

Licensing and Regulatory Panel
14 September 2023

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

Lead Officer: Emma Morgan

Portfolio Holder: Councillor Jim Sinnott

Public report

Wards of the District directly affected: All wards of the District

Contrary to the policy framework: Yes

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
Head of Service	31.8.2023	Marianne Rolfe
Legal Services	30.07.2023	Alaa Cronin

1. Summary

- 1.1 Members are asked to consider 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.

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 Anthony John Stevens 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 The Council's Street Trading Policy states 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)"

- 3.2 The Street Trading Policy also states that:

"The Council generally will only permit street trading between 06:00 and 18:00. Any trading outside these hours will have to be approved by the Licensing and Regulatory Committee. Street Trading outside the guideline hours will be assessed in terms of the criteria detailed above. The Council

however retains the right to specify permitted hours of trading that are less than those specified above if local circumstances dictate."

- 3.3 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.
- 3.4 Anyone who exposes goods for sale within the District needs a Street Trading Consent issued by the Council. A Street Trading Consent is issued for twelve months.
- 3.5 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 is attached as **Appendix 1**.
- 3.6 Upon receiving the application officers referred to the current Street Trading Policy which permits trading between the hours of 06:00 and 18:00. The Policy also includes at Appendix 1, standard general conditions to be applied to Consents, these provide 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 has requested to trade outside the hours set out in the Policy and has also requested that the condition in relation to being in the same location for more than 15 minutes is removed from any consent granted.
- 3.7 The Licensing Team consult with Warwickshire Police, Environmental Health and Warwickshire County Council when a new application is received. An objection was subsequently received from Warwickshire County Council Highways which is attached as **Appendix 2**.
- 3.8 A concern raised by Warwickshire County Council Highways is that removal of the condition relating to the time that a Touring Consent holder can 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.
- 3.8 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 is attached as **Appendix 3**.

- 3.9 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.
- 3.10 A copy of the Street Trading Consent Policy is attached as **Appendix 4**.

4. Legal comments

- 4.1 The relevant legislation relating to street trading is set out in 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 4**.
- 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 rights in this matter, are the 'right to a fair trial'. 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 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 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.