

Gloucester City Council

Meeting: Licensing and Enforcement Sub Committee
Date: Wednesday 1 July 2020 – 3pm
Subject: Appeal against the decision to refuse a Street Trading Consent – sale of provisions located on The Oxbode, Gloucester City.
Report Of: Head of Place
Wards Affected: All
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- Appendices:**
1. Street Trading Criteria
 2. Application from Taran Catley for Street Trading Consent dated 5 December 2019
 3. Representations from Gloucestershire Highways and Principal Conservation Officer, Gloucester City Council, dated 11 December 2019
 4. Representation from Councillor Paul James, dated 12 December 2019
 5. Representation from police CCTV unit dated, 6 January 2020
 6. Refusal letter dated 6 January 2020
 7. Solicitors response dated 17 February 2020
 8. Representations from Gloucestershire Highways, dated 19 February 2020 and Principal Conservation Officer, Gloucester City Council dated 4 March 2020, following re-consultation
 9. Refusal letter dated 31 January 2020
 10. Response email from solicitor dated 1 April 2020.
 11. Response letter to solicitor dated 2 April 2020.
 12. Response from Gloucestershire Highways dated 6 April 2020 and Principal Conservation Officer dated 8 April 2020
 13. Email to applicant and solicitor dated 15 April 2020

FOR GENERAL RELEASE/ EXEMPTIONS

This report contains exempt information as defined in paragraph(s) 1,2,3 and 7 of Part I of schedule 12A to the Local Government Act 1972 (as amended)

1.0 Purpose of Report

- 1.1 To consider the appeal by Mr Catley against the decision to refuse a street trading consent against agreed criteria.

2.0 Recommendations

- 2.1 The Licensing and Enforcement Sub-Committee are recommended to resolve that the appeal against the refusal to grant the street trading consent for a retail unit to be located on The Oxbode, Gloucester be dismissed for the following reasons:
 - a. The siting of a trading unit is not considered to be compatible with the character of the area in which it is proposed to be situated. The design of the unit is considered likely to have a significant adverse impact on the visual amenity of the area; and
 - b. The appearance and use of the Street Trading Unit including associated equipment or structures is not considered to be complimentary to the ambience and vitality of the locality; and
 - c. The siting and operation of any trader is considered likely to cause problems of highway safety, obstruction to users of the highway and create unacceptable parking issues.

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 the fulfilling of 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 in 2017 which is used by officers to determine Street Trading Consent applications (**please see appendix 1**).
- 3.4 Trading in a consent street is prohibited unless the trader has received written consent from Gloucester City Council.

Information

- 4.1 Taran Catley submitted an application on 5 December 2019 for a street trading consent to sell provisions (cheese, pies, pasties etc.) from a mobile retail unit or a gazebo in Gloucester City centre. The application listed four potential locations where he was seeking to trade from (Northgate Street, Southgate Street, Eastgate Street near to The Guildhall or The Oxbode). Only one location can be proposed on each application and it was agreed that the Oxbode would be the subject of this application (**please see Appendix 2 for details**).

- 4.2 The details of the application were then circulated to the usual consultees on 9 December 2019 for comment and notice was posted at the location inviting comments within 28 days.
- 4.3 Representations were received from Sally Godwin at Gloucestershire Highways, Charlotte Bowles-Lewis, the Principal Conservation Officer for Gloucester City Council, Councillor Paul James, Leader of Gloucester City Council at the time and Alison Wright from the Gloucestershire police CCTV unit **(please see appendices 3, 4 and 5 for full details)**
- 4.4 After consideration of the comments made the application for street trading consent was refused and Mr Catley was informed by letter on 6 January 2020 **(please see appendix 6)**
- 4.5 On 17 February 2020 a letter was received from Mr Catley's solicitor detailing alleged breaches of Council policy when determining the application and seeking a hearing before a Licensing Sub-Committee **(please see appendix 7)**.
- 4.6 Due to this Mr Catley and his solicitor were contacted and it was agreed that the application would be consulted upon again and, dependant on the decision, would be put before the Licensing Sub-Committee for determination if necessary.
- 4.7 The application was re-circulated on 19 February 2020 and included details of exactly where Mr Catley wished to site his unit and offered an alternative to the mobile unit in the form of a gazebo as agreed with him. Notice was also posted at the proposed location.
- 4.8 Following the re-consultation further responses were received from Sally Godwin at Gloucestershire Highways on 19 February 2020 and also from Charlotte Bowles-Lewis on 4 March 2020 **(please see appendix 8)**. Following consideration of these and also the initial representations the application was again refused.
- 4.9 Mr Catley was contacted by phone and was informed of the result of the re-consultation. He agreed that there seemed little room for mediation with either County Highways or the Principal Conservation Officer and was happy for the matter to be referred to a Licensing and Enforcement Sub-Committee for consideration. A further refusal letter was sent to him on 31 March 2020 **(please see appendix 9)**.
- 4.11 An email was received from Mr Catley's solicitor on 2 April 2020. **(please see appendix 10)**
- 4.12 A response was sent to Mr Catley's solicitor on 2 April 2020 which confirmed the refusal and also fully outlined the reasons for the decision to refuse the application once again **(please see appendix 11)**.
- 4.12 As a result of this Gloucestershire Highways and the Principal Conservation Officer were contacted by email on 6 April 2020 in order to ascertain whether, or not there was any room for a compromise. They both indicated that there was not in this case. The responses are attached **(please see appendix 12)**.
- 4.13 An email, dated 15 April 2020 was sent to Mr Catley and his solicitor informing them of the responses **(please see appendix 13)**

5.0 Conclusions

- 5.1 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
- 5.2 The Committee is recommended to dismiss the appeal and uphold the reasons for refusal.

6.0 Financial Implications

- 6.1 There are no direct financial implications associated with this report. (Financial Services have been consulted in the preparation this report.)

7.0 Legal Implications

- 7.1 Street Trading is regulated under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
- 7.2 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.
- 7.3 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."
- 7.4 The "*Criteria for Determining Street Trading Consent Applications in the City of Gloucester*" was revised and approved by Council in 2017. The revision removed outdated criteria to ensure it is compliant with the EU Services Directive 2006.
- 7.5 All determinations must be justified by reasons of public policy, public security, public health or the protection of the environment.
- 7.6 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.
- 7.7 Appeal hearings are normally hearing de novo (meaning they are completely fresh hearing). The Licensing and Enforcement Sub 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.

- 7.8 In reaching its decision, the Committee is a quasi-judicial body and accordingly must have regard to the rules of natural justice.
(One Legal has been consulted in the preparation this report.)

8.0 Risk & Opportunity Management Implications

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

9.0 People Impact Assessment (PIA):

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

10.0 Other Corporate Implications

Community Safety

- 10.1 Community Safety is considered within context when each application is considered.

Sustainability

- 10.2 There are no sustainability implications associated with this report

Staffing & Trade Union

- 10.3 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

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