

LICENSING SUB COMMITTEE - APPEAL AGAINST STREET TRADING CONSENT DECISION

MINUTES OF THE LICENSING SUB COMMITTEE - APPEAL AGAINST STREET
TRADING CONSENT DECISION MEETING HELD ON 23 JANUARY 2019 AT
KENNET ROOM - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

Present:

Cllr Allison Bucknell, Cllr Trevor Carbin and Cllr Stewart Palmen

Also Present:

Jim Brewster (Democratic Services Officer – Observing), Tom Ince (Authorised Officer – Amenity Partnership Team Leader), Sarah Marshall (Legal Adviser), Tracey Morris (Markets Officer), Cllr Jim Lynch (Observing), Lisa Pullin (Democratic Services Officer)

1 **Election of Chairman**

Nominations for a Chairman were sought, and it was,

Resolved:

To elect Councillor Trevor Carbin as Chairman of the Sub Committee for one meeting only.

2 **Declarations of Interest**

There were no declarations of interest.

3 **Meeting Procedure**

The Chairman explained the meeting procedure that would be followed as detailed in the agenda papers at pages 5 - 10.

4 **Consideration of Exclusion of the Press and Public**

Following input from those present, and with no members of the press or public in attendance, the Sub Committee determined there was no need to formally pass a resolution excluding any other attendees.

5 **Appeal Against Street Trading Consent Decision**

Mr Tom Ince (Amenity Partnership Team Leader and Authorised Officer), presented a report detailing the decision to refuse the Appellant, Mr Mehmet Yilmaz a street trading consent for kebab van, which was to be situated in George Lane car park, Marlborough. Mr Ince highlighted the following:

- During the 30-day consultation process a number of representations were received. Three objections from Wiltshire Police who were particularly concerned that the proposed location was also the site of a Police 'touchdown point' and that a food establishment in that area would cause them difficulties in managing on ongoing situation with anti-social behaviour in the area. They were also concerned about noise disturbance, litter, drug dealing and the fact that there are residential properties nearby;
- Marlborough Town Council also shared the same concerns as the Police and highlighted the fact that the trader would be within 200m of a school;
- Cllr Nicholas Fogg also supported the objections raised by the Town Council and Police and considered that such a food outlet could lead to breaches in public order; and
- The issues raised and the subsequent objections met the criteria for determining applications detailed in the Street Trading Consent Guidelines – Public Order, which determined that consent should be refused.

The Appellant, Mr Yilmaz did not wish to ask any questions of the Authorised Officer.

Members of the Sub Committee then had the opportunity to ask questions of the Authorised Officer as detailed below:

Q Was there any evidence of anti-social behaviour?

A No, this was accepted as the Police's recommendation that a van in his area would exacerbate anti-social behaviour.

Q Are there any other mobile hot food takeaways in Marlborough?

A There are some in outlying roads of Marlborough on the A road but none in the Town Centre.

Q What is the proposed proximity of the kebab van to the Police touch down point?

A I believe it is within 10 metres of the area the Police were planning to use. The Appellant had suggested another area which was closer to Waitrose, but this site was still of concern to all those who had replied

to the consultation and it was felt that it would still compound the existing anti-social behaviour concerns.

Q There are no noise concerns raised in the Town Council's representation?

A No, they were concerned with the anti-social behaviour.

Q Could the Appellant do anything to help control the anti-social behaviour?

A The Appellant has offered to have CCTV on the kebab van, but the area proposed is large and the CCTV from the van would not give coverage of a very large area. It is felt that it would attract young adults to the area and encourage drugs and anti-social behaviour to the area.

Q The Police intend to use this area as a touch down point – why would this be a problem?

A We aim to work in partnership with the Police and as they have made a strong objection we feel we should support their view with their knowledge of the area.

Q Is St Mary's School within a 200-metre radius of the proposed site?

A We have measured the distance and it is about 198 metres away – we used our GIS mapping tool but we cannot say it is 100% accurate. We did feel that due to the proposed start time (16:00) this would not affect those walking home from primary school unless they had attended after school clubs. Other venues that may be near to schools have had time restrictions, with those venues able to trade from 18:00.

Q What time does the school finish?

A I believe it is 15:30.

The Appellant, Mr Yilmaz was then given the opportunity to present his case against the refusal of street trading consent. Mr Yilmaz highlighted the following:

- That he could commence trading from 16:30/17:00 so that there was no conflict with the primary school children walking home;
- He was aware that Waitrose closed at 22:00 and he therefore intended to trade until 23:00 to be able to serve potential customers coming out of the Waitrose store;
- When they were serving customers they would be able to watch the area as there would be CCTV installed on the van; and

- He had 15 years' experience in the trade, having been previously sited in Melksham, but ending this as there was not enough trade.

Mr Ince (Authorised Officer) was then given the opportunity to ask questions of the Appellant.

Q The Police are concerned that the kebab van will encourage anti-social behaviour in the area – how would a kebab van reduce this?

A They will see our CCTV cameras and not do any naughty things.

Q The proposed site is a large car park around 150 metres – the van would attract people and that would be a greater opportunity for more issues to arise.

A I don't believe that the kebab van would cause anti-social behaviour – we did suggest an alternative place which is nearer to Waitrose.

The Chairman confirmed that any new proposed locations were not able to be considered by the Sub Committee at this meeting and that they could only consider the location as detailed in the application.

Q We know that there is an established anti-social behaviour problem in this area and we don't want to compound the problem. What is the coverage of your CCTV?

A Around 10/20 metres. We would have two staff present on the van whilst trading for our safety. It is the Council's job to put up CCTV if they wish to monitor an area. I feel that this is the best location for the van in Marlborough.

The Sub Committee then had the opportunity to ask questions of the Appellant.

Q Why did you chose this location for the kebab van?

A I checked everywhere and spent time looking around. I feel this is the best location, there will be footfall from those shopping in Waitrose.

Q I would have thought that you're more likely customers are those who have been drinking, not Waitrose customers. Have you been situated near to a supermarket before with your van?

A Yes, I was previously situated in Bath Road in Melksham – people will come to you if you are good.

Q Have you spent time in the area in the evening and observed what happens?

A Yes, I have spent time there around 21:00/23:00. I did not witness any anti-social behaviour, just saw young people in the cars with no problems.

Q Can you understand the concerns that have been raised?

A I have never had a problem, people don't do it (anti-social behaviour- because we are there.

Q In previous places where you have been situated, were there problems before?

A No, people get their takeaway and eat in their car or take their food home.

Q Will you install CCTV to check the area?

A That is for us and our customers. It would be situated behind and in front of the trailer.

Q Have you talked to Marlborough Town Council to see where they might think a kebab van would be acceptable?

A I have been trying for 8 years to find a location in Marlborough.

The Authorised Officer offered to supply the Appellant with details of Councillors he could contact.

The Chair explained it was not for Wiltshire Council Officers to assist him with locations but had he considered asking local Councillors or Town Councillors or other street traders in Marlborough for help to find a suitable location

Q Do you intend to have two people on the van all the time?

A Yes.

Q How long to you keep your CCTV recordings?

A We keep them for one month and have signs on the van to say that we have CCTV.

The Authorised Officer made the following points in summation:

- We want to work in partnership with the Police and we believe that the location will compound an existing anti-social behaviour issue;
- We do challenge objections but we are concerned here that a sitting vehicle in this location will compound the existing anti-social behaviour issue and encourage more people to park at night. Re the objection

concerning litter we could manage litter with conditions but it is the anti-social behaviour which is causing us the concern.

The Appellant made the following points in summation:

- Please give me the chance to open for a certain time as I don't think there will be a problem. If anything happens to my site I will close my business. I don't like anti-social behaviour and I have run 4 businesses in the past. People like to take foot to eat in their car before they go home.

The Sub Committee then retired with the Legal Adviser and Committee Manager at 10:55 and returned at 11:25, where the Sub Committee considered all of the submissions made and the written representations together with the Street Trading Consent Guidelines and the Local Government (Miscellaneous Provisions) Act 1982.

Resolved

The Licensing Sub Committee resolved to allow the appeal.

The Street Trading Consent for George Lane car park, Marlborough to be granted for a period up to 31 July 2019.

Licensable Activity	Timings	Days
Permitted trading hours	16:30 – 23:00	Mon – Sun

Conditions

- 1. Two people to be present on the premises (van) during all trading hours.**
- 2. CCTV to be operational during trading hours and available for checking by the Council's Authorised Officer and the Police for 30 days.**
- 3. The Appellant pays 50% of the annual street trading fee for the period up to 31 July 2019.**

Reasons

After taking into account the written representations from the Council's Authorised Officer and the Appellant and the oral submissions received from both parties at the hearing, the Sub Committee considered the appeal and the concerns raised in the objections to the application received from Wiltshire Police, Marlborough Town Council and the local Ward Member.

It was noted that these concerns related to the perceived public nuisance arising from anti-social behaviour in the area although no substantiated evidence was provided to the Sub Committee to this effect. In view of this, the Sub Committee agreed to grant the Street Trading Consent for a shorter period up to 31 July 2019 and for the Appellant to provide CCTV which would be available for checking by the Council's Authorised Officer or the Police. Another factor that was considered was the location of a primary school within approximately 200 metres of the trading van. However, the Sub Committee took the view that this could be mitigated by the Appellant not commencing trading until 16:30 hours.

In reaching its decision the Sub Committee also considered the Street Trading Consent Scheme Guidelines and the Local Government (Miscellaneous Provisions) Act 1982, Schedule 4 Street Trading.

Right to Appeal

A person aggrieved by the decision of the Licensing Sub Committee may make an application to the High Court for judicial review of the decision.

(Duration of meeting: 10.30am - 11.30am)

The Officer who has produced these minutes is Lisa Pullin, Tel 01225 713015 or email committee@wiltshire.gov.uk of Democratic Services, direct line , e-mail

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