

Licensing & Regulatory Panel

Minutes of the Licensing & Regulatory Panel held at the Town Hall, Royal Leamington Spa, on Thursday 14 September 2023, at 10.00am.

Present: Councillors Dray, D Harrison, and King.

Also Present: Patricia Tuckwell (Civic and Committee Services Manager); Alaa Cronin (Council's Solicitor); and Emma Morgan (Licensing Enforcement Officer).

1. Appointment of Chairman

Resolved that Councillor King be appointed as Chairman for the hearing.

2. Substitutes

Councillor Dray substituted for Councillor Syson.

3. Declarations of Interest

There were no declarations of interest made.

4. New Mobile Street Trading Consent holder wishes to trade outside of the restrictions set out within Warwick District Council's Street Trading Policy

The Panel considered a report from Safer Communities, Leisure and Environment which brought forward a new application for a Street Trading Consent to trade outside the hours and restrictions set out within Warwick District Council's Street Trading Policy.

Mr Stevens applied for a Street Trading Consent on 31 July 2023 to trade anywhere within Warwick District Council. A copy of the application form along with supporting documents was attached as Appendix 1 to the report.

Upon receiving the application, officers referred to the current Street Trading Policy which permitted trading between the hours of 6.00am and 6.00pm. The Policy also included at Appendix 1 to the report - Standard general conditions to be applied to Consents, that:

" Touring consent holders shall not trade from the same location for more than 15 minutes (or until queuing customers have been served) at any one time. There is to be no return to any location within 2 hours of previous trading."

On the application form, Mr Stevens requested to trade outside the hours set out in the Policy and also requested that the condition in relation to being in the same location for more than 15 minutes should be removed from any consent granted.

The Licensing Team consulted with Warwickshire Police, Environmental Health, and Warwickshire County Council when a new application was received. An

objection was subsequently received from Warwickshire County Council Highways which was attached as Appendix 2 to the report.

A concern raised by Warwickshire County Council Highways was that removal of the condition relating to the time that a Touring Consent holder could trade from the same location would mean that the applicant "could stop in one location for the whole day - anywhere on the highway network - which could lead to hazards for highway users and elicit complaints from adjacent properties/businesses, with no recourse". A further concern related to the jurisdictional scope of the Consent, that it should only apply to the jurisdiction of Warwick District Council.

The Licensing Officer noted the points raised by Warwickshire County Council Highways in their objection and reminded the applicant that the Consent would only permit trading within Warwick District Council. The Licensing Officer also queried whether the applicant would be willing to accept an additional condition if the Consent was granted, requiring them to only trade on private land with permission from the landowner. The applicant stated that they only intended to operate on private land. This email was attached as Appendix 3 to the report.

The Chairman introduced the Panel and officers present.

At the Chairman's request, the Licensing Team Leader introduced the report.

In response to questions from Members, the Licensing Enforcement Officer confirmed that:

- The application was different to a static trading application because in this instance, if granted, the applicant would be able to move around the District to trade.
- Hours that applicants could trade varied depending on the application and whether any objections had been received.
- Static traders would have different circumstances, for example, the use of a generator could have a noise impact on the area. Often the applicants applied to trade in a commercial area where this would have less of an impact.
- A condition could be added to amend the 15-minute time scale to a more suitable time scale.

The applicants, Mr and Mrs Stevens, were invited to give a statement. Mr Stevens explained that the business had started during the Covid-19 pandemic and initially delivered ready-made meals to customers' homes. As restrictions lifted, the business moved into barbecues and eventually offering private dinners cooked within the home. The business catered food festivals in Kenilworth, Royal Leamington Spa and Hatton. Mrs Stevens ran the social media page and saw an opportunity for a pop up on private land, which prompted the application for a Street Trading licence. Mr Stevens stated the intention would be to operate on private land with permission, and there was no intention to pull up on public highway to trade. The van would operate predominantly on weekends, within the hours of which the landowner operated. There was no intention to work late into the night, and the applicant expected to use the licence to operate in pub gardens, where owners would often invite traders during the summer months to generate business.

In response to questions from the Panel, the applicants explained that:

- the van did not require a generator, it ran off gas only;
- the hours applied to trade were 4.00pm-10.00pm Monday to Friday, 10.00am-11.00pm Saturday and 10.00am-10.00pm Sunday;
- both applicants were working full time and were not seeking to trade for the entirety of the hours applied for;
- sometimes they would be called to cover events with a 24-hour notice window, where someone else had dropped out. For that reason, it was important to have a large enough time frame to trade; and
- they would not “randomly turn up” in a location and would only attend with the landowner’s invitation.

At 10.20am, the Chairman asked all parties other than the Panel, the Council’s Legal Advisor and the Civic and Committee Services Manager to leave the meeting, in order to enable the Panel to deliberate in private and reach its decision. The decision would be communicated in writing via email to the applicant later on the same day, followed by a written notice with a full decision within seven days.

Resolved that the application be **granted**.

In reaching this decision the Licensing Panel considered the written report from the Licensing Officer which included a copy of the application and the objection received from Warwickshire County Council’s Highways Department. The Panel also had regard to the Licencing Officer’s presentation of the report and the oral representations made by the Applicant and his wife at the hearing.

The Panel considered the Council’s “Street Trading Consent Policy” dated 2016 and the provisions of Schedule 4 Local Government (Miscellaneous Provisions Act) 1982. The Panel noted the Applicant’s representations that they intend to operate as a “pop-up” food vendor across the District at locations such as Public Houses and private car parks owned by commercial business, on invitation of or by agreement with the landowner. Further, that they envisage primarily trading on weekends and occasionally on a weekday.

The Panel noted the Highways Department’s objection to the application on grounds of public safety, in particular the concern that if a Touring Consent was granted as applied for, the Applicant “could stop in one location for the whole day - anywhere on the highway network - which could lead to hazards for highway users and elicit complaints from adjacent properties/businesses, with no recourse”. However, the Panel considered that this concern can be adequately addressed by way of a condition requiring the Applicant to trade only on private land with permission from the landowner. It was considered that such a condition would ensure the Applicant would trade only from locations where their presence was desired.

The Panel gave weight to the fact that other than the objection from the Highways Department, no other

consultee raised concerns or objected to the application. The Panel also noted that Warwick District Council has granted Touring Street Trading Consents to hot food vendors in the past with no objection being received from any of the consultees. The Panel was assured by the Applicant's representations that they would use only gas appliances when trading and not a generator, which the Panel considered is less likely to lead to noise nuisance. Accordingly, the Panel considered that, at the time of their decision, there were no relevant grounds on which to refuse the application.

Though the operating hours requested by the Applicant are outside of the guidance hours as set out in the Council's Street Trading Policy, the Panel considered these reasonable given the nature of the locations that the Applicant intended to trade from. Similarly, the Panel considered that it would be unreasonable to impose the standard condition prohibiting the Applicant from trading from the same location for more than 15 minutes (or until queuing customers have been served) at any one time and not to return to any location within 2 hours of previous trading. However, as the Application is for a Touring Consent rather than a static pitch, the Panel considered that some restriction is necessary.

In the circumstances, the Panel resolved to grant the Street Trading Consent with the operating hours requested by the Applicant subject to the following additional condition:

- To only trade on private land with permission from the landowner.

Additionally, paragraph 5 of the General Conditions to Street Trading Consents (as set out at Appendix 1 of the Council's Policy) is to apply to this Consent as amended below:

- The Touring Consent holder shall not trade from the same location for more than 3 consecutive days at any one time. There is to be no return to any location within 1 week of previous trading."

A copy of this Record of Decision will be served on all relevant parties.

Under Schedule 4 Local Government (Miscellaneous Provisions) Act 1982 there is no statutory right of appeal against this decision. An aggrieved applicant may apply to the High Court for a judicial review to challenge any errors in the administrative process. Alternatively, applicants have recourse to the Council's complaints procedure.

(The meeting ended at 10.20am)

CHAIRMAN
11 March 2024