

# Gloucester City Council

<b>Meeting:</b>	Licensing and Enforcement Sub-Committee	<b>Date:</b> 17 <sup>th</sup> March 2015
<b>Subject:</b>	Appeal against the decision to refuse Street Trading Consent – Hot Food unit, Pavilion 2, Olympus Park, Quedgeley	
<b>Report Of:</b>	Gill Ragon – Head of Public Protection	
<b>Wards Affected:</b>	Quedgeley Severnvale	
<b>Contact Officer:</b>	Richard Barnett – Licensing And Enforcement Officer	
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<b>Appendices:</b>	<ol style="list-style-type: none"><li>1. Street Trading Criteria</li><li>2. Application for Street Trading consent and location plan</li><li>3. Copies of representations received</li><li>4. Refusal letter for Street Trading consent</li><li>5. Appeal letter from Mr. Sahin</li></ol>	
<b>Reference No.</b>	ES21195	

## FOR GENERAL RELEASE.

### 1.0 Purpose of Report

- 1.1 To consider the appeal of Mr Sahin against the decision to refuse street trading consent against agreed criteria.

### 2.0 Recommendations

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

The appeal against the refusal to grant the street trading consent for a catering unit located at Pavilion 2, Olympus park, Quedgeley is dismissed for the following reasons:-

- (1) The siting and operation of any trader shall be such that it does not cause any problems of highway safety or obstruction to users of the highway and,
- (2) Issues have been raised that there has been an increase in noise, smells, litter and late night disturbance.

### **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 1<sup>st</sup> 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 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 21<sup>st</sup> 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.

### **4.0 The Application**

- 4.1 Mr. Sahin first applied for street trading consent at Pavilion 2, Olympus Park in December 2014. A copy of the application and location plan can be seen attached as **APPENDIX 2**
- 4.2 A 28 day consultation period was started on 9<sup>th</sup> December 2014.
- 4.3 During the consultation period, two representations were received. Both of the representations were against the application being granted. A copy of the two representations are attached in **APPENDIX 3**.
- 4.4 Once the consultation period had ended, the representations were considered in relation to the criteria for determining street trading applications. The application was refused by officers. A copy of the refusal letter sent on 9<sup>th</sup> January 2015 can be seen attached in **APPENDIX 4**.

### **5.0 Appeal Details**

- 5.1 An appeal letter was received on 27<sup>th</sup> January 2015 from Mr. Sahin 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:
- He believes the road is only used for offices and workshops and does not believe the siting of the van would create an obstruction to the traffic.
  - He believes that there are no houses in the area and hardly any traffic during the evening. There are no night clubs or late night pubs so he believes there would not be an increase in noise, therefore unlikely to cause late night disturbance.
  - A litter bin will be provided and cleared on a daily basis by the vendor.
  - Air ventilation fan is fitted in the vending van to eliminate smell.

## **6.0 Alternative Options Considered**

- 6.1 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. Sahin and agree to grant the street trading consent as applied for or, grant the Street Trading Consent with additional conditions to address issues raised in the representations.

## **7.0 Reasons for Recommendations**

- 7.1 Having viewed all representations received during the consultation process the Officer's recommendation was to refuse this application for the following reasons:

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

Objections were received from the Police stating that they have concerns regarding this application. The community team have been dealing with a number of issues at Olympus Park of anti-social behaviour. 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.

(2) The siting and operation of any trader shall be such that it does not cause any problems of highway safety or obstruction to users of the highway.

Olympus Park is used as an alternative route to Bristol Road when it becomes busy. The hot food unit is located on the main road through Olympus Park. The road is also regularly used in the evening as there is a gym located near by the proposed trading location.

- 7.2 An objection was also received from Quedgeley Parish Council who stated that they fully support the concerns raised by the Police and that they would support the application being denied.

## **8.0 Conclusions**

- 8.1 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 6.1 of this report.

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

## **9.0 Financial Implications**

- 9.1 There are no direct financial implications associated with this report.

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

## **10.0 Legal Implications**

- 10.1 Street Trading is regulated under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
- 10.2 On the 19<sup>th</sup> February 2009 Council designated all streets in Gloucester City as Consent Streets with effect from 31<sup>st</sup> 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.
- 10.3 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.”
- 10.4 The “*Criteria for Determining Street Trading Consent Applications in the City of Gloucester*” was revised and approved by Council on 21<sup>st</sup> March 2013. The revision removed outdated criteria to ensure it is compliant with the EU Services Directive 2006.
- 10.5 All determinations must be justified by reasons of public policy, public security, public health or the protection of the environment.
- 10.6 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.
- 10.7 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.
- 10.8 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.)

## **11.0 Risk & Opportunity Management Implications**

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

## **12.0 People Impact Assessment (PIA):**

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

## **13.0 Other Corporate Implications**

### Community Safety

13.1 Community Safety is considered within context when each application is considered.

### Sustainability

13.2 There are no sustainability implications associated with this report.

### Staffing & Trade Union

13.3 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