



Agenda Item 4
Licensing and Regulatory Panel
28 May 2024

Title: An application for a new Street Trading Consent

Lead Officer: Rachael Russell

Wards of the District directly affected: Kenilworth Abbey and Arden

Contrary to the policy framework: No

Contrary to the budgetary framework: No

Key Decision: No

Included within the Forward Plan: No

Equality Impact Assessment Undertaken: No

Consultation & Community Engagement: No

Final Decision: Yes

Accessibility checked: Yes

Officer/Councillor Approval

Officer Approval	Date	Name
Team Leader		
Legal Services		

1. Summary

- 1.1 Members are asked to consider a new application for a Street Trading Consent where the applicant wishes to trade outside the trading hours set out in Warwick District Council's Policy.

2. Options available to the Panel

- 2.1 Members are asked to consider the information contained in this report and decide whether the Street Trading Consent for Mr Jonathan Rea should be granted.

The following options are available to members:

Option 1 – Grant the consent as requested;

Option 2 – Grant the consent with amended hours and/or added conditions, or;

Option 3 – Refuse the application.

3. Details for Consideration

- 3.1 Anyone who exposes goods for sale within the District needs a Street Trading Consent issued by the Council.
- 3.2 Mr Jonathan Rea has applied for a Street Trading Consent to trade from Abbey Fields on Saturday 8 June 2024 between 12:00 and 22:00. This is for the annual Kenilworth Lions Club Grand Show and is described as a 'Charity fun day/community summer fete'. The application is for a group trader consent for up to 50 stalls. However after 18:00 only four food vendors and one alcohol vendor will be trading. The application, and list of traders are attached as **Appendix 1**.
- 3.3 Upon receiving the application officers referred to the current Street Trading Consent Policy which permits trading between the hours of 06:00 and 18:00. As the application is to trade beyond these hours the application has been referred to the Licensing and Regulatory Panel for a decision.
- 3.4 The applicant has received permission from the Landowner (Warwick District Council) to use the site and has also obtained a Temporary Event Notice issued under the Licensing Act 2003 to serve alcohol and have live entertainment at the event with no objection being received by either Warwickshire Police or Environmental Health for the Temporary Event Notice.

- 3.5 The Council's Street Trading Consent Policy (2016) states (at page 3) that:

"In considering applications for the grant or renewal of a street trading consent the following factors should be considered:

a) Public Safety

Whether the proposed activity represents or could present a risk to the public from the point of view of obstruction, fire hazard, unhygienic conditions.

b) Public Order

Whether the proposed activity presents or could present a risk to public order.

c) The Avoidance of Public Nuisance

Whether the proposed activity presents or could present a risk of nuisance to the public from noise or misbehaviour, particularly in residential areas.

d) Local Area Needs

Consideration will be given to the character of the area (e.g. conservation area)"

- 3.6 The Street Trading Consent Policy also states (at page 5) that:

'Before a street trading consent is granted or renewed the Licensing Team will consult with the following agencies as considered appropriate:

- Police*
- Highways Department*
- Environmental Health*

The Council shall consider any representation made in writing to the Authority in respect of any application. The applicant will be provided with a copy of any representation received and given an opportunity to comment before a final decision is taken.'

- 3.7 The consultation period will end on 17 May 2024. At the time of writing this report there have been no objections from the consultees. An update in relation to any objection being received will be given at the panel.
- 3.8 Details of the procedure adopted by the Licensing Committee for Panel Hearings have been supplied to the applicant. The procedure will be explained more fully by one of the Council's Legal Team at the commencement of the hearing.

4. Legal comments

- 4.1 The relevant legislation relating to street trading is set out in Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.

- 4.2 The Council adopted the provisions of this Act in 2007 allowing the regulation and control of Street Trading and the current Street Trading Consent Policy which has been in force since October 2016 is attached at **Appendix 2.**
- 4.3 When granting or renewing a Street Trading Consent the Council may include any conditions that it thinks are reasonably necessary.
- 4.4 Without prejudice to the power of the Council to attach any conditions that they think are reasonably necessary, they may also include conditions specifically 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).
- 4.5 Every application must be considered on its' merits. What should, and should not, be considered will vary on individual circumstances. Matters to be considered include anything which a reasonable and fair-minded decision maker, acting in good faith, with proper regard to the interests of both the public and the applicant, could properly think it right to rely on.
- 4.6 In exercising discretion, the Panel must have regard to relevant matters and disregard irrelevant matters. If a decision is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere.
- 4.7 The purpose of the Policy of the Council concerning the grant of consent for street traders, is to try to ensure public order and safety, avoid nuisance and to meet local demand. However, the Policy guides, but does not bind or fetter the discretion of the Council.
- 4.8 Section 6 of the Human Rights Act 1998 states that a public authority cannot act in any way, which is incompatible with the rights enshrined in the European Convention on Human Rights. The relevant Convention right in this matter is the 'right to a fair trial' and arguably the rights to peaceful enjoyment possessions and a private life, which the courts have held includes a right to participate in essential economic activities. Nonetheless, consent holders must work within the Policy for the greater good of public safety.
- 4.9 The Local Government (Miscellaneous Provisions) Act 1982 does not provide any direct right of appeal against a decision made in relation to a Street Trading consent. Therefore, a Consent holder aggrieved by a decision would only be able to challenge any errors in the administrative process resulting in that decision, by making an application to the High Court for a judicial review. The application for judicial review must be made promptly following notice of the decision, and in any event no later than 3 months from the date of the decision.

- 4.10 Alternatively, applicants also have recourse to the Council's complaints procedure if the applicant considers that a Council service has not been properly delivered.

5. Policy Framework

5.1. Fit for the Future (FFF)

- 5.1.1 The Council's FFF Strategy is designed to deliver the Vision for the District of making it a Great Place to Live, Work and Visit. To that end amongst other things the FFF Strategy contains several Key projects.

- 5.2. The FFF Strategy has 3 strands, People, Services and Money, and each has an external and internal element to it, the details of which can be found [on the Council's website](#).

5.2.1 External impacts of proposal(s)

People - Health, Homes, Communities - The Street Trading Consent Policy recognises that residents within, and visitors to the District, need a safe and healthy environment to live, work and visit and that Street Traders are important to the local economy and vibrancy of the District.

Services - Green, Clean, Safe – None.

Money- Infrastructure, Enterprise, Employment - The Street Trading Consent Policy relates to current legislation, and, where possible, to local factors, allowing flexibility and the potential to expand and augment the local economy and promote cultural issues.

5.2.2. Internal impacts of the proposal(s)

People - Effective Staff – None.

Services - Maintain or Improve Services - None.

Money - Firm Financial Footing over the Longer Term - None.