

WILTSHIRE COUNCIL

LICENSING SUB COMMITTEE

23 January 2019

Appeal against refusal of Street Trading Consent – Mr M Yilmaz

1.0 Purpose of Report

- 1.1 To determine an appeal against a decision to refuse an application for a Street Trading Consent in George Lane Car Park, Marlborough made by Mr M Yilmaz.

2.0 Background information

- 2.1 Under Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 ('The 1982 Act') (attached at **Appendix 1**), the Council has designated all streets in Wiltshire as 'Consent Streets'. This means that, subject to certain specified exceptions, any person who wishes to trade within a street in the County must obtain prior permission (known as a Street Trading Consent) from Wiltshire Council. It is an offence for anyone to trade in a Consent Street without having such a consent.
- 2.2 The Council has adopted guidelines for the consideration of applications for street trading consents, a copy of which is attached at **Appendix 2**. These guidelines set out when such consent will be required and the criteria that the Council will apply in assessing applications for consents (see Pages 8 and 9 of the guidelines).
- 2.3 The guidelines provide that where an application is received, the Council will carry out a consultation process and will evaluate the application against the approved criteria, taking into account any representations received during the consultation process. If the application meets the criteria and no reasonable or appropriate objections are received, an authorised officer can issue the consent.
- 2.4 Conditions may be applied to any consent that is granted.
- 2.5 If the application does not meet the adopted criteria and/or there are unresolved objections, then an authorised officer will consider whether the concerns raised can be adequately addressed by conditions and/or variations to the consent application. If that is not possible, then the application may be refused.
- 2.6 Where an application for a street trading consent is refused, or where additional conditions are imposed on the consent, the guidelines provide that there is a right of appeal to the Licensing Sub-Committee. Both the applicant and the authorised officer can attend the appeal to make representations in support of their case.

2.7 Consent streets are regulated under Schedule 4 of the 1982 Act. It is noted that the use of “consent” streets within Wiltshire rather than “licenced” streets indicates that the council wanted to provide itself with more latitude in the granting or denial of permissions to trade on Wiltshire’s streets. In terms of street trading consents, the legislation merely provides that the Council may issue a consent if it thinks fit. There are no specific statutory grounds for refusal of an application (as there are for street trading licences). Under the 1982 Act there is no requirement for local authorities to provide an appeal process or limits to local authorities’ powers to refuse consent (subject to the usual public law principles). However, in Wiltshire an appeal process was built into the Harmonised Street Trading Scheme (Street Trading Consent) guidelines (‘the Guidelines’).

2.8 The options available to the Sub-Committee are as follows:

- i) To grant the consent as applied for, subject to the standard conditions.
- ii) To grant the consent subject to such additional conditions that the Sub - Committee considers appropriate.
- iii) To refuse the application.

3.0 The Street Trading application

3.1. On 02 October 2018, an application for a street trading consent was received from Mr M Yilmaz and accepted as a valid application.

3.2. The application applied for was as follows:

A kebab van in George Lane Car Park, Marlborough (A copy of the application is attached as **Appendix 3**).

4.0 Consultation and representations

4.1 Once the application was received by the council, a consultation email was sent to relevant consultees on 02 October 2018 seeking representations as to the consent application. A copy of this consultation email is attached at **Appendix 4**.

4.2 During the consultation process representations were received to the Council. These representations are attached at **Appendix 5 – 9** inclusive. Those objecting to the granting of this consent are summarised below along with considerations by the authorising officer:

Marlborough Town Council (Appendix 5)

Within the Guidelines (Appendix 2), under the ‘Public Order’ section of the criteria for determining applications it states:

The street trading activity should not present a risk to public order in the locality in which it is situated. Observations from Wiltshire Police and council officers will be taken into consideration.

Marlborough Town Council ('the Town Council') objected this application over concerns for public order and cited the fact that the location already has considerable issues with anti-social behaviour and the proposed facility would compound these.

The Town Council also highlighted the fact the trader would be within 200m of a school (see 'Proximity to schools and colleges' criteria for determining applications – page 9 of the Guidelines).

Authorising Officer's considerations:

In line with the promotion of localism, the Town Council's concerns were considered. In this case Marlborough Town Council's Planning Committee indicated in their objection that they are concerned regarding increasing levels of anti-social behaviour in the area. This was a position also highlighted by Wiltshire Police.

The Town Council objection met the criteria for determining applications detailed in the Guidelines – Public Order and the Authorised Officer considered that the street trading activity would present a risk to public disorder in the locality it is situation and determined that consent should be refused.

The Town Council in their objection also commented that the facilities location was in close proximity to a school and the Authorised Officer found that that the facilities would be within a 200m walk of a school in close proximity. Under the Guidelines (page 9) no street trading consents will be provided for trading at locations within a 200 metre walk of a school unless agreed in writing by Wiltshire Council and the Authorised Officer determined consent should also be refused on this ground.

Wiltshire Police

Sgt Peter Foster (**Appendix 6**)

PC Paul Woodbridge (**Appendix 7**)

PSCO Emily Sykes (**Appendix 8**)

Wiltshire Police in their objection cited continual issues with noise, litter, drug dealing and cars revving at night in the George lane car park area along with general anti-social behaviour. The proposed location is also the site of a Police 'touchdown point' and the Police believe a food establishment in this area will cause them difficulties in managing the anti-social behaviour in this area. The Police believe the proposed facility would increase anti-social behaviour in the area and objected on these grounds.

Authorising Officer's considerations:

Anti-social behaviour is a serious issue and Wiltshire Police have confirmed there is no CCTV in the area and residential properties are located nearby. This objection was considered by the Authorised Officer and was the primary reason for the refusal of this application. The Authorised Officer found that the objection from Wiltshire Police met the criteria for determining applications as

set out in the Guidelines and determined that consent should be refused on this ground.

Councillor Nicholas Fogg (Wiltshire Councillor – Marlborough West) (Appendix 9)

Cllr Nicholas Fogg supported the objection made by Marlborough Town Council and Wiltshire Police in that he considered that such a food outlet could lead to breaches in public order.

Authorising Officer's considerations:

The issues raised here by Cllr Fogg and the subsequent objection met the criteria for determining applications detailed in the Street Trading Consent Guidelines – Public Order, which determined that consent should be refused

5.0 Reasons for Refusal

- 5.1 The street trading consent application was refused by the authorising officer. An email notifying the applicant of this decision was sent on 07 November 2018 (**Appendix 10**). The application was refused by the Authorised Officer for the following reasons:

Consultee's observations

That the objections received from the Town Council and Wiltshire Police showed that the granting of the application would potentially lead to increased levels of anti-social behaviour in the proposed location which currently suffers from anti-social behaviour.

That the catering facility would be located close or near to a school which would not be permitted under the criteria for determining street trading consent applications.

6.0 Appeal

- 6.1 In accordance with the guidelines, Mr Yilmaz was notified of the decision to refuse his application and informed of his right to appeal to the Licensing Sub Committee. Mr Yilmaz responded the same day to enquire about the appeals process and subsequently suggested a new location for the catering facility. The new location was put to the consultees but their objections remained unchanged due to the close locality of the new (second) location to the first location. Mr Yilmaz was therefore advised on 12 November 2018 that the second location would also be unsuitable.
- 6.2 Mr Yilmaz provided written reasons for his appeal and are shown in a copy of the representation received from Mr Yilmaz attached as **Appendix 11**. These are detailed in order below:
- (i) Mr Yilmaz advised that he will use security cameras inside and outside of his van to reduce anti-social behaviour.

(ii) Mr Yilmaz advised that he will manage litter and clean the area around his van each evening after trading.

(iii) Mr Yilmaz advised he will address the noise issue by using a silent generator.

6.3 The authorised officer has considered Mr Yilmaz's written reasons for his appeal and takes the view that despite all of the above appeal reasons, the objections of the Town Council and Wiltshire Police remain relevant because the presence of a hot food van in the proposed location will make an already fragile situation worse in respect of the management of the anti-social behaviour. Whilst Mr Yilmaz states he will have his own CCTV cameras on his van, this is not considered to be a deterrent for a potential increase in anti-social behaviour within the car park. This view from the Police as described within this report is of primary concern to the Authorised Officer because the Police are aware of the current anti-social behaviour issues which are frequent in the car park area.

6.4 Schedule 4 of the Act, 7(2) states the council may grant a consent 'if they see fit'. No greater duty is placed on the council to grant consent or require it to specify grounds for refusal. I believe that the application was appropriately considered in all respects and the refusal decision taken was correct given the objections and circumstances.

7.0 Legal Implications

7.1 The applicant has been informed of the date, time and location of the hearing and their right to attend and be represented.

7.2 At the hearing the applicant and the authorised officer are entitled to address the Sub-Committee and to ask questions of each other, with the consent of the Sub-Committee.

8.0 Right of Appeal

8.1 There is no further right of appeal against the decision of the Sub-Committee, other than by way of judicial review on a point of law.

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9 January 2019

Background Papers used in the preparation of this Report

List of Appendices:

No.	Description
1	Local Government (Miscellaneous Provisions) Act 1982 (c. 30) Schedule 4 (The Act).
2	Wiltshire Council Street Trading Consent – Guidelines.
3	Street Trading Consent Application – Mr Yilmaz.
4	Street Trading Consent – Consultation email.
5	Marlborough Town Council – Objection email.
6	Sgt Peter Foster (Wiltshire Police) objection email.
7	PC Paul Woodridge (Wiltshire Police) objection email.
8	PCSO Emily Sykes (Wiltshire Police) objection email.
9	Cllr Nicholas Fogg (Wiltshire Councillor – Marlborough West) objection email.
10	Street Trading Consent Application - Refusal Notification email.
11	Reasons for appeal letter (Mr Yilmaz) email.