

Gloucester City Council

COMMITTEE	: LICENSING & ENFORCEMENT
DATE	: 13TH DECEMBER 2011
SUBJECT	: STREET TRADING APPEAL – HOT FOOD UNIT NORTHGATE STREET, GLOUCESTER
DECISION TYPE	: -
WARD	: WESTGATE
REPORT BY	: REGENERATION GROUP MANAGER – SERVICES, FACILITIES AND SUPPORT
NO. OF APPENDICES	: A – APPLICATION AND PHOTOGRAPHS B – STREET TRADING CRITERIA 1 A-C – PHOTOGRAPHS FROM APPELANT 2 – COPIES OF EMAILS REGARDING KINGS SQUARE UNIT.
REFERENCE NO.	: PT131111A

1.0 PURPOSE OF REPORT

- 1.1 To consider an appeal from Mr Stevens regarding refusal of street trading consent against agreed criteria.

2.0 RECOMMENDATIONS

- 2.1 Members are recommended to resolve:-

- A. To dismiss the appeal STAPP33 (Mr Stevens) and uphold the reasons for refusal of street trading consent namely:-
- i) The siting of the unit will cause unreasonable obstruction to users of the highway and to the visibility of local businesses specifically that of HSBC Bank, in terms of customer access, visibility of window displays, blocking of emergency exits and increased security risk for delivery and cash collections.
 - ii) The Siting of the unit is not compatible with the area in which it is proposed to be situated and neither enhances the street scene or adds vitality to the Historic City Centre.
 - iii) The goods on offer are principally the same as those offered on another unit in Eastgate Street and also a consented unit in Kings Square, therefore it is not felt that this introduces anything new into the City Centre.

3.0 BACKGROUND

- 3.1 The Council adopted a new policy and process for street trading applications in April 2009. The policy introduced two new areas, that of an agreed street trading criteria (Appendix B) and a consultation programme.
- 3.2 The policy has been in place for 2 years and in that time there have been significant improvements to the street trading activity both in the City Centre and in the surrounding areas.

4.0 STREET TRADING APPEAL – STAPP33 (MR STEVENSO

- 4.1 A street trading application was received on 11th October 2011 for a hot food unit in Northgate Street, outside HSBC Bank, operational Monday to Thursday and any available Saturdays (Appendix A)

- 4.2 Consultation was carried out as outlined in the policy with the following:

Gloucestershire Constabulary
Gloucestershire Fire & Rescue
Gloucestershire County Highways
Cabinet Member
Ward Councillors
Banks and Retailers.

- 4.3 Nine responses were received to the application, details of which are summarised as follows:

Gloucestershire County Highways – we would not like to see this on the cross, it will impede vehicular movements and also pedestrians.

Councillor Toleman - I don't like the idea of the gate streets particularly around the cross being cluttered with traders that can obstruct shoppers especially ones selling food. I know we are obliged to accommodate the 'street market' traders once a week but I believe that shoppers come into town specifically for that which I can accept.

Service & Sales Manager HSBC Bank - We would like to oppose this application in the strongest possible way.

The catering unit will block access to the Branch for Customers and Staff.
It will block emergency exits from the branch
It would block light into the banking hall, effecting both staff and customers.
The height of the catering unit would obscure the Banks displays in the windows.
The odour would penetrate the banking hall and be offensive to both staff and customers.
The unit would create a security risk for deliveries and collections of cash by security companies.

Cushman & Wakefield (Estate Management Company for Clydesdale & Yorkshire Bank) – concerns were raised regarding

- the smell generated from a mobile catering unit, which could impact on the branch, even though the unit will not be directly outside the branch.
- The increased risk of littering from customers using the unit
- The positioning of this could detract from potential customers visiting the premises
- The noise level would increase if a generator will be running for the period the unit is positioned near our branch
- Vermin such as pigeons and seagulls could increase.

Royal Bank of Scotland – disagree that this is a positive move if approved. This would lower the historical and cultural aspects of the town centre. There are numerous alternative fast food outlets already in place. The town centre increasingly looks like a 'fairground'.

Gloucester Civic Trust – application received a resounding no. Reasons being:-

- This will set a precedent to allow similar units and the cross will become over run.
- It is not the kind of thing we should have in the historic city centre.
- The cross will become even more cluttered
- It does little to enhance the street scene on the cross.
- Members say there are similar units like this in Eastgate Street and Kings Square, why do we need more?
- That the carpet man and others were asked to move and why should the city make a U turn in policy?
- The main reason above all – English Heritage recently visited the cross area and said it was far too cluttered from things being allowed there by the City Council with no regard. As a result the Civic Trust are spending over £1000 to remove street clutter so that our latest project 'City Celebrations' can go ahead. The Civic Trust feel it unfair we should be landed with this cost – but it is a small price to pay to promote the City's heritage and to attract visitors.
- So it is generally felt that apart from the Farmers Market and the Craft Fair – which do enhance the street scene that no other units should be permitted.

Gifts Direct (Retailer) – This is not a suitable position at all.

- The HSBC Bank have spent time and money cleaning and restoring the building.
- There are other units selling the same food that it could affect.
- I do not wish to look out and see this unit – it looks stupid.

Meeks (Retailer) – We feel there are enough fast food establishments in and around the city centre. It is not the right place for such an eyesore. It will cause unpleasant odours and these stands cheapen the look of the City.

City Centre Community Partnership – We have been consistent in our view that street trading should be limited to Eastgate Street, although the regular markets cut through that principle regularly. Noted that this application avoids Fridays Farmers Market.

If the Council is minded to allow this application the unit must be high quality – which it would appear to be.

We also feel that the site for the unit should be further away from the Cross; the photograph gives the impression that it could be an obstruction to traffic movement.

The split between those commenting was close, 21 For and 23 Against consent.

- 4.4 I considered the proposal against the agreed criteria and resulting consultation. No consideration was given to the information provided on the Kings Square unit as this is of no direct relevance to the application. The Council's criteria states that each application will be judged on its own merits.

The application was refused for the following reasons:-

Concerns regarding obstruction of the highway but more specifically HSBC Bank as outlined in their objections.

The siting of the unit is not compatible with the area in which it is proposed to be situated and neither enhances the street scene or adds vitality to the Historic City Centre.

The goods on offer are principally the same as those offered on another unit in Eastgate Street and also a consented unit in Kings Square, therefore the unit does not add anything new to the City Centre offer.

- 4.5 Mr Stevens was informed of this decision of 4th November 2011.

5.0 APPEAL DETAILS

- 5.1 The following appeal was received on 15th November 2011 and is summarised as follows:

Regarding the refusal of Street Trading Application STAPP33/JAW. I must appeal against the above decision as the stated reasons for refusal are erroneous and flawed.

Also as the circumstances under which the application was made have not been taken into account.

GROUND OF APPEAL

1. The pitch applied for is an established one and occasional siting of our stall there will cause no more obstruction than the market stalls pitched there for a number of years, nor will it block any emergency exit or display window or present any security risk – if the latter was cause for concern the pitch would not be in regular use. (See appendix 1 a, b and c)
2. The unit is compatible with the area for which it is proposed, it was designed in consultation with the City Council specifically to stand outside a bank of similar architectural style to HSBC and matches some of its architecture (appendix 1a)
3. The goods to be sold will not conflict with any other stall or shop as this is an application to re-site an existing consented stall.

For the committee's information there are no shops selling these goods in Northgate Street and the stall will in fact be further away from the other stall in Eastgate Street if re-sited to the pitch applied for (210 meters as opposed to 145 meters when in Kings Square).

4. I feel that this application was made in response to a new trader being consented to trade in direct opposition to our long established stall in Kings Square should be taken into account.

I enclose copies of emails between Mrs Wells and myself (appendix 2) in which she makes the correct assumption that there is not enough trade in Kings Square for two units and ends by saying that she understands the problem and would like to find a fair and satisfactory conclusion.

The siting of the new trader opposite us at the only economically viable time of year is neither fair or satisfactory.

I respectfully ask the licensing committee to allow this appeal.

6.0 APPEAL RESPONSE

Point 1

- 6.1 The HSBC Bank has informed the Council that the siting of the unit does pose a security risk for their deliveries. If permitted the security company will refuse to deliver causing serious operational issues for the bank and will result in legal action being taken against the Council.
- 6.2 The appellant is quite incorrect in his claim that this is an established trading pitch. There is no established pitch however, it is correct that there is a farmers market held in the area on Fridays plus a craft market on one Saturday per month. Those regular market operations do not provide justification for allowing the appeal proposal.

- 6.3 Gloucester has a long history of markets and a desire to publicise and promote these to encourage visitors to the City to provide a vibrant street scene and boost the local economy. This can be evidenced by the recent programme on ITV West showcasing Gloucester's Markets.
- 6.4 It is nationally recognised that Markets are a way of attracting visitors and increasing footfall into the area, again evidenced by the recent success of the Victorian Market operated at the Quays. As a result local businesses recognise the benefits of markets and accept them as part of the City's culture and heritage.
- 6.5 The Farmers Market and monthly craft market are embraced by City Centre businesses as being positive, well managed attractions which help to drive up footfall. It is clear from the consultation responses that businesses near to the Cross do not hold the same view in respect of this hot food stall application. There is widespread opposition and considerable concern about the proposal.

Point 2

- 6.5 The unit is a tall and solid structure that does not fit with the architecture of the buildings around it and certainly does not display architectural design to match with the surrounding buildings. The photograph supplied with the application (Appendix A) does rather demonstrate the point that the unit appears a discordant feature against the backdrop of attractive buildings at Gloucester's historical centre.
- 6.6 The HSBC Bank are currently carrying out a large programme of investment in their property. The windows are blank at this moment in time but there are plans for displays in each window. The height and solid backed structure of the unit will obscure the display windows.

Point 3

- 6.7 There is no disputing the fact that this stall if granted would be further away than the Kings Square stall currently is, however this is an irrelevant consideration. The key question is whether the stall adds anything new and positive to the City Centre. Given that it replicates existing stalls, operated by the same trader, it is impossible to see what benefit it offers.

Point 4

- 6.8 As previously mentioned no account was taken of the reason for application regarding Kings Square when considering this application as each application is judged on its own merits. However as Mr Stevens raises the point I will respond.

Mr Stevens has traded in Kings Square for a number of years with varying numbers of consented trading days. Until this year there were no other applications for that area.

During 2010/11 Mr Stevens had consent to trade for 7 days per week but actually traded and paid for 1 day per week with the exception of November and December 2010. When Mr Stevens reapplied for consent this year he made an application for

only 1 day per week Saturdays and also requested the whole months of November and December.

Around the same time an application was received from another provider which was granted consent for Kings Square. The applicant is bringing something new to the City and permission has been granted for trade Monday to Thursday inclusive – ie. days when Mr Stevens will not be there.

There now became an issue as Mr Stevens felt it was his 'right' to trade all of November and December then revert to one day per week as per consent whilst the other trader wished to trade on their consented days too. Details of which are all confirmed in the emails provided by Mr Stevens (appendix 2)

It was agreed that both traders could be in place during the months of November and December, the new trader for his 4 consented days and Mr Stevens all week.

Therefore the 'fair and satisfactory conclusion' referred to by Mr Stevens in appendix B was achieved by permitting both traders to be in place during November and December. These months are the only time that both traders will be in place and we are at this position as a concession to both traders as they are offering very different products and are not in any way in direct competition.

At the time of writing this report the new trader has not traded at all during November, meaning Mr Stevens has been the only trader in the area. The new trader has indicated that they plan to start trading early December.

Overall, the application represents a very significant challenge to the policy and criteria for Street Trading adopted by the Council. It would represent a quite inappropriate and discordant feature at one of Gloucester's busiest and historic street junctions. It brings no new offer to the City Centre and will disrupt and disturb the operation of nearby businesses, each of which has raised objections.

The committee is recommended to dismiss the appeal and uphold the reasons for refusal.

7.0 FINANCIAL IMPLICATIONS

7.1 None

7.0 LEGAL IMPLICATIONS

8.1 Street Trading is regulated under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 and is a relative recent activity. Market trading is an historical activity in the City, regulated by the City having been granted Royal Charters as far back as 1155. The Farmer's market operates under the terms of the Market Charters.

8.2 The criteria that has been imposed by the Council to determine street trading applications needs to comply with both the Local Government (Miscellaneous Provisions) Act 1982 and EU Services Directive 2006.. The Act is to be changed to

bring it in line with the Directive, but in broad terms, having criteria must be in the public interest in terms of existing traders. For new applications the criteria must be justifiable in terms of public policy, public security (which includes public safety) public health or the protection of the environment. Many of the concerns expressed in representations would fit the justification criteria.

- 8.3 The report makes mention of representations from the HSBC Bank, regarding a security risk the siting of the unit would pose to the bank in terms of the delivery and collection of cash by security companies. Members' attention is drawn to paragraphs 4.3 (page 20) and 6.1 of the report and the reference to a possible legal challenge against the City Council, if their security is compromised. Section 17 of the Crime and Disorder Act 1998 places a duty on the Council to do all it reasonably can to reduce crime and disorder locally.

Background Papers :

Published Papers :

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