

Licensing Regulatory Sub-Committee Report
Report of the Licensing Team Leader
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**Local Government (Miscellaneous Provisions) Act 1982
Application for a Street Trading Consent**

1. Purpose of Report

- 1.1 The report asks the Licensing Regulatory Sub-Committee to consider an application for the grant of a Street Trading Consent for a mobile catering kebab van located on Egerton Road between the Royal Surrey hospital and Tesco superstore. A site location map is attached as Appendix 1.

2. Strategic Priorities

- 2.1 The aim of local authority Street Trading regulation is to create a street trading environment which complements premises-based trading, is sensitive to the needs of residents, provides diversity and consumer choice, and seeks to enhance the character and safety of the local environment. We aim to ensure this by only issuing Street Trading Consents to those businesses that meet these objectives.
- 2.2 The Council has adopted a Street Trading Licensing Policy in relation to issuing Street Trading Consents, giving guidance on the approach to be taken when considering whether applicants and existing licence holders are suitable to hold a consent. This Policy helps us maintain a consistent approach, builds public confidence and assists in supporting business.
- 2.3 The Council's decision must balance the right of a Street Trading Consent holder to hold that permission against the right of the needs of residents and established retail businesses. A successful regime will help Street Trading businesses to operate and provide assurance to the public and existing retailers. This assists in the strategic priorities of supporting business and maintaining the safety and wellbeing of our residents.

3. Background

- 3.1 There is no current street trading consent in place for the van. The requirement to obtain a street trading consent for this location only became effective from 1 April 2018 following the review of the designated consent streets by the Licensing Committee on 17 January 2018.
- 3.2 A premises licence (no. GUPL0042) issued under the Licensing Act 2003 has been in place for the van since November 2005 when the provision of late night refreshment became a licensable activity under the Act.
- 3.3 GUPL0042 was varied in November 2017 to extend the sale of hot food until 03:00 hours 7 days a week to 04:00 hours Sunday to Thursday and 05:00 hours on Friday and Saturday.

- 3.4 An application has been submitted for a street trading consent for the van and was subject to the public consultation standards outlined in the Street Trading Policy. A copy of the application form is attached as Appendix 2.
- 3.5 The application is to trade between the hours of 17:00 to 05:00, 7 days a week. The proposed trading location is within 'pay and display' on street parking bays on Egerton Road, on the north bound carriageway, a short distance from the roundabout with the hospital entrance. The application is for kebabs, burgers, chicken and chips. The application describes the unit as a burger van of 2050mm (w) and 6363 (l).
- 3.6 No photograph has been provided by the applicant. An image of the vehicle available from the internet is attached as Appendix 3.
- 3.7 The most recent unannounced food hygiene inspection of Mr Kebab was conducted on 17/01/18 at 18:30. Hygiene standards were generally satisfactory at the time of the visit with Mr Kebab scoring 3 out of 5 for food hygiene.

4. Public Consultation

- 4.1 The application was in consultation from 26 March to 20 April 2018. Copies of the application were distributed to the responsible authorities and local ward councillors as per the Street Trading Policy.
- 4.2 Representations were received from the following Responsible Authorities and are attached as Appendix 4:
- 4.3 The Environmental Health (Food and Safety) service made comment on the application and requested a number of conditions relating to food safety and cleanliness.
- 4.4 The Parking service made comments that the application is in conflict with the current parking restrictions on Egerton Road, with the van having a history of disregarding parking controls despite the issue of fixed penalty notices. The Parking service requested a condition that the van comply with parking restrictions and be removed at the end of each day's trading.
- 4.5 Seven representations were received from other persons and are attached as Appendix 5. These were:

One objection from the local ward Councillors, Cllrs Goodwin and Phillips.

One objection from the local county councillor, Cllr White.

One objection on behalf of the Royal Surrey County Hospital.

Four objections from local residents; Mr Corbett, Mr Risk, Ms Smith and Mrs West.

5. Main Considerations/Evaluation

- 5.1 The aim of local authority Street Trading Consents is to create a street trading environment which compliments premises-based trading, is sensitive to the needs of residents, provides diversity and consumer choice, and seeks to enhance the character and safety of the local environment.

- 5.2 Following the introduction of the street trading resolution in January 2018 designating all streets in the Borough as consent streets, the applicant is required to obtain a street trading consent to regularise a kebab van, which has been trading on Egerton Road since 2005. The applicant currently holds a premises licence authorising the sale of hot food.
- 5.3 Potential concern has been raised by the Council's Parking Service, and comments have been received from Environmental Health requesting conditions relating to hygiene and safety requirements.
- 5.4 In addition, a number of concerns have been raised by local Councillors and residents about the van.
- 5.5 The Street Trading Policy sets out the criteria used to determine suitable trading sites (Section 2.3) and applications (section 2.4). The criteria are:
- **Public Safety:** The location of the proposed street trading activity should not present a substantial risk to the public in terms of road safety, obstruction and fire hazard.
 - **Public Order:** The street trading activity should not present a risk to good public order in the locality in which it is situated.
 - **Avoidance of Nuisance:** The street trading activity should not present a substantial risk of nuisance from noise, rubbish, potential for the harbourage of vermin, smells or fumes to households and businesses in the vicinity of the proposed street trading site.
 - **Character of the Area:** In determining the area for the proposed activity, the following will be taken into consideration:
 - The presence of like outlets already existing in the immediate locality of the proposed street trading site.
 - The general needs of a locality, should no comparable outlets exist. Applicants may be asked to demonstrate to the Council the need for the proposed street trading activity.
 - The quality of the goods sold by the applicant.
 - The appearance of the applicant's stall, van, barrow, cart etc.
 - **Compliance with legal requirements:** The proposed street trading activity should be carried out from a trading unit that complies with all relevant legislation such as food hygiene and health and safety.
 - **Consultees' Observations:** In relation to the points above, consideration will be given to written observations from consultees. Any representations made to the proposed street trading activity will be considered in terms of relevance to the application that has been made.

6. Legal Implications

- 6.1 Street trading is governed by Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 ("the Schedule"). Paragraph 7 of the Schedule states that, when an authority receives an application for a street trading consent, it may grant it "if they think fit". The Council may attach such conditions to a consent as they consider reasonably

necessary. A consent can be granted for any period not exceeding 12 months and can be revoked at any time.

- 6.2 The Local Government (Miscellaneous Provisions) Act 1982 does not make provision for an unsuccessful applicant to appeal against the decision of the Council in relation to the refusal of a Street Trading Consent.

7. Human Rights Implications

- 7.1 Under Article 6 of the First Protocol of the Human Rights Act 1998, everyone, in the determination of his civil rights and obligations, is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Whilst there is no statutory right of appeal, a dissatisfied applicant has the right to judicially review the Council's decision. This procedure is therefore compliant with Article 6.

8. Conclusion

- 8.1 The application seeks approval for a mobile kebab van, which has been trading in Egerton Road since 2005, and is required to obtain a Street Trading Consent following recent changes to the Council's list of Consent Streets under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
- 8.2 Representations have been received to the application and the Sub-Committee are invited to consider the application on its merits.
- 8.3 Consents will be subject to Standard Consent Conditions in all cases in order to promote public safety and avoid obstructions, nuisance and annoyance. Other conditions may be attached to a Consent at the discretion of the Sub-Committee and should be relevant to the particular site and nature of the goods being sold.
- 8.4 The Sub-Committee may take the following options:
- To grant the application as made, subject to the standard conditions, or
 - To grant the application with or without variation, subject to the standard conditions and any other conditions considered necessary to uphold the objectives of the Street Trading Policy, or
 - To refuse the application entirely.

9. Background Papers

[Guildford Borough Council Street Trading Policy](#)

[The Local Government \(Miscellaneous Provisions\) Act 1982](#)

10. Consultation

Report agreed by:

Environmental Health Manager: Justine Fuller, 1 May 2018

Legal Services: Bridget Peplow, 9 May 2018

Appendices:

Appendix 1: Site Location

Appendix 2: Application Form

Appendix 3: Pictures

Appendix 4: Consultation Responses from Responsible Authorities

Appendix 5: Consultation Responses from Other Persons