

Gloucester City Council

Meeting:	Licensing and Enforcement Sub-Committee	Date:	11 February 2015
Subject:	Appeal against the refusal to renew a Street Trading Consent – Hot Food unit, Lay-by off Innsworth Lane, Gloucester		
Report Of:	Gill Ragon – Head of Public Protection		
Wards Affected:	Longlevens		
Contact Officer:	Richard Barnett – Licensing And Enforcement Officer		
	Email: Richard.Barnett@Gloucester.gov.uk		Tel: 396311
Appendices:	<ol style="list-style-type: none">1. Street Trading Criteria2. Application to renew Street Trading consent3. Copies of representations received4. Refusal letter for Street Trading consent5. Appeal letter from Mr. Aslantepe6. Letters received on 22.01.15 and 02.02.15 in support to renew application.7. Map of location		
Reference No.	ES21192		

FOR GENERAL RELEASE.

1.0 Purpose of Report

- 1.1 To consider the appeal of Mr Aslantepe against the refusal to renew a street trading consent against agreed criteria.

2.0 Recommendations

- 2.1 Members are recommended to **RESOLVE** that:-

The appeal against the refusal to renew the street trading consent for a catering unit located in Innsworth Lane (Ref:STAPP44) is dismissed for the following reasons:-

- (1) The unit is not compatible within the location it is situated
- (2) Issues have been raised that there has been an increase in noise, smells, litter and late night disturbance and,
- (3) The Street Trading Unit is not complementary to the ambiance and vitality of the location.

3.0 Background

- 3.1 In accordance with Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982, Gloucester City Council has adopted criteria in a Street Trading Consent scheme, where Street Trading covers the selling or exposing or offering for sale of any article in a designated street.
- 3.2 On 1st April 2009, Gloucester City Council adopted a new Street Trading management regime which designated all streets in Gloucester City as 'consent streets'. Consents provide a more flexible means of controlling street trading and are not limited by statute in their refusal or revocation. Applications are therefore subject to the individual merits and fulfilling set criteria.
- 3.3 Potential traders can apply for consent to trade in any street and applications are assessed on their own merits. There is a standard set of criteria that was agreed by Council on 21st March 2013 which is used by officers to determine Street Trading Consent applications. This can be found in **APPENDIX 1**.
- 3.4 Trading in a consent street is prohibited unless the trader has received written consent from Gloucester City Council.

The Application

- 3.5 Mr Aslantepe first applied for street trading consent at Innsworth Lane Lay-by in January 2014.
- 3.6 The Street Trading consent was granted for a temporary 6 month period from 9th June 2014 until 8th December 2014, because concerns were raised during the consultation process about a possible increase in Anti Social behaviour and other issues such as littering, noise etc. arising from these activities. A temporary consent was decided to allow Officers to determine whether those concerns would materialise.
- 3.7 During the first month of their trading period, local Ward Councillors passed on concerns that were raised about this unit to the Licensing Team. These issues included:
- Increase in traffic, making it difficult to park outside the allotments
 - Wheel spinning and fast driving in the area
 - Increase in litter seen in both fields and streets
 - Antisocial behaviour (noise, litter, smell of cannabis smoke)
 - Groups of youths hanging around
- No further complaints or concerns were received by the Licensing Team after July 2014.
- 3.8 An application to renew Street Trading consent for a catering unit in Innsworth Lane Ref: STAPP44 was received on 11th November 2014. A copy of the application and location plan can be seen attached as **APPENDIX 2**. The application was for the exact same days and times and with no changes being made to the unit or location.

- 3.9 As no changes were to be made, a 14 day consultation period started on the 24th November 2014. It was considered appropriate to re-consult on this application because consent was originally granted for a temporary period to determine whether the original objections received were substantiated.
- 3.10 During consultation period, six representations were received. Four of the representations were against the application being granted, one representation stated that they had no objection as long as there were not any changes to the original consent issued on 9th June 2014 and one representation was in support of the application. A copy of all six representations are attached in **APPENDIX 3**.
- 3.11 Once the consultation period had ended all representations both for and against the application were considered in relation to the criteria for determining street trading applications. The renewal application was refused by officers on the grounds outlined in paragraph 5.1 below. A copy of the refusal letter sent on 10th December 2014 can be seen attached in **APPENDIX 4**.

Appeal Details

- 3.12 An appeal letter was received on 29th December 2014 from Mr. Aslantepe outlining the reasons which he believes the Street Trading consent should be granted. This can be seen in **APPENDIX 5**. In summary the grounds of his appeal include:
- Since trading in this location, there has been a reduction in fly tipping, drug dealing and anti-social behaviour in and around Innsworth Lane.
 - At the end of the night the trader walks around the area picking up litter relating to both his business and other sources.
 - The trader's service adds to the variety of different foods available to the public, and the food is of a high standard and at competitive prices.
 - Clients who arrive by car are only there for a short time, whilst their order is completed.
- 3.13 A petition in support of the catering unit was handed in at the reception of Gloucester City Council on 24th December 2014.
- 3.14 The petition consists of around 343 signatures. The petition has not been published with this report due to some of the names and addresses being fictitious and some of the comments being of an offensive nature. However, it will be available at the Hearing should Members wish to consider this.
- 3.15 Two further letters were received by email on 22nd January and 2nd February 2015 in support of the application to renew Street Trading Consent. The letters outlining reasons in support can be seen in **APPENDIX 6**.

4.0 Alternative Options Considered

- 4.1 Should Members decide that the applicant's grounds for appeal against the Officer's decision is valid and outweigh the grounds for refusal. Members may accept the appeal lodged by Mr Aslantepe and agree to renew the street trading consent as applied for.

5.0 Reasons for Recommendations

5.1 This application was not straight forward because representations both in support and against this application have been received. On balance the Officer's recommendation was to refuse this application for the following reasons:

(1) The unit is not compatible within the location it is situated.

Objections were received from Developmental Control and two residents citing this reason.

(2) Issues have been raised that there has been an increase in noise, smells, litter and late night disturbance.

Objections were received from two residents citing this reason. There is scope to control noise, smells and litter under conditions attached to the consent, however some instances of disturbance such as anti-social behaviour are more difficult to control through conditions.

(3) The Street Trading Unit is not complementary to the ambiance and vitality of the location.

Objections were received from Developmental Control and two residents citing this reason.

5.2 Further objections were also received from a ward Councillor and two residents that the location of this unit is causing obstruction to the parking area available for users of the allotment and the sports field. This was not included as a reason for refusal because a second Councillor indicated that cars only stop there for a few minutes and then leave and that there is capacity to park nearby. The Licensing team have not received any objections from either the Police or Highways relating to traffic obstructions of this highway.

5.3 The trader does not currently have planning permission to operate in this location. However, the lack of planning permission alone is not a reasonable ground to refuse street trading consent, because Development Control have their own enforcement powers to deal with activities that do not have planning permission.

6.0 Conclusions

6.1 Members should consider the relevant information, Street Trading Criteria and representations received and make a decision in accordance with the options outlined in paragraph 2.1 or 4.1 of this report.

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

7.0 Financial Implications

7.1 There are no direct financial implications associated with this report.

(Financial Services have been consulted in the preparation this report.)

8.0 Legal Implications

- 8.1 Street Trading is regulated under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
- 8.2 On the 19th February 2009 Council designated all streets in Gloucester City as Consent Streets with effect from 31st March 2009. At the same time, the Council adopted a scheme to determine Street Trading Consent applications. A Street Trading Consent is therefore required before any person can trade on any street in Gloucester City unless the trading is specifically made exempt under Schedule 4 of the Act.
- 8.3 Under the Act, the meaning of “street” is given a wide definition, going beyond being just highway, to include:
“(i) any road, footway, beach or other area to which the public have access without payment; and
(ii) service areas as defined under Section 329 of the Highways Act 1980, and also includes a part of a street.”
- 8.4 The “*Criteria for Determining Street Trading Consent Applications in the City of Gloucester*” was revised and approved by Council on 21st March 2013. The revision removed outdated criteria to ensure it is compliant with the EU Services Directive 2006.
- 8.5 All determinations must be justified by reasons of public policy, public security, public health or the protection of the environment.
- 8.6 The Local Government (Miscellaneous Provisions) Act 1982 provides no right for the applicant to appeal to the Magistrates’ Court against a Council decision to refuse consent or impose condition(s). The appeal process within the Council is something that it has introduced itself to allow the applicant to be fairly heard.
- 8.7 Appeal hearings are normally hearing de novo (meaning they are completely fresh hearing). The Licensing and Enforcement Committee places itself in the position of the officer who made the original decision. The Committee must base its decision on the same criteria applied by the Officer and any new information made available since the date of appeal.
- 8.8 In reaching its decision, the Committee is a quasi-judicial body and accordingly must have regard to the rules of natural justice.

(Legal Services have been consulted in the preparation this report.)

9.0 Risk & Opportunity Management Implications

- 9.1 Risks associated with public safety and crime prevention are fully appraised through the consultation process.

10.0 People Impact Assessment (PIA):

10.1 There are no adverse impacts or any risks to customers in the areas of gender, disability, age, ethnicity, religion, sexual orientation and community cohesion.

11.0 Other Corporate Implications

Community Safety

11.1 Community Safety is considered within context when each application is considered. In this application letters in support indicate that the presence of this street trader has reduced antisocial behaviour and crime in this area, namely drug dealing and fly tipping.

Sustainability

11.2 There are no sustainability implications associated with this report.

Staffing & Trade Union

11.3 There are no staffing or Trade Union implications associated with this report.

Background Documents:

Provision of Services Regulations 2009

Schedule 4, Local Government (Miscellaneous Provisions) Act 1982