

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 applications for the grant of two Street Trading Consents for mobile food catering stalls on the High Street, outside GAP Kids Clothing and Vodafone. The Applications are included as Appendix 1 to this report. A site location map is attached as Appendix 2.

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 consent holders are suitable to hold a consent in Guildford in line with the aims above. 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 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 The Applicant has been trading in this location for a number of years (the earliest records licensing hold indicate that trading has been authorised since at least 2008) and has two stalls selling German Sausages and Dutch Pancakes. The Applicant holds planning permission for the stalls.
- 3.2 The applicant also assists the Council's Economic Development team with the organisation of the Christmas Market.

- 3.4 Applications were submitted for the units and were subject to the public consultation standards outlined in the Street Trading Policy. This is the first time that the applications have been considered against the new Street Trading Policy.
- 3.5 The applicant requests to trade on 28 dates (Saturdays and Sundays) between October and April:
- October 2018: 13, 20, 21
 - December 2018: 29, 30
 - January 2019: 05, 06, 12, 13, 19, 20, 26
 - February 2019: 02, 03, 09, 10, 16
 - March 2019: 02, 03, 09, 10, 16, 17
 - April 2019: 06, 07, 13, 14, 20
- 3.6 An image of the stalls provided by the applicant is attached as Appendix 3.
- 3.7 The Hygiene standards are rated as 5 by Rushmoor Borough Council.

4. Public Consultation

- 4.1 The applications were in consultation from 8 September to 9 October 2018. Copies of the applications were distributed to the responsible authorities and local ward councillors as per the Street Trading Policy.
- 4.2 A representation was received from Experience Guildford and is attached as Appendix 4.
- 4.3 Experience Guildford made comment on the potential obstruction to the two established High Street retailers, and that there was already provision on the North Street Market.
- 4.4 There was one other representation from 'other persons' received from a local business owner, Mr Shah of iFix Gadgets at no 64 High Street which is attached as Appendix 5.
- 4.5 Mr Shah has made an objection on the basis of the obstruction to his retail frontage, and the odour from sausages. Mr Shah made a similar complaint about the obstruction of his shop frontage earlier in the year.

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.
- 5.1 The applicant seeks to renew permissions to sell German sausages and Dutch pancakes from two stalls positioned on the High Street. The applicant has been trading for over 10 years from this location, however this is the first occasion that the applications have been consulted upon and considered against the new Street Trading Policy requirements.
- 5.2 Potential concerns about obstruction to established High Street retailers has been raised by Experience Guildford and one of the retailers.
- 5.3 The retailer has also mentioned that they suffered odour from the stall earlier this year.

5.4 Concern has also been expressed that the granting of a Consent to this unit may detract from the successful North Street Market which also operates on a Friday and Saturday.

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.

5.6 The Policy also seeks to ensure that there is no conflict between street trading and established markets or significant events taking place in the town centre. As the trader seeks to trade on a Saturday on the High Street, these applications may undermine this objective of the Street Trading Policy.

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 applicant seeks to renew the approvals for two catering stalls offering German sausages and Dutch pancakes on the High Street on a Saturday and Sunday, for 28 days in the year between October and April.
- 8.2 Representations have been received to the applications and the Sub-Committee are invited to consider the applications on their merits.
- 8.3 The Street Trading Policy, revised on 26 March 2018 seeks to ensure that there is no conflict between street trading and established markets or significant events taking place in the town centre. The applications may undermine this aim.
- 8.4 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.
- 8.5 The Sub-Committee may take the following options:
- To grant either or both of the applications as made, subject to the standard conditions, or
 - To grant either or both of the applications 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 either or both of the applications entirely.

9. Background Papers

[Guildford Borough Council Street Trading Policy](#)

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

10. Consultation

Report agreed by:

Regulatory Services Manager: Justine Fuller, 16 October 2018.

Legal Services: Bridget Peplow, 18 October 2018.

Appendices:

Appendix 1: Application Form

Appendix 2: Site Location

Appendix 3: Pictures

Appendix 4: Consultation Responses from Responsible Authorities

Appendix 5: Consultation Responses from Other Persons