

LICENSING COMMITTEE		AGENDA ITEM No. 4
21 JULY 2011		PUBLIC REPORT
Contact Officer:	Darren Dolby, Licensing Regulatory Officer	Tel. 453561

APPLICATION: APPEAL AGAINST REVOCATION OF ICE CREAM TRADING CONSENT

APPLICANT: Mr Wajid Hussain, .41 Waterloo Road, Peterborough, PE1 3AS

1. PURPOSE OF REPORT

1.1 Members are asked to consider and determine an appeal from Mr Wajid Hussain against the revocation of an ice cream trading consent taking into account the following:

- The revocation letter sent to Mr Hussain including a list of breaches of trading consent – **Appendix A**
- The appeal letter from Mr Hussain dated 11th June 2011 – **Appendix B**
- The four witness statements alleging breaches of trading consent – **Appendix C**
- The email from PC Kevin Drury regarding trading in Central Park – **Appendix D**
- The ice cream trading ‘check sheet’ signed by Mr Hussain – **Appendix E**
- The warning letter sent to Mr Hussain dated 20th April 2011 – **Appendix F**
- The warning letter sent to Mr Hussain dated 28th June 2011 – **Appendix G**

1.2 All appendices are contained in exempt papers.

2. BACKGROUND INFORMATION

2.1 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.

2.2 The Operations Director, Section Head of Business and Licensing and Licensing Manager 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).

2.3 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’.**

2.4 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.

2.5 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 Environment Committee resolved to give those whose applications for street trading consents that were refused a right of appeal to the Licensing Committee.

2.6 In granting permission to trade as a street trader in a consented street the Authority may attach conditions as is deemed reasonably necessary. These will include conditions relating to the location and the times when trading can take place.

- 2.7** Conditions may be varied, or the consent revoked at any time. The holder may also surrender the consent.
- 2.8** Under the Act street trading includes sales from a van, or other vehicle, cart, barrow, or portable stall. Typically street traders are mobile food trailers, ice creams vans and flower sellers. See definitions below;

Mobile – Trader that 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.

Static – Trader granted permission to trade from one specific location, the unit must be removed from that location at the end of each trading period.

- 2.9** Consent for ice cream traders to trade in the area surrounding Central Park was withdrawn after a number of complaints regarding the trading practices of ice cream vans in that particular area.

3. DETAILS OF REVOCATION

- 3.1** On 5th April 2011 Mr Hussain submitted an application for an ice cream trading consent to sell ice creams in the Peterborough licensing area. As Mr Hussain met the criteria for a consent the ice cream trading consent was authorised.

- 3.2** Due to a number of complaints in 2010 regarding Mr Hussain's trading practices in the Park Farm area it was decided to place a condition upon Mr Hussain's consent preventing him from trading in this area and causing further complaints. When Mr Hussain attended the Council Offices to pick up his trading consent and badge he was spoken to by licensing staff who went through a detailed consent ' checklist ' (**Appendix E**) which Mr Hussain read and signed to say that he understood his consent and conditions placed upon it.

- 3.3** Since Mr Hussain was consented by the licensing authority it is alleged that Mr Hussain has breached his consent and conditions on a number of occasions. It is alleged that Mr Hussain has :

- Traded in the Park Farm area on at least 7 different occasions;
- Used his chimes in excess of the permitted 4 seconds at any one time;
- Traded in a stationary position for more than the permitted 15 minute period at any one time; and
- Traded in the Central Park area.

- 3.4** The information supporting these alleged breaches are attached to this report and are either in statement or email form. Mr Hussain was warned by Officers on a number of occasions regarding these breaches and the possibility that his consent would be revoked if he continued to trade in breach of his conditions. These warnings by licensing staff were either made verbally to Mr Hussain at the time of the alleged breach, on the telephone shortly after the breach and by sending out a warning letter.

- 3.5** Due to the continued breaches of his consent it was decided that Mr Hussain's consent would be revoked. A revocation letter (**Appendix A**) was handed to Mr Hussain on 1st July 2011. It was explained to Mr Hussain that he had the right to appeal the decision in writing within 21 days of the date of the revocation.

- 3.6** Mr Hussain delivered a letter to the Licensing team detailing his appeal against the revocation of his consent on 4th July 2011. In this letter (**Appendix B**) Mr Hussain stated a large proportion of the information contained within the revocation letter was incorrect. As a result of this letter the information contained in the revocation letter was checked and it was found that one complaint regarding the use of chimes in Walgrave was incorrectly attributed to Mr Hussain. As soon as this error was realised a letter was sent to Mr

Hussain detailing the error. All of the remaining information of the revocation was checked and confirmed as being correct.

4. IMPLICATIONS

Corporate Resources

The Legal Division support the Licensing Team regarding the provision of advice and guidance on street trading matters.

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.

Financial

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

Legal

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

5. BACKGROUND DOCUMENTS

Parts 3 and 4 of Local Government (Miscellaneous Provisions) Act 1982
Street Trading Application Pack

This page is intentionally left blank