

# Gloucester City Council

<b>Meeting:</b>	<b>Licensing and Enforcement Sub-Committee</b>	<b>Date:</b>	<b>19<sup>th</sup> October 2016</b>
<b>Subject:</b>	<b>Appeal by Mr Yunus Caparlar against the decision to refuse a Street Trading Consent for Glevum Way, Abbeydale, Gloucester</b>		
<b>Report Of:</b>	<b>Gill Ragon – Head of Public Protection</b>		
<b>Wards Affected:</b>	<b>Abbeydale</b>		
<b>Contact Officer:</b>	<b>Rebecca Tuck – Licensing And Enforcement Officer</b>		
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<b>Appendices:</b>	<b>1. Street Trading Criteria</b>		
	<b>2. Application for Street Trading consent and location plan</b>		
	<b>3. Copies of representations received</b>		
	<b>4. Refusal letter for Street Trading consent</b>		
	<b>5. Appeal letter from Mr Caparlar</b>		

## **FOR GENERAL RELEASE.**

### **1.0 Purpose of Report**

- 1.1 To consider an appeal by Mr Caparlar against the decision to refuse an application for street trading consent against the agreed criteria.

### **2.0 Recommendations**

- 2.1 The Committee are recommended to take one of the following courses of action:
- a) To grant Mr Caparlar's application for street trading consent as applied for with or without additional, appropriate licence conditions attached.
  - b) To refuse Mr Caparlar's appeal against the decision to refuse his application for street trading consent because following the consultation period and taking into consideration representations received, the application falls outside the Council's policy on the criteria for determining street trading applications.

### **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 seen at **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 On 11 August 2016 Mr Caparlar made an application for street trading consent at Glevum Way in Abbeydale. A copy of his application and location plan is attached as **APPENDIX 2** of this report.

4.2 A 28 day consultation period was started on 12 August 2016.

4.3 During the consultation period, four representations were received that were against street trading consent being granted. No representations were received in support of the application. Copies of the representations are attached in **APPENDIX 3** of this report.

4.4 Following the consultation period 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 to Mr Caparlar on 20 September 2016 can be seen attached as **APPENDIX 4** of this report.

#### **5.0 Appeal Details**

5.1 Mr Caparlar submitted a letter of Appeal on 28 September 2016 outlining the reasons which he believes the Street Trading consent should be granted. This can be seen in **APPENDIX 5** of this report.

In summary the grounds of Mr Caparlar's appeal include:

- Street Trading Consent has been granted in the past close to where Mr Caparlar intends to trade from
- The reasons for refusal relate to issues that can be rectified following a discussion

#### **6.0 Officers Reasons for Refusal of Street Trading Consent**

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

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

Objections were received from existing businesses trading close to pitch that Mr Caparlar intends to trade from 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.

- 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 existing businesses trading close to the pitch that Mr Caparlar intends to trade from stating that this area already suffers with considerable congestion and the siting of a mobile catering unit would only add to the congestion in a no through road.

- Issues have been raised that the range of food offered for sale would not promote the positive health impacts that may be taken into consideration in line with Gloucester City Council's Interim Planning Policy for Mobile Catering Units.

An objection was received from an existing business trading close to the pitch that Mr Caparlar intends to trade from stating that it would be inappropriate to site a van selling fast food opposite a Medical Practice that is trying to promote healthy eating.

6.2 A further representation was received from Ward Councillor Gravells whose objection also relates to all the points raised in paragraph 7.1 of this report.

6.3 The Licensing team also received an objection from Highways relating to litter, size of the vehicle and its proximity to a play area. The objection does not go into specific detail about these issues and Highways have been contacted and asked for more detail regarding their concerns. This additional information is attached with the representations at **APPENDIX 3** of this report.

6.4 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.

## **7.0 Conclusions**

7.1 Members should consider the relevant information, Street Trading Criteria and representations received.

## **8.0 Financial Implications**

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

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

## **9.0 Legal Implications**

9.1 Street Trading is regulated under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.

- 9.2 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.
- 9.3 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.”
- 9.4 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.
- 9.5 All determinations must be justified by reasons of public policy, public security, public health or the protection of the environment.
- 9.6 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.
- 9.7 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.
- 9.8 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.)

## **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