consents

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. Shorter term Consents may be issued on a daily, weekly or monthly basis. These particular Consents will expire, unless renewed, on the date specified in the Consent.

If a cheque is dishonoured by a bank this will result in the revocation of the Street Trading Consent issued by the Council unless payment of the outstanding fees is made in cash within 5 working days. In such cases an administration charge will also be imposed on the Consent Holder. If an application is refused then a full refund will be made.

#### 10. **Decision to refuse or revoke**

If the Head of Service is unable to grant a Street Trading Consent, or decides to revoke a 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 or revocation of the Consent. At the meeting the applicant will be informed of the criteria from these guidelines that have not been met or adhered to. The applicant will be given an opportunity to discuss any relevant matters in relation to the application or Consent. After the meeting the outcome will be confirmed in writing by the Head of Service within 5 working days of the meeting taking place. The Head of Service may decide to: revoke the Consent, grant the Consent or allow the existing Consent to continue.

If an applicant refuses an offer of attending a meeting with the Head of Service or fails to attend, then the Head of Service will review the matter and a letter will be sent to the applicant confirming the decision reached.

If the applicant is not satisfied with the decision to revoke or refuse a Consent, he/she may make representation, in writing within 28 days, to the Licensing Committee for it to consider the application.

#### 11 **Representation to the Licensing Committee**

The Council's Licensing Committee has been established to consider applications and hear objections and appeals in relation to licensing matters.

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 Head of Service.

On receipt of a written representation, arrangements will be made to have the application heard at the next available meeting of the Licensing Committee.

Once arrangements have been made for the representation to be heard by the Licensing Committee the applicant will be advised in writing of the date, time and place where the representation will be heard. The person making the application is expected to attend the hearing. The applicant can be represented by a solicitor, or supported by a friend or colleague. The Licensing Committee will follow a set procedure that will be notified to the applicant in advance of the meeting, along with any officer reports that will be presented at the meeting.

The decision of the Licensing Committee will be confirmed in writing to the applicant within 5 working days of the meeting at which the application was considered.

The Licensing Committee will always adhere to the rules of natural justice when it is considering an application to ensure that all persons get a fair hearing.

## 12. Refusal of Applications

The Local Government (Miscellaneous Provisions) Act 1982 does 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.

## 13. General Information on Street Trading Consents

**Reimbursement of Fees:** Fees will be reimbursed to Consent Holders where they cease to trade and surrender their Consent to the Council. Any reimbursement will be strictly from the date the Consent is surrendered to the Council.

Refund of any fee paid in connection with the granting of a Street Trading Consent will be based on the following formula:

Number of complete days remaining divided by the fee paid **less** the current administration fee.

**Persons under the age of 17 years:** The Council will not grant a Street Trading Consent to persons under the age of 17 years.

**Access by Council and Police Officers:** Consent Holders should allow access to Authorised Officers of the Council and Police Officers at all reasonable times.

**Street Trading Consents:** The conditions attached to all Street Trading Consents stipulate that a Consent Holder shall not assign, sub-let or part with his interest or possession of a Street Trading Consent.

**Variance of conditions:** The Council may at any time vary the conditions of a Street Trading Consent.

*The Consent granted is specific to the person to whom it is issued and is **non-transferable and there can be no sub-letting.***

## 14. Enforcement of Street Trading

The Council will enforce the provisions of the Street Trading legislation within its area in a fair and consistent manner. All enforcement activities will comply with the relevant Service Enforcement Policy.

15. **Complaints against the Service**

The Council has a Corporate Complaints Procedure copies of which are available from the Council Offices or on the Council's website [www.testvalley.gov.uk](http://www.testvalley.gov.uk).

**Appendix 1**

**Summary of the Procedure for Determining Street Trading Consents**

