

# **Street Trading Consent Determination - Nidge's Artisan Pizza Kitchen**

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

## **Recommended:**

- 1. That the Licensing Committee consider the representation from Mr Nigel Male (trading as Nidge's Artisan Pizza Kitchen), decide whether the street trading consent applied for ought to be granted or refused, and delegate authority to the Environmental Health Manager to implement that decision.**
- 2. That, if the decision is to grant the street trading consent, the trading location be conditioned by being restricted only to the row of car parking spaces on the south-eastern side (i.e. the side closest to Salisbury Road) of the access road.**

### **SUMMARY:**

- In accordance with the Council's constitution and Street Trading Consent policy, the Licensing Committee is requested to determine whether the Street Trading Consent applied for by Mr Nigel Male of NEM Catering, trading as Nidge's Artisan Pizza Kitchen, should be granted or refused.
- The applicant proposes to operate as a mobile food trader one day per month (unspecified day of the week) between 4pm - 8pm at the car park adjacent to The Hexagon, Andover, SP10 3PR.
- The application was refused on 13 October 2022 under delegated powers by the Environmental Health Manager who, in making that decision to refuse, took account of the Council's Street Trading Consent Policy, an objection received jointly from the three elected members for the Millway Ward, and the fact that no further representation in response to the objection was received by the applicant within 7 days of notification of his preliminary decision to refuse the application.
- The applicant has, since the refusal of the application, submitted a written representation in full response to the objection and indicated his wish for the decision to be reviewed by the Licensing Committee, in accordance with the Council's Street Trading Consent policy.

## **1 Introduction**

- 1.1 The purpose of this report is to present the facts of the case in order for the Licensing Committee to determine a Street Trading Consent application, i.e. whether to grant or refuse the application.

- 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 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: “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		
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