

## AGENDA ITEM NO. 4

**TITLE: DETERMINATION OF AN APPLICATION FOR CONSENT TO TRADE FROM A LOCATION DEFINED AS A CONSENT STREET IN ACCORDANCE WITH THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982.**

Applicant: Mr Zeki Yasan

Date: 30 November 2018

Author: Senior Licensing Officer – Stewart Broome

[T144]

### 1.0 PURPOSE/SUMMARY OF REPORT

1.1 To consider an application to trade from a location defined as a Consent Street within the East Cambridgeshire district boundary.

### 2.0 RECOMMENDATION(S)

2.1 That Members consider the report, and determine:

- (i) To grant the application as applied for; OR
- (ii) To grant the application with any variation deemed reasonably necessary subject to the Council's approved standard conditions and any other specific conditions or restrictions the Committee deem reasonable and appropriate; OR.
- (iii) To refuse the application.

### 3.0 BACKGROUND

3.1 The Local Government (Miscellaneous Provisions) Act 1982 contains adoptive provisions enabling local councils to control street trading by designating streets as Licence Streets, Consent Streets or Prohibited Streets.

3.2 Street trading is only permitted in Licence or Consent Streets if the Council has given permission by way of a licence or consent. Permission cannot be given to trade in Prohibited Streets. Street trading is not controlled in streets that have not been designated by the Council, or in areas covered by one of the exemptions within the legislation.

3.3 The Council reviewed its street trading resolutions in 2015, and following a consultation exercise all streets (as defined by the "1982 Act") in the district were designated as Consent Streets, with the exception of the A10, A11 and A14 trunk roads which were designated as Prohibited Streets. This change took effect from 1 April 2016.

3.4 In accordance with the Council's Street Trading Policy, applications that do not attract objections can be dealt with via delegated powers to officers. However, if an objection is received, the application must be determined by Members.

3.5 In April 2018 minor amendments were made to the Street Trading Policy, to enable the Licensing Sub-Committee, or the main Licensing Committee to determine such applications. These amendments came into effect on 11 April 2018.

#### 4.0 THE APPLICATION

4.1 An new application has been received from a Mr Yasan of 25 Benedict Street, Ely, Cambridgeshire, CB6 3AU to sell hot food and drink from a catering unit to be permanently located on the grass verge at the edge of the car park of the Brooklands Centre, The Brook, Sutton, Cambridgeshire during the times listed in the table below:

Day	Hours
Monday to Sunday	17:00 to 22:30

4.2 The full application form, location plan, and a photo of the trading unit can be found in **Appendix 1**.

4.3 In accordance with the Council's policy the following organisations/ people were consulted:

- Cambridgeshire Constabulary
- Cambridgeshire Fire and Rescue Service,
- Cambridge County Council highways department,
- Environmental Health
- Planning
- Ward, City, town and parish councils
- Property owners within 100metres who directly overlook the proposed location (static pitches only)

4.4 During the consultation period Officers received a total of four valid objections to the granting of consent (**see Appendix 2**), and one valid comment supporting the application (**see Appendix 3**).

4.5 Those opposing the application cited noise, odour, rubbish, and traffic issues as reasons for their objections.

4.6 The supporting comment just stated no objection.

4.7 In the period between submitting the application and this report being written, the applicant and one of the objectors, Sutton Parish Council (the landowner) agreed terms that they were both happy with. These are as follows:

Day	Hours
Monday to Saturday (no Sundays)	18:00 to 22:30

The unit to remain trading from the location permitted on their existing permission, and the trading vehicle to be removed from site daily.

4.8 There are no other street trading consent holders in the village, but Mr Yasan currently holds a street trading consent to trade from the Brooklands Centre car park with the following restrictions:

Day	Hours
Thursday to Saturday	18:00 to 22:00
Christmas Eve	18:00 to 00:00
New Year's Eve	18:00 to 01:00

The unit must be removed from site daily.

4.9 Mr Yasan has chosen to submit a new application, as he did not wish to affect his other permission whilst attempting to increase his trading hours.

## 5.0 CONSIDERATIONS

5.1 In considering applications for the grant of a Street Trading Consent, as well as the individual merits of the application and the relevant legislation, the Street Trading Policy provides that the Council may have regard to the number, nature and type of traders already trading within a consent area when determining an application, and when determining an application for the grant or renewal of a Street Trading Consent the following factors will be considered:

### a) Public Safety

Whether the street trading activity represents, or is likely to represent, a substantial risk to the public from the point of view of obstruction, fire hazard, unhygienic conditions or danger that may occur when a trader is accessing the site.

### b) Public Order

Whether the street trading activity represents, or is likely to represent a substantial risk to public order.

### c) The Avoidance of Public Nuisance

Whether the street trading activity represents, or is likely to represent, a substantial risk of nuisance to the public from noise or misbehaviour, particularly in residential areas.

### d) Highway

The location and operating times will be such that the highway can be maintained in accordance with the Cambridgeshire County Council's requirements and that there are no dangers to those who have a right to use the highway and no obstruction for emergency access.

### e) Compliance with legal requirements

Trading should only be conducted from a trading unit that complies with relevant legislation. Observations from relevant officers will be considered on this point.

5.2 The Council's Street Trading Policy states that the Council will normally grant a Street Trading Consent unless, in its opinion:

- A significant effect on road safety would arise either from the siting of the trading activity itself, or from customers visiting or leaving the site;
- Where there are concerns over the recorded level of personal injury accidents in the locality where the street trading activity will be sited;
- There would be a significant loss of amenity caused by traffic, noise, rubbish, potential for the harbourage of vermin, odour or fumes;
- There is already adequate like provision in the immediate vicinity of the site to be used for street trading purposes but note that competition issues will not be a consideration;
- There is a conflict with Traffic Orders such as waiting restrictions;
- The site or pitch obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use for street trading purposes;

- The trading unit obstructs the safe passage of users of the footway or carriageway;
- The trading unit is not considered to be suitable in style or in keeping with the location requested.
- The pitch interferes with sight lines for any road users such as at road junctions, or pedestrian crossing facilities;
- The site does not allow the Consent Holder, staff and customers to park in a safe manner;
- The street trading activity is carried out after dusk and the site is not adequately lit to allow safe access and egress from the site for both customers and staff.
- In the case of a renewal application the previous year's fees have not been settled, and/or the consent holder has been the subject of substantiated complaints.

5.3 The Street Trading Policy allows Members and Officers to depart from the policy where there are clear and compelling reasons for doing so.

5.4 On 17<sup>th</sup> and 20<sup>th</sup> April 2018 Environmental Health received complaints from two local residents that Mr Yasan's business was causing odour and vermin issues, and that Mr Yasan was arriving earlier than he was permitted to.

5.5 Environmental Health spoke with Mr Yasan to ask that he address any possible failings that may be causing food odour, and sent out diary sheets to the complainants. These sheets were not returned and so the complaints were closed. No further complaints have been received during the first eight months Mr Yasan has been trading.

5.6 Licensing Officers attended to see if Mr Yasan was arriving earlier than he should and found no evidence that this was the case.

5.7 Mr Yasan provided a large number of supportive comment slips from his customers to support his application.

5.8 Sutton Parish Council (the landowner) has given permission to use the land for trading purposes to the new hours they agreed for a temporary trial period of six months.

## 6.0 LEGISLATIVE POSITION/LEGAL IMPLICATIONS

6.1 Schedule 4 paragraph 7(2) of the "1982 Act" provides that the Council may grant a consent if they think fit, subject to observing the mandatory grounds for refusal at sub-paragraph 7(3). No mandatory grounds of refusal are applicable to this application.

6.2. The Council is not under any duty to grant a Street Trading Consent and need not specify any of the statutory grounds for refusal. Therefore, the matter to grant or refuse an application for a Street Trading Consent is at the total discretion of the Council. However, the Council must have regard to its Street Trading Policy, which outlines the approach that it will take in determining applications of this sort, and any comments submitted in support of, or in opposition to the granting of the application. Members will need to give full reasons for their decision.

6.3. Accordingly the Committee may:

- (i) Grant the application as it stands in which case it will be subject to the Council's approved standard conditions (**see Appendix 4**).
- (ii) Grant the application with any variation deemed reasonably necessary subject to the Council's approved standard conditions and any other specific conditions or restrictions the Committee deem reasonable and appropriate.
- (iii) Refuse the application.

6.4 Street Trading Consents can be issued for a maximum of twelve months, but can be issued for shorter periods.

6.5 Street Trading Consents can be revoked at any time.

## 7.0 FINANCIAL IMPLICATIONS/EQUALITY IMPACT ASSESSMENT

7.1 There are no costs associated with this report, other than the author's time. However, should the Council's decision be subject to a judicial review, legal fees to defend the review would be accrued.

7.2 An Equality Impact Assessment (EIA) is not required as this does not relate to a service provided by the Council or a decision on a change of policy, but a regulatory disciplinary matter relating to an individual.

## 8.0 APPENDICES

- 8.1 Appendix 1 - Application, location plan, and trading unit photo
- Appendix 2 - Objections
- Appendix 3 - Supporting comment
- Appendix 4 - Standard trading conditions

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<u>Background Documents</u>	<u>Location</u>	<u>Contact Officer</u>
Local Government (Miscellaneous Provisions) Act 1982	Room SF208 The Grange Ely	Stewart Broome Senior Licensing Officer 01353 616477 stewart.broome@eastcambs.gov.uk
East Cambs Street Trading Policy 2016		