



# Walsall Council

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## REPORT OF THE INTERIM REGULATORY MANAGER

### LICENSING AND SAFETY COMMITTEE

20 JULY 2011

## LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

### APPLICATION FOR AN ANNUAL STREET TRADING WARD CONSENT:

Mr Steven William Roberts  
Bridge Farm  
Goscote Lane  
Pelsall  
Walsall  
WS3 4QG

*Not for publication by virtue of paragraphs 1,2 and 3 of  
Schedule 12(A) of the Local Government Act, 1972 (as  
amended)*

#### **1.0 Summary of report**

- 1.1 To seek determination of an application made by Mr. S. Roberts for an annual street trading ward consent. The ward area requested being Maybrook Road, Brownhills.

#### **2.0 Recommendations**

- 2.1 The committee is asked to determine the application, having had regard to the information contained in the report, and hearing from the relevant parties.

#### **3.0 Background information**

- 3.1 On the 19 May 2011, an application for the grant of street trading annual ward consent was received from Mr Steven Roberts.
- 3.2 The application is in respect of a catering trailer for hot and cold food,

and refreshments. This unit is to be sited in Maybrook Road, Brownhills.

- 3.3 Before annual street trading ward consents are granted, the authority consults with West Midlands Police, along with various departments of Walsall MBC, these being Trading Standards, Environmental Health, Licensing Enforcement and Highways Enforcement.
- 3.4 West Midlands Police have submitted observations in respect of the application; these are attached as **Appendix 1**.
- 3.5 No other observations have been received in respect of the application from other consultees.

#### **4.0 Resource considerations**

- 4.1 **Financial:** The fee for a consent application is £430. If the application is refused the Council shall return the fee minus an administration charge of £50.
- 4.2 **Legal:** The Local Government (Miscellaneous Provisions) Act 1982 Schedule 4, contains a code which is available for councils to adopt in order to control street trading. Walsall MBC adopted this code by resolution on the 12<sup>th</sup> December 1983.

The committee is under no duty to grant a street trading consent and the committee need not specify statutory grounds for refusal. However human rights legislation and natural justice requires that any decision is evidence based and unbiased. Reasons for a decision should be given.

Paragraph 7 of the Local Government (Miscellaneous Provisions) Act 1982 Schedule 4:

#### **Street Trading Consents**

- (1) An application for a street trading consent or the renewal of such a consent shall be made in writing to the district council.
- (2) Subject to sub-paragraph (3) below, the council may grant a consent if they think fit.
- (3) A street trading consent shall not be granted –
  - (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.

(4) When granting or renewing a street trading consent the council may attach such conditions to it as they consider reasonably necessary.

(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 –

(a) obstruction of the street or danger to persons using it; or

(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 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 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.

There is no guidance as to when the committee should not think it fit to grant consent.

Some guidance on the factors the Committee may wish to consider is contained in Paragraph 3(6) of the Local Government (Miscellaneous Provisions) Act 1982 Schedule 4. This paragraph deals with Street Trading **Licences** and in the case of consents is merely illustrative of factors which the Committee may or may not wish to take account of. Some of the factors are not relevant to street consents.

The council may refuse an application for a street trading licence on any of the following grounds –

- (a) that there is not enough space in the street for the applicant to engage in the trading in which he desires to engage without causing undue interference or inconvenience to persons using the street;
- (b) that there are already enough traders trading in the street from shops or otherwise in the goods in which the applicant desires to trade;
- (c) that the applicant desires to trade on fewer days than the minimum number specified in a resolution under paragraph 2(11) of the Local Government (Miscellaneous Provisions) Act 1982 Schedule 4;
- (d) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- (e) that the applicant has at any time been granted a street trading licence by the council and has persistently refused or neglected to pay fees due to them for it or charges due to them under paragraph 9(6) of the Local Government (Miscellaneous Provisions) Act 1982 Schedule 4 for services rendered by them to him in his capacity as licence-holder;
- (f) that the applicant has at any time been granted a street trading consent by the council and has persistently refused or neglected to pay fees due to them for it;
- (g) that the applicant has without reasonable excuse failed to avail himself to a reasonable extent of a previous street trading licence.

There is no right of appeal against the refusal to grant a street trading consent. Redress is through the judicial review process.

A procedure to be followed has been prepared to assist in the meeting. However, Members can, of course, take a flexible approach in the interests of natural justice and fairness. The procedure is attached as **Appendix 2**.

4.3 **Staffing:** Nothing arising from this report

**5.0 Citizen impact**

5.1 Nothing arising from this report.

**6.0 Community safety**

6.1 Nothing arising from this report.

**7.0 Environmental impact**

7.1 Nothing arising from this report.

**8.0 Performance and risk management issues**

8.1 Nothing arising from this report

**9.0 Equality implications**

9.1 None arising from this report.

**10.0 Consultation**

10.1 Consultation has taken place with interested parties as detailed in 3.8 of the report.

**11.0 Contact Officer:**

11.1 Steve Knapper, Principal Licensing Officer. 01922 652221

## LICENSING AND SAFETY COMMITTEE

### GUIDANCE FOR PROCEDURE WHEN DETERMINING STREET TRADING APPLICATIONS

- (1) The Chair of the Committee to welcome the applicant (or representative) and will be asked to confirm if he/she has received a copy of the report and understands the procedure to be followed.
- (2) Introduction of the report.
- (3) The applicant will be asked if he/she has any questions regarding the report.
- (4) The Committee to ask any questions regarding the report.
- (5) Members may wish to hear evidence from witnesses.
  - (5a) The Licensing Officer may put questions to the witnesses
  - (5b) The applicant may put questions to the witnesses
  - (5c) Members of the Committee may put questions to the witnesses.
- (6) Applicant or representative will be invited to present his/her case to the Committee.
  - (6a) The Licensing Officer may put questions to the applicant or the representative
  - (6b) Members of the Committee may put questions to the applicant or representative
- (7) Licensing Officer will be invited to make a final statement.
- (8) Applicant or representative will be invited to make a final statement.
- (9) Applicant or representative and Licensing Officer to withdraw from the room whilst Committee considers the application.
- (10) Applicant or representative and Licensing Officer will be recalled.  
Parties will be advised of the decision (confirmation will be forwarded in writing).

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#### **NOTE:**

At any time during this procedure, the Head of Legal Services' representative may ask for, and respond to, points of clarification.