

Licensing and Appeals Sub Committee Hearing Panel

Minutes of the meeting held on Wednesday, 25 January 2023

Present: Councillor Andrews – in the Chair

Councillors: Connolly and Grimshaw

LACHP/23/9. Exclusion of the Public

A recommendation was made that the public be excluded during consideration of the following items of business.

Decision

To exclude the public during consideration of the following items which involved consideration of exempt information relating to the financial or business affairs of particular persons, and public interest in maintaining the exemption outweighed the public interest in disclosing the information.

LACHP/23/10. Application for a Street Trader Consent - Fraga, Whitworth Street on road, Bradford (between Welcomb St and Redby St)

The Hearing Panel considered a report from the Director of Planning, Building Control and Licensing.

The Principal Licensing Officer introduced the report and advised the Panel that the Licensing Out of Hours team had initially submitted a representation on the basis there was not sufficient room for pedestrians to pass the proposed unit which was to be positioned on the pavement area. That representation was subsequently withdrawn in light of the proposal to place the unit on the road with the hatch facing towards the pavement for service of food. However there remained a representation from an existing street trader (Couch Potato) who was present at the meeting.

In line with the established procedure for such hearings, the Panel firstly considered the Applicant's statement.

The Applicant stated that although the names of the products being sold appeared the same as the established business, 'Couch Potato', they were not; and the food would be authentic Portuguese or mainly Portuguese cuisine in view of the number of Portuguese students at the college near the proposed site. This food, she asserted was markedly different to existing local food offer.

The Panel was informed that the proposed site had been selected due to the number of residents in the area, its diverse population (including the local student population) and was pedestrianised. The Applicant was of the opinion they could operate alongside with the objecting street trader and meet all the customers' needs and that competition was good for business.

The Panel then considered photographs were provided of the site including an additional photograph showing the location of the objector's unit in the context of the proposed site for the Applicant. The Applicant advised when questioned the proposed trailer was 2 metres wide and 3 metres in length.

A Panel Member noted that the photograph of the proposed location showed an articulated wagon on the carriageway and expressed concerns about the risks such vehicles would pose on pedestrian and road user safety at the proposed location should consent be granted.

The Panel then heard from the Objector who explained that whilst he was not against anybody running a business, naming each in turn.

He outlined concerns about the potential impact on his business and staff (one full-time and two part-time) in the context of rising costs on income and the likelihood of ceasing to trade. He made reference to a similarity of the food offer as set out on the written application and the location of the site on passing trade. He also reported a downturn in sales of tea / coffee when the college recently opened a coffee outlet.

The Objector also referred to previous incidents where his unit had been impacted upon by large articulated vehicles when turning at the site. This however had been remedied by moving the unit by a couple of feet.

In reaching its decision the Panel also considered the Council's Street Trading Policy, Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 and Article 1 of Protocol 1 of the European Convention of Human Rights.

The Panel noted this was an application for a street trading Consent and had regard to the statutory provisions of Schedule 4, paragraph 7(4) and (5) of the Local Government (Miscellaneous provisions) Act 1982:

(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—

(a) obstruction of the street or danger to persons using it; or

(b) nuisance or annoyance (whether to persons using the street or otherwise).

The Panel carefully considered whether any conditions could be attached to address their concerns but concluded there were not; the possible transfer of the unit to the pavement had already been considered and found to be unsuitable.

The Committee also considered section 3.5 and 3.1.1 of the City Council's Street Trading Policy: -

3. Policy

3.5. Whilst the statutory grounds differ between a licence and a consent, the policy applies equally to applications for both types of authorisation. The policy will also be taken into account by the Council when dealing with applications for the renewal of an existing authorisation, and when considering whether to

revoke an existing authorisation.

3.1. *The Act provides that the Council must grant an application for a street trading licence to a person aged 17 years or over unless they consider that the application ought to be refused on one or more of grounds including:*

3.1.1. *That there is not enough space in the street for the applicant to engage in the trading in which he desires to engage without causing undue interference or inconvenience to persons using the street*

One of the main objectives of the licensing regime is to ensure that trading is carried out in a manner that protects public health/safety and the Panel's concern was in relation to the proposed location of the unit in that:

1. The unit was located in a central part of the road and would protrude almost ten feet into it causing an obstruction to motorists and to the large articulated lorries driving through the area which although industrial, also attracted pedestrians from the nearby college and companies.
2. Its obstruction would impact on public safety
3. The footfall in the area in relation to (1) and (2).

As such, the Panel did not think it was fit in the circumstances to grant the consent and the application was therefore refused under the provisions of paragraph 7(2), Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 and section 3.1.1 of the City Council's Street Trading Policy: -

7(2) Subject to sub-paragraph (3) below, the council may grant a consent if they think fit.

The Panel therefore refused consent.

Decision

To refuse consent.