

LICENSING COMMITTEE	AGENDA ITEM No. 4
15 FEBRUARY 2011	PUBLIC REPORT (This report contains Appendices which are NOT FOR PUBLICATION in accordance with paragraph 1 of Schedule 12A of Part 1 of the Local Government Act 1972 in that they contain information relating to an individual and it is considered that the need to retain the information as exempt outweighs the public interest in disclosing it)

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APPLICATION:	APPEAL AGAINST REFUSAL OF STREET TRADING CONSENT
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APPLICANT :	Mr James Carpenter, 152 Newark Avenue, Peterborough, PE1 4NP
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TRADING LOCATION :	Opposite Unit 14, Tresham Road, Orton Southgate, Peterborough
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1. PURPOSE OF REPORT

1.1 Members are asked to consider and determine an appeal from Mr James Carpenter against the refusal of a street trading consent to trade opposite unit 14 Tresham Road, Orton Southgate, Peterborough, taking into account the following:

- Representation received from the Licensing Manager, Mr Day, and his subsequent refusal to grant the application. Refusal letter (**Appendix A – Page 13**)
- No representations received from the Peter Tebb, Traffic Manager (**Appendix B – EXEMPT – Page 15**)
- No representation received from Councillor Gavin Elsey as Ward Cllr (**Appendix C – Page 19**)
- Notification from the applicant requesting to appeal decision (**Appendix D – Page 21**)

1.2 Issues raised which indicate this as an unsuitable trading location:

- Complaints received from the business operating at unit 14, Tresham Road.
 - Odour nuisance caused by cooking smells escaping from the trading unit
 - Customers of the trading unit causing an obstruction to / parking on the entrance to unit 14.
 - The addition of conditions cannot effectively control the complaints of nuisance, annoyance or obstruction.

- Due to the irreparable situation that has evolved between the applicant and the occupier of Unit 14 it is anticipated that future trading at the location will result in a continual dispute of a nature that is impossible to resolve on an amicable basis.

1.3 Applicants' issues raised to appeal the decision to refuse include:

- The location is safest position with minimum disruption
- No complaints from any other unit holders in 13 years
- No parking restrictions applicable to the area
- Complainants from unit 14 purchase food from the trading van

2. BACKGROUND INFORMATION

2.1 Peterborough City Council passed a resolution under part III Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 designating all streets within the District of Peterborough (this included all future streets) including all forecourts, roads, footways or other areas adjacent to them for a distance of 20 meters, for the purpose of street trading as consent streets. This came into effect on 1 August 2001.

2.2 The Local Government (Miscellaneous Provisions) Act 1982 (The Act) (Paragraph 7 (2) of schedule 4) states that the Council **may grant a consent 'if they see fit'**.

2.3 (Paragraph 7 (4)) When granting or renewing a street trading consent the council may attach such conditions to it as they consider reasonably necessary.

2.4 (Paragraph 7 (5)) Without prejudice to the generality of sub-paragraph (4) above, the conditions that may be attached to a street trading consent by virtue of that sub-paragraph include conditions to prevent-

- Obstruction of the street or danger to persons using it; or
- Nuisance or annoyance (whether to persons using the street or otherwise)

2.5 There is no statutory procedure outlining how the Authority is to notify the applicant of any objections, however, the applicant must be notified of the substance of any objections to the granting of consent, and given an opportunity to respond to those objections.

2.6 The Act does not give a statutory right of appeal in respect of the refusal, revocation or variation of a street trading consent, though the Environment Committee resolved to give those whose applications for street trading consents that were refused a right of appeal to the Licensing Committee.

2.7 In granting permission to trade in a consented street the Authority attaches conditions as is deemed reasonably necessary. These will include conditions relating to the location, the unit, and times when trading can take place.

2.8 Conditions may be varied, or the consent revoked at any time. The holder may also surrender the consent.

3. APPLICATION

3.1 On 1 December 2010 an application for a street trading consent was received from Mr Carpenter to trade opposite unit 14 at Tresham Road, Peterborough (**Appendix E – Page 23**). The hours and days applied to trade are:

- Monday to Friday from 06:00 until 23.00.

3.2 The type of goods to be sold are; confectionary, fish and chips, hot and cold food.

3.3 A plan showing the location of the proposed trading unit is attached at (**Appendix F – Page 27**).

3.4 A photograph of the proposed new unit to be used is attached at (**Appendix G – Page 29**).

4 REASONS FOR REFUSAL

4.1 The trading location is not suitable for this application without causing nuisance or annoyance or obstruction which conditions cannot effectively control.

4.2 The static pitch action sheet following consultation is attached at (**Appendix H – EXEMPT – Page 31**).

5. LICENSING OFFICER COMMENTS

5.1 The applicant contacted the Local Government Ombudsman (LGO) as he felt ‘duel standards’ were in operation which meant that he felt he was at a trading disadvantage. The final report from the LGO is attached at (**Appendix I – EXEMPT – Page 35**).

5.2 The licensing department have received complaints from the operator of unit 14, the conclusion of the stage three (3) complaint resulted with the Chief Executives Office recommending the trader be relocated.

5.3 The applicant has now submitted written confirmation that he will comply with the principles of Street Trading Legislation and the requirement to be correctly consented at all times when trading. This document is attached at (**Appendix J – Page 41**).

6. STANDARD CONDITIONS PERTAINING TO STATIC STREET TRADERS

6.1 Consent holders must:

- 1) Have a current insurance policy against Public Liability and Third Party Risks
- 2) Ensure that no person under the age of 17 years old is employed in or assists in the unit.
- 3) Inform PCC in writing if trading is to stop for a period of three (3) weeks or more (should PCC not be informed this may result in the consent being revoked and the pitch being recorded as vacant).
- 4) Return the consent issued to PCC immediately if they are to cease (stop) trading. PCC must be notified in writing if trading is to cease.
- 5) Provide suitable storage for litter and refuse, which will be properly disposed of at the end of each trading day. (It is unlawful to put trade or commercial waste in public litter bins).
- 6) Ensure that the surrounding area on which the unit is located is left clean and free from debris.
- 7) Ensure that all waste matter is collected or disposed of appropriately and not disposed of down a road gully.
- 8) Ensure that any generator used is reasonable silent running, does not leak fuel (any spillage is the consent holders responsibility) and does not create a tripping hazard.
- 9) Ensure that no signs or advertisements relating to the unit are displayed at the pitch or on the approach to it, except those that have been approved by the Highways Department of PCC.
- 10) Ensure that no tables, chairs, trestles or any other structures are placed on the pitch without permission from PCC.

6.2 Consent holder or any other person working in the unit must:

- 1) Comply with the terms of the consent i.e. trading days, trading times, trading location.
- 2) Comply with the Food Safety Act 1990.
- 3) Comply with the Voluntary Code for Practice For The Fast Food Industry (DEFRA 2003) or any document that replaces this.
- 4) Ensure that no goods or produce are stored or displayed at the side of the unit.
- 5) Ensure that the unit is available for inspection by an authorised PCC officer at any time when trading is taking place or at other times with prior notice.

- 6) Ensure that trading does not cause a danger, annoyance or nuisance to the public.
- 7) Ensure that at all times access is clear for Emergency Service's vehicles.
- 8) In the event of an emergency or any other reasonable request by PCC, move the unit without prior warning.

6.3 The unit must

- 1) Have the current Street Trading Consent issued by PCC clearly and publicly displayed.
- 2) Be removed from the highway or trading area out of permitted trading hours.
- 3) Be purpose made and should any alterations be needed they must first be approved by PCC.
- 4) Be kept in good clean repair both inside (interior) and out (exterior)
- 5) Contain suitable fire fighting equipment pertaining to the nature of the business to reduce the risk of an outbreak of fire.

7. IMPLICATIONS

Corporate Resources

Cross Service Implications

Consultation in relation to possible consented sites is undertaken with a number of Council services.

Community Implications

Street Trading significantly impacts upon Peterborough in terms of the services provided, employment opportunities, and the look and feel of the City. It also has an impact on the local environment with issues such as litter and competition to local businesses.

Resources

There have been significant resources employed both in attempting to regulate the applicants trading behaviour previously as well as compiling this report.

Financial

The Council's fees for consents issued should cover the costs of administering this scheme.

Legal

Guidance has been sought from the Legal Section on the compilation of this report.

8. BACKGROUND DOCUMENTS

Parts 3 and Schedule 4 of Local Government (Miscellaneous Provisions) Act 1982.

9. STREET TRADING DEFINITIONS

- 9.1 **Street trading** means selling or exposing or offering for sale of any article in a street.
- 9.2 A **Street** includes any road, footway, beach or other area to which the public have access without payment.
- 9.3 A **Consent** means a consent to trade had been granted by the council.
- 9.4 **Consent holder** means the person or company to whom consent to trade has been granted by the council.
- 9.5 **Unit** means a barrow, stall or vehicle as specified in the consent.
- 9.6 The **council** means Peterborough City Council as being the authority under the Local Government (Miscellaneous Provisions) Act 1982 that controls street trading in the Peterborough area.
- 9.7 A **Static Street Trader** means a trader who has been granted by the council to trade from a specified location.

- 9.8 A **Mobile Street Trader** means a street trader who moves from street to street but trades for less than 15 minutes at any one point and does not return to a similar trading position within 2 hours.

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