

LICENSING COMMITTEE	AGENDA ITEM No. 4
3 SEPTEMBER 2015	PUBLIC REPORT

Cabinet Member(s) responsible:	Councillor North, Cabinet Member for Communities and Environment Capital	
Contact Officer(s):	Regulatory Officer Ian Robinson Public Protection Manager Donna Hall	Tel. 453541 Tel. 453502

APPEAL AGAINST REFUSAL OF STREET TRADING CONSENT

R E C O M M E N D A T I O N S	
FROM : Licensing Department Regulatory Officer Ian Robinson	Deadline date : N/A
Members are asked to consider and determine an appeal from Ms Malayeka Sultan against the refusal of a street trading consent for 5 Field Walk, Peterborough.	

1. ORIGIN OF REPORT

- 1.1 This report is submitted to the Licensing Committee following a request from Ms Malayeka Sultan to appeal the Licensing Department's decision to refuse to grant street trading consent for a Fruit and Vegetable Stall at the rear of 5 Field Walk.

2. PURPOSE AND REASON FOR REPORT

- 2.1 The purpose of this report is to enable the Committee to consider the original Licensing Department's decision in line with Ms Malayeka Sultan's appeal and decide if consent should be granted.
- 2.2 This report is for the Licensing Committee to consider under its Terms of Reference No. 4.2.1.3 and 2.4.4.3, 'Licensing Market and Street Trading'.

3. TIMESCALE

Is this a Major Policy Item/Statutory Plan?	NO	If Yes, date for relevant Cabinet Meeting	N/A
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4. HISTORY

- 4.1 Field Walk backs onto the Wellington Street Car Park, where a car boot sale is held every Sunday. Reports were received by the Licensing Department concerning two residents in Field Walk offering goods for sale to the public every weekend. The residents were clearly capitalising on the nearby boot sale trade.
- 4.2 A number of complaints were subsequently received from Mr Tony D'Alessio - the Manager of the legitimate Car Boot Sale, a local resident and Parking Services concerning issues surrounding these two addresses. Parking Services have had to divert resources to the area and a number of fixed penalty tickets were issued.
- 4.3 Investigating officers identified two addresses that were involved in unlicensed street trading in Field Walk, one of which was No.5 Field Walk. Ms Sultan was selling fruit and vegetables from a stall at the rear of the location, whilst the occupant of 9 Field Walk was

selling a wide range of second hand household items, including electrical equipment. Ms Sultan is not a resident of Field Walk and was trading at the rear of a family friend's address. Both addresses were clearly trading.

- 4.4 Both unlicensed traders were advised they could not legally sell items to the public without first being in possession of the necessary legal consent and permissions.
- 4.5 Ms Sultan submitted an application to be granted a street trading consent on the 26th May 2015. Following a consultation, her application was refused by Public Protection Manager Donna Hall.
- 4.6 Following refusal of consent to trade outside 5 Field Walk, Ms Sultan submitted an appeal. Although in law there is no right of appeal following refusal, the council previously resolved to give those refused, a right of appeal through Licensing Committee.
- 4.7 Ms Sultan (the Appellant) and Mr Ahmed (9 Field Walk) have supplied a number of supporting letters, including a petition of 48 signatures (**Appendix C**). The petition requires the signatory to sign that they have not complained of any noise or parking issues pertaining to Ms Sultan trading at the location, however it is worthy of note that only six of the signatories reside in Field Walk, the bulk live nowhere near and it is believed that they would not be in a position to genuinely comment on how it affects the life of the local residents.
- 4.8 Checks also indicate that Ms Sultan has not registered as a food business with the council. Registration of premises used for food businesses (including market stalls) is required by law. See e-mail from Regulatory Officer Nichola Russell (**Appendix B**). All businesses should be registered at least 28 days before they start trading.
- 4.9 For the purposes of registration the term 'food' means any substance or product intended to be or reasonably expected to be ingested by people. If you run a food business you must inform the local authority about any premises you use for storing, selling, distributing or preparing food.
- 4.10 Checks with the council's Planning Department also indicate that no attempt has been made to seek planning permission, despite contact with Planning Enforcement. See e-mail from Planning Compliance Officer Tony Whittle (**Appendix B**).
- 4.11 Members are asked to consider and determine an appeal from Ms Sultan against the refusal of a street trading consent for Field Walk, Peterborough, taking into account the following:
 - Initial application from Mrs Malayeka Sultan re the Fruit and Veg stall at the rear of 5 Field Walk. (Includes comments from Regulatory Officer Ian Robinson and Public Protection Manager Donna Hall.) **Appendix A**.
 - Initial application from Mr Ishfaq Ahmed. **Appendix A**.
 - Representation received from Tony D'Alessio – Wellington Street Car Boot Sale Manager. **Appendix B**.
 - Notifications from Regulatory Officer Nichola Russell re failure to register as a food business and Compliance Officer Tony Whittle re failure to apply for the necessary planning permission. **Appendix B**.
 - Representations received from Darren Bell, Parking Operations Manager and Justin Beaumont, City Officer. **Appendix B**.
 - Letters of support and petition for both traders. **Appendix C**.
 - Service Request from Field Walk resident complaining re the activities at both addresses. **Appendix D**.
 - Photograph showing the trading at 5 and 9 Field Walk. **Appendix E**.
 - Letters refusing consent to trade from the Field Walk addresses. **Appendix F**.

Issues raised include:

- Illegal parking
- Noise / disturbance
- Obstruction of the highway, causing issues for other motorists and forcing members of the public to walk on the road to negotiate the obstruction caused by the two traders.
- Failure to register as a food business and therefore failing to allow the Food Safety Team to inspect food storage and handling processes to ensure public safety.
- Approval may set a precedent, allowing other local residents to trade from their home addresses, affecting the look of the area and causing similar issues elsewhere.

5. SUPPORTING INFORMATION

- 5.1 On 19 March 2001, in a review document, the Environment Committee resolved that all streets in Peterborough be designated for the purpose of street trading as consented streets.
- 5.2 The Public Protection Manager Donna Hall and the Head of Regulatory Services Peter Gell have delegated authority to designate consented streets in Peterborough in the absence of objections. This is to account for future growth in the City. In addition the named officers have delegated authority to issue, amend, revoke or refuse street trading consents, other than in the City Centre Pedestrian Area (the latter being delegated to the Head of Transport and Engineering).
- 5.3 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'.
- 5.4 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.
- 5.5 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 Committee resolved to give those whose applications for street trading consents that were refused, a right of appeal to the Licensing Committee.

6. ALTERNATIVE OPTIONS CONSIDERED

In order to trade legally, Ms Sultan can simply pay for a pitch on the legitimate car boot sale in Wellington Street, or at any other of the city's legitimate Markets or Car Boot Sales. These alternatives have been suggested to the appellant in a bid to assist.

7. IMPLICATIONS

7.1 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, noise, illegal parking and competition to local businesses.

It is believed that granting a street trading consent from domestic addresses would set a dangerous precedent, impacting on the quality of life of local residents. The issues already reported, surrounding the two traders in Field Walk appear to corroborate this.

Whilst we must bear the rights of the appellant in mind i.e. the peaceful enjoyment of possessions, it must also be balanced against the rights of local residents i.e. their right to peaceful enjoyment of possessions and also respect for their private and family life.

7.2 Cross-Service Implications

The illegal trading at the location has increased the drain on council resources. Parking Services have had to divert their Civil Enforcement Officers to address issues at the location. In addition, Justin Beaumont, the City Officer responsible for Markets and Planning Enforcement Officers have also had to attend the location to assess the problem.

7.3 Legal

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

8. **BACKGROUND DOCUMENTS**

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