

BRIDGEND COUNTY BOROUGH COUNCIL

REPORT TO LICENSING SUB-COMMITTEE

14 SEPTEMBER 2017

REPORT OF THE CORPORATE DIRECTOR, OPERATIONAL AND PARTNERSHIP SERVICES

APPLICATION FOR GRANT OF STREET TRADING CONSENT

1. Purpose of Report.

- 1.1 To determine an application for the grant of a street trading consent for the Family Zone, The Esplanade, Porthcawl for "Elvis" merchandise and for food outlets in John Street and on The Esplanade during the Elvis Festival weekend of the 23/24 September 2017. The application has been submitted by Porthcawl Elvis Festival Ltd. This matter is referred to Sub-Committee for determination, in view of the objections raised by the highway authority.

2. Connection to Corporate Improvement Plan / Other Corporate Priority.

- 2.1 None.

3. Background.

- 3.1 The Council has adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 to regulate street trading in the County Borough. For the purposes of the Act street trading is defined as "the selling or exposing or offering for sale of any article (including a living thing) in a street."

- 3.2 A street includes

"(a) any road, footway, beach or other area to which the public have access without payment..."

When adopting the designation of consent streets and a street trading policy, the Licensing Committee was advised of the High Court in the case of WEST BERKSHIRE DISTRICT COUNCIL v PAINE (2009) which clarified the scope of the definition of a street. The judgement outlined that it was important to keep in mind the purpose of the 1982 Act, namely that it enabled a local authority to regulate sellers who operated without premises and itinerant traders so that it could assess the suitability of sellers; assess what nuisance or obstruction they might cause; and ensure consumer protection. The judgement concluded that whether premises were private property was an immaterial consideration for the purposes of considering what constituted a street for the purposes of Sch.4 paragraph 1(1)(a) of the 1982 Act. Therefore the key consideration for the local authority was whether the public could go to a place without having to make a payment and not whether they did so go.

- 3.3 The current application process requires the applicant to provide information to enable an assessment to be carried out as to the suitability of the applicant, and to

ensure that consideration may be given as set out in Paragraph 7 of Part III Schedule 4 of the Act, to 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)

3.4 The policy governing the grant and renewal of applications, and the application process was approved by the Licensing Committee on 4 October 2011 (Minute 91). The resolution identified that all streets in the County Borough shall be designated as consent streets e.g. one where consent from the local authority is needed before street trading may commence.

4. Current situation / proposal

4.1 The application has been circulated to South Wales Police, the Council's Highways Department, Transportation and Engineering, Planning Department, Town Centre Manager, Property Department, Public Protection Department, Streetworks Department, Rights of Way Department, Parks and Playing Fields Department and Porthcawl Town Council. The application was also advertised on Bridgend County Borough Council website.

4.2 The Manager of the Highways Network, Bridgend County Borough Council raised initial concerns about granting the organisers permission to trade on the highway. The lack of such permission would mean that any street trading consent, if granted, could not take effect. A number of meetings have been held and correspondence exchanged on the logistics and organisation of the Festival, including the Council's Events Safety Advisory Group. However, the objection trading on the highway has not been withdrawn. The relevant correspondence from the Manager of the Highways Network is attached as Appendix A. A copy of the plans outlining the required areas for the Street Trading Consent is attached as Appendix B. A copy of the Council's Street Trading Policy is attached as Appendix C.

4.3 In addition, to the criteria referred to in paragraph 3.3 of the report, and the policy in place. The following specific paragraphs of the policy are relevant to this application:

Paragraph 2.2:

"2.2 For the purposes of this document, the term relevant representations means, representations made by a statutory or enforcement agency, Council department, or a person who is likely to be affected by the trading. Relevant representations could include matters relating to obstruction of the street, danger to persons using it or nuisance or annoyance, whether to persons using the street or otherwise, factors which are set out in the Act."

Paragraph 4.1:

"The aim of the policy is to encourage vibrant town centres and minimise nuisance in residential areas. The overriding policy is that each application will be determined on its merits. However, there will be a presumption of refusal, following relevant

representations on certain grounds connected to the potential for public safety, road safety, nuisance, obstruction, visual intrusion, litter, and noxious smells.”

Paragraph 4.4:

“In addition, there will be a presumption of refusal of consent if the following factors apply:

- a. The sale of vehicles from or adjacent to the highway other than from premises with the appropriate planning consents in place
- b. Trading in close proximity to schools, playgrounds or other community facilities regularly used by children where representations are received that the trading will result in road safety issues, impact on safe routes to schools, or anti-social behaviour and litter.
- c. Trading that will result in anti-social behaviour and litter
- d. Trading that is likely to obstruct the free flow of traffic and pedestrian movement or otherwise cause a hazard to other road users
- e. Trading that will lead to the contravention of any traffic regulation order or advice given in the Highway Code
- f. Trading that takes place in narrow or restricted areas where the activity would cause congestion or impact on public safety
- g. Trading that takes place in areas requiring servicing, deliveries or emergency access
- h. Trading that will have a detrimental effect on the character of an area”

Paragraph 5.1:

“5.1 The granting or renewal of a street trading consent is subject to standard and/or special conditions relating to such issues as:

- Obstructions
- Nuisance or annoyance
- Location of trading
- Operation times
- Litter control
- Any other conditions as are reasonable and proportionate to include consent being limited to a single location.”

Paragraph 6.3:

“6.3 The applicant will be responsible for obtaining any other permissions, including permissions from the planning and highway authority and the land owner’s consent to trade on the street. The applicant will be required to provide written confirmation of the land owner’s consent to trade on the street.”

5. Effect upon Policy Framework & Procedure Rules.

5.1 None

6. Equality Impact Assessment.

6.1 There are no implications in relation to age; disability; gender and transgender; race; religion or belief and non-belief or sexual orientation

7. Financial Implications.

7.1 None. The fee for the grant of the consent has been paid.

8. Recommendation.

8.1 The powers available to the Sub-Committee are as follows:-

8.1.1 To grant the consent subject to the standard conditions and any other conditions the Sub-Committee deems reasonably necessary.

8.1.2 To refuse the application.

Andrew Jolley

Corporate Director Operational and Partnership Services

7 September 2017

Contact Officer: **Yvonne Witchell**
Team Manager Licensing

Telephone: (01656) 643643

E-mail: Yvonne.Witchell@bridgend.gov.uk

Postal Address Civic Offices, Angel Street, Bridgend, CF31 4WB

Background documents

Application for Street Trading Consent
Council's Street Trading Policy