

WILTSHIRE COUNCIL

LICENSING SUB COMMITTEE

20 March 2014

Appeal Against Refusal of Street Trading Consent – Mr P Balasooriya

1. Purpose of Report

- 1.1 To determine an appeal against a decision to refuse an application for a Street Trading consent in The Market Place, Chippenham made by Mr P Balasooriya.

2. Background Information

- 2.1 Under Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982, attached as **Appendix 13**, 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 the 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 as **Appendix 14**. The 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, the 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 the 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 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 The options available to the Sub Committee are:-

- 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. The Application

3.1. On 5 November 2013, an application for a street trading consent was received from Mr P Balasooriya and accepted as a valid application.

3.2. The application applied for is as follows:

A fruit and vegetable stall in High Street or Market Place, Chippenham.

A copy of the application is attached as **Appendix 1**.

4. Consultation and Representations

4.1 During the consultation process the representations at **Appendices 5 – 12** were received. Those objecting to the granting of this consent are summarised below, and were assessed as follows:

(a), Town Council - Appendix 5.

Under "Permitted Trading hours", market stalls should only be permitted on market days and as part of existing markets.

Consideration:

In line with the promotion of localism, town councils concerns have much weight. In this case Chippenham town council's planning committee indicate in their objection that they do not want traders in Chippenham, other than as part of existing regular markets on Fridays and Saturdays or the monthly Sunday farmers market.

If there were traders in the main street on all days this might undermine existing market traders and viability of the weekly community markets, which are valuable to this market town.

(b), SK Fruits - Appendix 6.

Competition would put them out of business.

Consideration:

Competition is good for customers - Dismiss objection.

(c), Independent Traders Association - Appendix 7.

Support objection made by SK fruits and Town council.

Consideration:

Competition is good for customers - Dismiss objection.

(d), Highways Engineer - Appendix 8.

Generation of Litter – this would be dealt with by consent conditions as appropriate.

Possible 'knock on' effect of more stalls on non market days forming an 'unofficial' market.

Consideration: as (a), above.

(e), Markets Manager - Appendix 9.

Should not be permitted on market days

Consideration: As (a). above

5 Reasons for Refusal

5.1 The Authorised Officer refused the application for the following reasons:

Consultees' observations -

The application would undermine existing traders and businesses.

Permitted Trading hours -

Market style stalls should be restricted to Market Days

5.2 A copy of the refusal letter is attached as **Appendix 2.**

6. Appeal

6.1 In accordance with the Guidelines, Mr Balasooriya was notified of the decision to refuse his application and informed of his right to appeal to the Licensing Sub Committee.

6.2 Consent streets are regulated under Schedule 4 of the Act, Appendix 13. It is noted that the use of "consent" streets within Wiltshire rather than "licence" 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). There is under the Act no requirement to provide an appeal process or limits to the council's power to refuse consent (subject to the usual public law principles) although this appeal process was built into the guidelines.

6.3 The reasons given for appeal are shown in a copy of the representation received from Mr Balasooriya attached as **Appendix 3**. These are addressed in order below:

6.3.1 The advice given by officers to Mr Balasooriya was around normal trading hours and that the consent would not normally be granted on Market days, on those days he should apply for a place on the Market. He has recently traded on the market.

The application was not rejected outright but after a proper consultation. Officers gave general advice on trading hours in good faith, but could not predict any of the objections that were later received or predict the outcome.

6.3.2 Whilst the objections from local businesses on grounds of competition were dismissed. The possibility of undermining the viability of the existing weekly community markets, the concern raised by the town council, was considered unacceptable.

6.3.3 The issues regarding payment of the fees have been dealt with separately and are not, therefore, part of this appeal process.

6.3.4 The decision was only made after consideration of the objections as prescribed by the process. Mr Balasooriya was informed of the decision shortly after it was made and the letter included information that an appeal could be made.

6.4 Schedule 4 of the Act, 7(2) 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 properly considered in all respects and the decision taken appropriate to the circumstances.

7. 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. 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.

Report Author:

Paul Harris
Principal Highways Enforcement Officer
Tel: 01249 706269
Email: paul.harris@wiltshire.gov.uk

4th of March 2014

Background Papers Used in the Preparation of this Report

Appendices

No.	Description
1	Application form
2	Refusal Letter
3	Appeal letter
4	Consultation Email
5.	Chippenham Town Council –Objection
6.	SK Fruits - Objection
7.	Chippenham Independent traders – Objection
8.	Highways Engineer Objection
9.	Market Manager – Comments
10.	Ward Councillor Comments
11.	Fire Service Comments
12.	Principal highways Enforcement officer - Comments
13.	Local Government (Miscellaneous Provisions) Act 1982 (c. 30) Schedule 4 (The Act) Text that 'does not' apply is highlighted grey.
14.	Council Guidelines for Street Trading consents