

Manchester City Council Report for Resolution

Report to: Licensing and Appeals Sub-Committee – 25 March 2019

Subject: Application for a Street Trading Consent

Report of: Head of Planning, Building Control and Licensing

Summary

The Licensing and 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 and Appeals Sub-Committee.

Appeals from this Sub-Committee in relation to Street Trading Consent applications will be considered by the full Licensing and 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, any information provided at the hearing.

Wards Affected:

Chorlton Park

Contact Officers:

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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 Ms Gemma Gill 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 (2c) below.
- 1.2 The application is in relation to a stall located in the layby next to the cemetery entrance on Nell Lane. 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 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.
- 1.4 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 22/01/2019 Ms Gemma Gill 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:
 - Mon to Fri 8.30am to 4.30pm
 - Sat 9am to 5pm
 - Sun 9am to 2pm.

- 2.3 The requested goods for this application are:

Flowers, wreaths, small plants, graveside candles

- 2.4 The applicant shall be trading from:

Stall

3 Objections

- 3.1 The Licensing Unit has received an objection from the following –
 - Designer Flowers by Rodgers Ltd
- 3.2 All objections are included in their original form in Appendix 3
- 3.3 The main points of all objections are summarised as follows –

Designer Flowers by Rodgers object to the application being granted on the grounds that:

- A further trader would impact on their business, both at the shop and at the stall which is situated further along in the same layby;
- Similar products are available at a number of outlets in the vicinity;
- A further stall would exacerbate existing congestion and obstruction in the area.

4 Legal Considerations

4.1 This section relates 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)

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| <p>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.</p> <p>(2) Subject to sub-paragraph (3) below, the council may grant a consent if they think fit.</p> <p>(3) A street trading consent shall not be granted —</p> <ul style="list-style-type: none">(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. <p>(4) When granting or renewing a street trading consent the council may attach such conditions to it as they consider reasonably necessary.</p> <p>(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 —</p> <ul style="list-style-type: none">(a) obstruction of the street or danger to persons using it; or |
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- (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

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 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.