

Licensing and Regulatory Panel Thursday 14 September 2023

A Licensing & Regulatory Panel will be held at the Town Hall, Royal Leamington Spa on Thursday 14 September 2023 at **10:00am**, and available for the public to watch via the Warwick District Council [YouTube channel](#).

Membership: D Harrison, King and Syson.

Substitutes: Councillor Dray is substituting for Councillor Syson.

Agenda

1. **Appointment of Chairman**

To appoint the Chairman of the meeting.

2. **Substitutes**

To receive the name of any Councillor who is to act as a substitute, notice of which has been given to the Chief Executive, together with the name of the Councillor for whom they are acting.

3. **Declarations of Interest**

Members to declare the existence and nature of interests in items on the agenda in accordance with the adopted Code of Conduct.

Declarations should be disclosed during this item. However, the existence and nature of any interest that subsequently becomes apparent during the course of the meeting must be disclosed immediately. If the interest is not registered, Members must notify the Monitoring Officer of the interest within 28 days.

Members are also reminded of the need to declare predetermination on any matter.

If Members are unsure about whether or not they have an interest, or about its nature, they are strongly advised to seek advice from officers prior to the meeting.

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

To consider a report from Safer Communities, Leisure, and Environment

(Pages 1 to 17)

Published Wednesday 6 September 2023

General Enquiries: Please contact Warwick District Council, Riverside House, Milverton Hill, Royal Leamington Spa, Warwickshire, CV32 5HZ.

Telephone: 01926 456114

E-Mail: committee@warwickdc.gov.uk

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456114

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.

**WARWICK DISTRICT COUNCIL****APPLICATION FOR A STREET TRADING CONSENT****LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982**

Data protection: We will use the information supplied by you and/or obtained on your behalf for the purpose of licensing and enforcement. This information may be used internally and shared with other bodies administering public funds to prevent and detect crime and fraud and to apprehend offenders. Information held about you will not be released to other third parties unless it is shown that they are entitled to the information by law.

THIS FORM WILL BE RETURNED IF YOU HAVE NOT COMPLETED ALL OF THE QUESTIONS IN FULL

Name of consent holder Anthony John Stevens
Address of consent holder:.....
.....
..... Contact Tel No.:
.....
Date of birth: National insurance Number.....

Have you ever been refused a street trading consent in this, or any other area?

(Answer Yes or No) no If yes, Which Area:

What items do you intend to sell: Hot Street Food - various International Cuisine's

Where do you intend to sell them? (Where is your pitch?)..... Various locations in Warwickshire in the form of 'pop ups'

State the days and times you wish to trade

Monday	4	to	10	Tuesday	4	to	10
Wednesday	4	to	10	Thursday	4	to	10
Friday	4	to	10	Saturday	10	to	11
Sunday	10	to	10				

Vehicle registration number (if trading from a vehicle)

If selling food, are you registered with Environmental Health? yes. (Answer Yes or No)
(If No, please request a registration form) Coventry City council
(If Yes) Which Local Authority are you registered with?

If selling food, what food hygiene qualification do you hold? Food & Hygiene Level 4. C&G 706/1. 706/2. 707/1. 707/2. 717/1.

Name of Business/Vehicle owner: Phoenix Dining Solutions
Address of Business/Vehicle owner:.....
.....
..... Contact Tel No.

Date of Birth: National Insurance Number:
Signature: A.J Stevens Date: 31/07/2023
Print Name: A.J Stevens

It is an offence to make a false declaration on this form

Continued overleaf

Declaration and Signature

Please tick



I understand that this application will be considered by the Licensing Team, Warwick District Council and that if granted, I shall comply with any lawful condition under which the Street Trading Consent is granted.	X
I have enclosed a current passport style photograph of myself.	
I have enclosed a current Basic DBS Certificate (not more than 1 month old)	
I, as the consent holder, will be in regular attendance at the trading site together with a duly authorised assistant (if applicable).	X
I have attached completed details forms for each additional employee/assistant.	X

I declare that all the information given is true to the best of my knowledge. If any information is subsequently found to be untrue or incomplete, any consent granted may be suspended pending a full investigation of the matter.

Signature of applicant	Date
A.J Stevens	31/07/2023

You must submit the following with the application

Where the proposed street activity is from a **fixed position**:

- A completed and signed Street Trading Consent Application Form.
- The full fee as appropriate.
- A recent Basic Disclosure Certificate (DBS) for the applicant (not more than 1 month old)
- A copy of a map of at least 1:1250 scale. The map should clearly identify the proposed site position by marking the site boundary with a red line.
- A photograph of the proposed site.
- Three colour photographs of the stall, van, barrow, cart etc that will be used for the street trading activity. (Front, Back and Side views)
- A passport sized photograph of the applicant.
- An original copy of the certificate of insurance that covers the street trading activity for third party and public liability risks.
- Permission from the land owner
- Where food will be sold a copy of the Food Hygiene Certificate for the applicant.

Where the proposed street activity is from a **touring vehicle**:


- A completed and signed Street Trading Consent Application Form.
- The full fee as appropriate.
- A recent Basic Disclosure Certificate (DBS) for the applicant (not more than 1 month old).
- A passport sized photograph of the applicant.
- Three colour photographs of the van, barrow, cart etc. that will be used for the street trading activity. (Front, Back and Side views)
- An original copy of the certificate of insurance that covers the street trading activity for third party and public liability risks.
- An original copy of the V5 for the vehicle.
- An original copy of the certificate of insurance that covers the applicant to drive the vehicle.
- Where food will be sold a copy of the Food Hygiene Certificate for the applicant.



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Voltage: 230V
Frequency: 50Hz
CE

Emma Morgan

From: Licensing
Sent: 08 August 2023 16:02
To: Jeff Morris
Cc: Nathan Oneill; Highways Business Support; Rebecca Alcock; Daniel Perkins; David Elliston; Gerald Brooks; Licensing
Subject: RE: Street Trading application - Phoenix Dining Solutions

Good afternoon Jeff,

Thank you for your comments.

I can see we have other hot food traders in the District who have been issued a touring consent without the time limit, with no objections/comments received by County Highways in the past or any requests for specific locations and times of stopping. To help us guide a Committee are you able to confirm the change in your position in relation to hot food sellers to ensure we are treating all applicants the same. As I am sure you can appreciate, we would not consult with Highways in relation to those renewing and therefore, all those already licensed will be able to continue to trade as set out in your objection.

I am able to confirm one location they will be trading from, which is Budgens in Kenilworth, this land is privately owned. I will ask the traders for further information and perhaps we could ask the Committee to consider a condition that they are only able to trade on privately owned land to help alleviate your concerns. I can also confirm the applicant wishes to go before a Committee to remove the condition in relation to the 15 minute limit, if this was granted they would not need to move on as set out in our policy. If this was not granted by a Committee I envisage the applicant will withdraw their application.

The applicant will be made aware that they are only able to trade within Warwick District Council's area.

I look forward to hearing from you.

Kind regards

Emma

Emma Morgan
 Licensing Enforcement Officer
 Safer Communities, Leisure and Environment
 Warwick District Council
 01926 456138
www.warwickdc.gov.uk

From: Jeff Morris <jeffmorris@warwickshire.gov.uk>
Sent: Tuesday, August 8, 2023 3:25 PM
To: Licensing <licensing@warwickdc.gov.uk>
Cc: Nathan Oneill <nathanoneill@warwickshire.gov.uk>; Highways Business Support <highwaysbusinesssupport@warwickshire.gov.uk>; Rebecca Alcock <rebeccaalcock@warwickshire.gov.uk>; Daniel Perkins <danielperkins@warwickshire.gov.uk>; David Elliston <davidelliston@warwickshire.gov.uk>; Gerald Brooks <geraldbrooks@warwickshire.gov.uk>
Subject: Re: Street Trading application - Phoenix Dining Solutions

OFFICIAL

Hi Emma,

WCC County Highways retain their OBJECTION based upon the following:

1. A touring consent similar to that of an Ice Cream Van(ICV) is entirely inappropriate for the case of hot food. ICV's, as I understand it, are under quite strict conditions such as a max. stop of 20 mins or until the queue has diminished, with serving available immediately upon stopping. Hot food, such as is proposed, is likely to require substantial stop times to allow cooking of ingredients, possibly with additional electricity generation equipment, or even heating/cooling times for oils.
2. There is no control over the times specified, so they 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.
3. The application states - pop ups across Warwickshire - WDC cannot give permission for street trading outside of the jurisdiction of the WDC judicial area. This could lead to the applicant breaching street trading laws in other District & Borough areas.
4. WCC County Highways has a duty of care to ALL Highway Users. Granting a carte blanche permission to trade anywhere on the highway network would not allow us to fulfil our obligations on this front. We would need specific locations provided for us to assess before making comment on Highway Safety.

I hope this clarifies our current position.

Kind Regards
Jeff

Jeff Morris M.I.H.E
Client Services Manager
County Highways
Environment, Planning & Transport
Communities
Warwickshire County Council
Tel: 01926 412515
email: highwaysbusinesssupport@warwickshire.gov.uk

www.warwickshire.gov.uk

Like us on Facebook: www.facebook.com/WarwickshireCountyCouncil

Follow us on Twitter: twitter.com/WarksHighways or twitter.com/warwickshire_cc

From: Licensing <licensing@warwickdc.gov.uk>

Sent: 04 August 2023 14:43

To: Jeff Morris <jeffmorris@warwickshire.gov.uk>; Licensing <licensing@warwickdc.gov.uk>

Cc: Nathan Oneill <nathanoneill@warwickshire.gov.uk>; Highways Business Support

<highwaysbusinesssupport@warwickshire.gov.uk>; Rebecca Alcock <rebeccaalcock@warwickshire.gov.uk>; Daniel Perkins <danielperkins@warwickshire.gov.uk>; David Elliston <davidelliston@warwickshire.gov.uk>; Gerald Brooks <geraldbrooks@warwickshire.gov.uk>

Subject: RE: Street Trading application - Phoenix Dining Solutions

OFFICIAL

Good afternoon,

Thank you for your email.

I can confirm this is for a touring consent which means we would not ask them to give us specific locations of trading, similar to ice cream van etc.

I hope this helps to clarify.

Regards

Emma

Emma Morgan
Licensing Enforcement Officer
Safer Communities, Leisure and Environment
Warwick District Council
01926 456138
www.warwickdc.gov.uk

From: Jeff Morris <jeffmorris@warwickshire.gov.uk>

Sent: Friday, August 4, 2023 10:13 AM

To: Licensing <licensing@warwickdc.gov.uk>

Cc: Nathan Oneill <nathanoneill@warwickshire.gov.uk>; Highways Business Support <highwaysbusinesssupport@warwickshire.gov.uk>; Rebecca Alcock <rebeccaalcock@warwickshire.gov.uk>; Daniel Perkins <danielperkins@warwickshire.gov.uk>; David Elliston <davidelliston@warwickshire.gov.uk>; Gerald Brooks <geraldbrooks@warwickshire.gov.uk>

Subject: Re: Street Trading application - Phoenix Dining Solutions

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OFFICIAL

Dear Mrs Downes,

WCC County Highways would not agree to this application without confirmation of specific locations. We need to assess specific locations from a safety aspect as well as considering legal implications associated with Legal Traffic Regulation Orders.

Furthermore, the application does not appear to be confined to the Warwick District Council area. If it was granted in its current form, the applicant could misconstrue it as permission for the whole of Warwickshire and find themselves trading illegally in other District & Borough areas.

I hope this clarifies our position in the matter.

Kind Regards
Jeff

Jeff Morris M.I.H.E
Client Services Manager
County Highways
Environment, Planning & Transport
Communities
Warwickshire County Council
Tel: 01926 412515
email: highwaysbusinesssupport@warwickshire.gov.uk

www.warwickshire.gov.uk

Like us on Facebook: www.facebook.com/WarwickshireCountyCouncil

Follow us on Twitter: twitter.com/WarksHighways or twitter.com/warwickshire_cc

From: Highways Business Support <highwaysbusinesssupport@warwickshire.gov.uk>

Sent: 04 August 2023 08:59

To: Rebecca Alcock <rebeccaalcock@warwickshire.gov.uk>; Daniel Perkins <danielperkins@warwickshire.gov.uk>; David Elliston <davidelliston@warwickshire.gov.uk>; Gerald Brooks <geraldbrooks@warwickshire.gov.uk>; Jeff Morris <jeffmorris@warwickshire.gov.uk>

Cc: Nathan Oneill <nathanoneill@warwickshire.gov.uk>

Subject: FW: Street Trading application - Phoenix Dining Solutions

OFFICIAL

For your attention...

Sending to you all as multiple locations referred to in the application:

(Where is your pitch?).....Various locations in Warwickshire in the form of 'pop ups'

Regards,

Richard Woodfin
Business Support Officer

County Highways
Warwickshire County Council
Shire Hall Post Room
Rear of Shire Hall
Northgate Street
Warwick
CV34 4RL

Email: highwaysbusinesssupport@warwickshire.gov.uk Tel: 01926 412515

From: Licensing <licensing@warwickdc.gov.uk>

Sent: 03 August 2023 15:11

To: @ South Warks Liquor Licensing <SouthWarksLiquorLicensing@warwickshire.police.uk>; CountyHighways SouthArea General <chsouth@warwickshire.gov.uk>; Pollution <Pollution@warwickdc.gov.uk>

Cc: Food Safety <FoodSafety@warwickdc.gov.uk>

Subject: Street Trading application - Phoenix Dining Solutions

Good afternoon

Please find attached a Street trading application for Phoenix Dining Solutions. As they are applying to trade outside of our permitted trading hours, they will be attending a hearing scheduled for 14th September 2023.

Ref: WDCSTC00259

Kind regards

Mrs V Downes
Licensing Technical Support Officer

Safer Communities, Leisure & Environment | Warwick District Council | Riverside House | Milverton Hill |
Royal Leamington Spa | CV32 5HZ | 01926 456705

velda.downes@warwickdc.gov.uk | www.warwickdc.gov.uk

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From: Anton Stevens [REDACTED]
Sent: 10 August 2023 09:25
To: Emma Morgan
Subject: Re: Highways objection

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Good morning,

We can confirm we would only be operating on private land and not on the public footpath. We are not able to provide the exact locations at present as these are usually booked one month in advance of our attending. We are aware of not trading on a public highway and will consider this when we are approached to attend any future engagements.

Hope this helps

Anton and Emma
Phoenix Dining Solutions

Kindest regards

Anton
Phoenix Dining solutions
[REDACTED]

From: Emma Morgan <Emma.Morgan@warwickdc.gov.uk>
Sent: Wednesday, August 9, 2023 3:25:12 PM
To: Anton Stevens [REDACTED]
Subject: Highways objection

Good afternoon,

I am emailing to confirm we have received an objection to your application from highways. I have explained that you wish for the condition in relation to 15 minutes to be removed by a Licensing Panel. However, are you able to answer the points below.

1. There is no control over the times specified, so they 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.
2. The application states - pop ups across Warwickshire - WDC cannot give permission for street trading outside of the jurisdiction of the WDC judicial area. This could lead to the applicant breaching street trading laws in other District & Borough areas.
3. WCC County Highways has a duty of care to ALL Highway Users. Granting a carte blanche permission to trade anywhere on the highway network would not allow us to fulfil our obligations on this front. We would need specific locations provided for us to assess before making comment on Highway Safety.

Please could you provide me with a breakdown of locations, will this be on private land only where you have been given permission or were you looking at setting up on the footpath. It may be that we look at a condition in relation to trading only from private land to ensure any footpaths are not blocked. I am unsure if I initially made you aware but you are unable to trade in any of our parks or gardens or car parks unless you have been given specific permission to do so for each event.

I would also like to clarify this STC would only give you permission to trade within Warwick, Kenilworth, Whitnash and Leamington and any surrounding villages within Warwick District area. This means you would not be able to trade in Stratford, Nuneaton, Rugby etc.

Kind regards

Emma

Emma Morgan
Licensing Enforcement Officer
Safer Communities, Leisure and Environment
Warwick District Council
01926 456138
www.warwickdc.gov.uk

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