

Gloucester City Council

Meeting:	Licensing and Enforcement Sub-Committee	Date: 17 th March 2015
Subject:	Appeal against the decision to refuse a Street Trading Consent – Hot Food unit, Crypt School Roundabout, Gloucester	
Report Of:	Gill Ragon – Head of Public Protection	
Wards Affected:	Podsmead	
Contact Officer:	Richard Barnett – Licensing And Enforcement Officer	
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Appendices:	<ol style="list-style-type: none">1. Street Trading Criteria2. Application for Street Trading consent and location plan3. Copies of representations received4. Refusal letter for Street Trading consent5. Appeal letter from Mr. Kilic	
Reference No.	ES21193	

FOR GENERAL RELEASE.

1.0 Purpose of Report

- 1.1 To consider the appeal of Mr Kilic against the decision to refuse a 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 Crypt School Roundabout 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 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 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.

4.0 The Application

- 4.1 Mr Kilic first applied for street trading consent at Crypt School Roundabout in November 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 21st November 2014.
- 4.3 During the consultation period, six representations were received. Four of the representations were against the application being granted, one representation stated that they had no objection and one comment was from Planning stating that there is currently no planning consent in place so they would need to apply for that. A copy of all six representations are attached in **APPENDIX 3**.
- 4.4 Once the consultation period had ended all 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 6th January 2015 can be seen attached in **APPENDIX 4**.

5.0 Appeal Details

- 5.1 An appeal letter was received on 21st January 2015 from Mr. Kilic 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 will have two bins for litter. One outside the food trading unit and one inside.
- Mr. Kilic does not believe the unit would cause a smell but if any complaints are received he will stop trading.

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. Kilic and agree to grant the street trading consent as applied for, or grant the Street Trading Consent with additional conditions that address the concerns raised in the representations received.

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 residents citing this reason. There is scope to control noise, smells and litter under conditions attached to the consent, however some instances of customer disturbance 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.

Objections were received from residents stating that even though trading hours will be out of school hours, the school's sports facilities are still used. Also, it could create traffic problems during parent evenings and evening events at the school.

- 7.2 Further representations were also received from Ward Councillor Dallimore and a Senior Partnership and Engagement Officer that they object to this application being granted on health grounds, due to the catering unit being located near to a school. The Council has committed to help residents in Podsmead change their behaviour and adopt a healthy lifestyle. This has been supported by grant funding from the British Heart Foundation.

- 7.3 The Licensing team have not received any objections from either the Police or Highways relating to traffic obstructions of this highway. However, the proposed location is a bus stop on a roundabout, which is unsuitable in case buses and coaches need access to drop off and pick up children outside school hours. There is also limited space for customer vehicles to park. Contact has been made with Crypt school to ascertain the bus times. Crypt School have confirmed that the busses arrive at 14:30, and depart around 15:30. If there are organised school trips then the busses are usually there around 17:30. The School also have evening activities where busses could be there at any time the events are scheduled to end.

- 7.4 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.

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 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.
- 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 21st 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