

**Manchester City Council
Report for Resolution**

Report to: Licensing & Appeals Sub-Committee – 9 November 2020

Subject: Application for a Street Trading Consent

Report of: Director of Planning, Building Control and Licensing

Summary

The Licensing & Appeals Committee approved the Street Trading Policy without modification on 28 November 2011. The policy included the provision that Street Trading Licence and Consent applications, which attract objections, shall be considered by a Licensing & Appeals Sub-Committee.

Appeals from this Sub-Committee in relation to Street Trading Consent applications will be considered by the full Licensing & Appeals Committee.

Appeals in relation to Street Trading Licence applications will be considered by Manchester Magistrates Court, as provided by Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.

Recommendations

That the Sub-Committee consider the application for a street trading consent, having regard to the information contained within the report and any information provided at the hearing.

Wards Affected: Moston

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Background documents (available for public inspection):

- Local Government (Miscellaneous Provisions) Act 1982 (Schedule 4)
- Statement of Policy and Guidelines Relating to the Relevance of Convictions for Street Trading Licence and Consent Applications (effective from 9 May 2012)

1 Introduction

- 1.1 The Sub-Committee are requested to consider the application made by Ifeoluwa Akande for a street trading consent. This application for a street trading consent has been brought before the Sub-Committee for consideration because the application has attracted objections. Details of the objection(s) received are given in section 3.3 below.
- 1.2 The application is in relation to a Mobile Catering Unit located at Pym Street - Layby outside numbers 1-3. This area is not currently designated as a prohibited street in relation to street trading, nor is it licence street and an application for a street trading consent can therefore be considered.
- 1.3 Background – during the application process it came to light that there was another street trading unit operating without a licence nearby, which was later reported in the press as having been destroyed by fire. A number of objectors made reference to this unit in their representations, believing it to be the same unit as had been applied for. On 27/10/2020 an email was sent by the Premises Licensing team to clarify that this was not the trader making the application. The email sent is included as **Appendix 3**. Individual emails were sent to objectors who had made reference to the other trader. These emails are included with the representations in **Appendix 4**.
- 1.4 The legislation provides a right of appeal to the Magistrates Court in respect of a decision by the Council not to grant or to refuse to renew a street trading licence.
- 1.5 The legislation does not provide for a statutory right of appeal to the Magistrates Court in respect of any decision made in relation to a street trading consent. Any appeal therefore can be made to the full Licensing and Appeals Committee.

2 Application for a Street Trading Consent

- 2.1 On 04/09/2020 Ifeoluwa Akande submitted an application for a street trading consent. The application is attached at **Appendix 1**. The location map and photograph are attached at **Appendix 2**.
- 2.2 The requested trading hours for this application are:
Monday to Saturday, 8am to 11am and 12noon to 3,30pm each day.
- 2.3 The requested goods for this application are:
Nigerian hot drinks, tea, coffee/hot water, soft/fruit drinks, stews, fish, curry, rice, soup, eggs, toast, yam, plantain, asun, suya
- 2.4 The applicant shall be trading from:
Mobile catering unit

3 Objections

- 3.1 The Licensing Unit has received objection(s) from the following –
 - (a) Greater Manchester Police
 - (b) MCC Licensing and Out of Hours

- (c) Neighbourhood Delivery Team
- (d) Councillor x 1
- (e) Resident x 8

3.2 All objections are included in their original form in **Appendix 4**

3.3 The main points of all objections are summarised as follows –

Greater Manchester Police:

- The proposed trading location is directly outside two residential properties and is likely to cause nuisance for the residents, from noise and odours.
- The unit will be taking up parking spaces for seven and a half hours each day, six days a week.
- GMP “can only see negatives if this application was granted” and ask for the application to be refused.

MCC Licensing and Out of Hours

- The street is a busy thoroughfare which “is often nearly blocked with cars parked both in the parking bays and elsewhere on the street”.
- The addition of this trader “would almost certainly cause further unacceptable congestion” by removing two “vital parking spots” and increasing the number of cars on the street.
- The unit is likely to lead to nuisance for the adjacent residents who would “only be able to see the traders van right outside their door” and would also have “people congregating right outside their front doors”.
- Smell and fumes from the trader are likely to affect these residents, littering in the area is another potential issue

Neighbourhood Delivery Team

- Residents in the area “have over time and through many forums raised issues and concerns with street trading”
- The area and this location “already suffers with the volume of litter, fly tipping, traffic, anti-social behaviour and noise”.
- There are other food businesses in very close proximity. A further food vendor may have a negative effect on established local businesses.
- Over recent months, “the area has been subject to significant antisocial behaviour caused by a large number of people gathering and drinking near this location. Locating a mobile catering unit in this location could well result in further antisocial behaviour, as it would provide a focal point for those gathering in the area”

Councillor

- Littering around the area is already a significant problem
- The area already has plenty of takeaway outlets offering various types of food, and cafes.
- Parking in the area is a major issue and the space is needed for people to park.

RES1

- Moston already has “numerous food outlets, i.e. pizza shops, takeaways, cafés, chip shops, etc. In some cases, there are several in the same row.”

- Moston has a big problem with litter. Another food outlet will increase existing problems
- Pym Street is frequently blocked by HGV delivery vehicles and cars parked inconsiderately, likely to prevent access by emergency vehicles and compromising road safety. The pavement on the street outside the market is virtually impassable because of food on pallets.
- An aerial photo was submitted with the objection to demonstrate congestion on the street.

RES2

- The “layby” outside the only 2 houses is a parking bay
- The street is impossible to drive down as there are so many cars and delivery vans some parked illegally.
- Pedestrians have difficulty as cars are parked on the pavements and rubbish from the market, including rotting produce, is on the pavement as well.
- There are enough food outlets in the area already. A street trader would add to existing problems of littering, noise and congestion in the area.

RES3

- There are more than enough food outlets in the area to cater for all diversity in the area.
- There are major traffic issues already on Moston Lane and side streets.
- There is already a considerable amount of littering from fast food places as well as fly tipping in the area. The addition of a street trader will lead to more problems in the area.

RES4

- There are many food outlets which cater for most cuisines in this area
- There is already an issue with ASB, noise and, most importantly, traffic which is “dangerous” in the area, and Pym street is often “near impossible” to use.
- The addition of a street trader will bring litter, noise and fly tipping - all of which are already a major problem in this area.

RES5

- There are enough food outlets around this small area. Adding a street trader will only cause more litter. The area is “scruffy” already.
- An increase in litter will encourage rodents.

RES6

- Moston has enough food outlets - far more than are needed.
- The traffic on Pym Street can be horrendous – “you tend to get stuck for at least 10 minutes”.
- The area has a problem with littering from existing takeaways. A street trader in the area will add to these problems
- Moston has “many issues” and people gathering around this van will add to “an already difficult situation”.

RES7

- Where will the trader use for rest/toilet facilities. Where their waste water will be dropped?
- The street is highly congested at most hours of the day, adding a street trader will create more traffic.
- The space requested is a public lay-by for the public to use to park their cars.
- There are many takeaways in the area, catering for different culinary tastes. The same takeaways also cause a lot of waste and litter in the area.

RES8

- This particular street is constantly flooded with heavy traffic, not just cars but HGV's and can be gridlocked most days.
- The footpaths are narrow causing pedestrians to have to walk in the road due to cars parked partly on the footpaths to enable wider vehicles to get by.
- There are sufficient food outlets on Moston Lane.
- There is already a problem in the area with litter, fly tipping and anti-social behaviour. The addition of a street trader will add to existing problems.

4 Legal Considerations

4.1 This section relate to legislation and other legal issues, which shall be taken into consideration by the Sub-Committee when making their decision.

Decision

4.2 The decision maker will make their decision in accordance with the rules of natural justice, ensuring that the hearing is fair to all parties and that there is no bias, perception or pre-determination.

Human Rights Act

4.3 Article 1 of Protocol 1 of the European Convention of Human Rights confers on individuals (and companies) the Right to Peaceful Enjoyment of their Possessions and the Protection of Property.

4.4 A Licence is a possession.

4.5 No one can be deprived of their property or have controls put on his/her property except where the action is permitted by law and justifiable in the public or general interest.

4.6 When considering matters relating to the grant, revocation, renewal or refusal of licences and the placing of conditions on licences, the Sub-Committee must consider whether the decision affects an individual, group or company's Human Rights as set out in the Convention and if it does, whether the interference with those rights is permissible by reason of the justifications set out in the Convention. In addition consideration must be given to whether the interference is proportionate to the general purpose.

The conduct of the hearing

4.7 Manchester City Council will determine the conduct of the hearing. The decision maker should be able to adjourn the hearing if, in his/her opinion,

he/she considers that it is appropriate to do so. In deciding whether to adjourn the hearing, and if so for how long, the decision maker's overriding objective should be that the applicant is made fully aware of any objections or other relevant information in relation to his application and that he has a proper opportunity to prepare and present his case.

The right to legal representation

4.8 A person is entitled to have legal representation or be accompanied by a legal advisor or friend.

The decision and the reasons for it

4.9 Reasons for a decision should be given either at the hearing or as soon as practicable after the hearing.

Manchester City Council Act 2010

4.10 The Manchester City Council Act extends the definition of street trading to include:

- (a) The supplying of or offering to supply any service in a street for gain or reward.
- (b) Services can now be included in any application for a street trading authorisation

Crime and Disorder Act 1998 Section 17

4.11 The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. It is not considered that the contents of this report have any such effect.

Relevant extract from Local Government (Miscellaneous Provisions) Act 1982 (Schedule 4)

- 7(1) An application for a street trading consent or the renewal of such a consent shall be made in writing to the district council.
- (2) Subject to sub-paragraph (3) below, the council may grant a consent if they think fit.
- (3) A street trading consent shall not be granted —
- (a) to a person under the age of 17 years; or
 - (b) for any trading in a highway to which a control order under section 7 of the Local Government (Miscellaneous Provisions) Act 1976 is in force, other than trading to which the control order does not apply.

- (4) When granting or renewing a street trading consent the council may attach such conditions to it as they consider reasonably necessary.
- (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).
- (6) The council may at any time vary the conditions of a street trading consent.
- (7) Subject to sub-paragraph (8) below, the holder of a street trading consent shall not trade in a consent street from a van or other vehicle or from a stall, barrow or cart.
- (8) The council may include in a street trading consent permission for its holder to trade in a consent street—
 - (a) from a stationary van, cart, barrow or other vehicle; or
 - (b) from a portable stall.
- (9) If they include such a permission, they may make the consent subject to conditions —
 - (a) as to where the holder of the street trading consent may trade by virtue of the permission; and
 - (b) as to the times between which or periods for which he may so trade.
- (10) A street trading consent may be granted for any period not exceeding 12 months but may be revoked at any time.
- (11) The holder of a street trading consent may at any time surrender his consent to the council and it shall then cease to be valid.

Other Legal Implications

4.12 At the time of writing there are no issues that the City Council Solicitor considers need to be brought to the specific attention of the Sub-Committee, other than those highlighted in the report. Any issues that subsequently arise will be brought to the attention of the Sub-Committee at the hearing.

5 Recommendations (street trader consent)

5.1 The Sub-Committee is requested to consider the application for the grant of the street trading consent, having regard to the information contained within the report and any information provided at the hearing, with regard to the options below:

5.2 The Council may grant the consent if they see fit. When granting the consent:

- (a) it may be granted for a period not exceeding 12 months; and
- (b) such conditions may be attached to it as the Council considers reasonably necessary; including any conditions to Street Trading Consent prevent obstruction of the street or danger to persons using it, or nuisance or annoyance (whether to persons using the street or otherwise).

5.3 The Council may refuse the application.