

BRIDGEND COUNTY BOROUGH COUNCIL

REPORT TO LICENSING SUB COMMITTEE

18 AUGUST 2015

REPORT OF THE ASSISTANT CHIEF EXECUTIVE LEGAL AND REGULATORY 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 sale of ice cream from a vehicle in various locations in the county borough. The application has been submitted by Pamela Davies in respect of a single van, for the sale of ice cream sweets, tea/coffee, biscuits, crisps.

1.2 A previous consent expired on 11 August 2015.

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 was originally submitted prior to the expiry date, to renew and extend the scope of the existing consent which covered fixed trading on the Newton Beach site, and Porthcawl streets as a mobile trader. The applicant provided supporting evidence from the land owner of consent to occupy the fixed trading site at Newton Beach, Porthcawl.

4.2 The application also named Rhych Avenue Porthcawl specifically as a site. The applicant also seeks to extend the mobile trading element to encompass all streets in the County Borough except outside schools.

4.3 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.

4.4 The previous consent was issued subject to special conditions as to the location of trading on a fixed site, and specifying where trading could not take place as follows:

4.4.1

1. When operating as a mobile trader the consent holder shall not operate so as to cause:

(a) The contravention of any traffic regulation order or advice given in the Highway Code.

(b) The obstruction of the free flow of traffic and pedestrian movement or otherwise cause a hazard to other road users.

(c) Any congestion or hazard to public safety.

(d) The consent holder will move on immediately the last customer has been served and no permission is granted to trade from a fixed site or position except the Newton Beach site.

4.4.2

2. **The consent to apply to fixed trading at the Newton Beach Car Park.**

4.4.3

3. **The consent to apply to mobile trading in Porthcawl but with the following exclusions:**
 - (a) **No trading outside any Primary School during school hours or at the beginning or end of the school day or in Park Avenue, Victoria Avenue or Severn Road, Porthcawl.**
 - (b) **No trading on the Eastern Promenade, Porthcawl.**
 - (c) **No trading on the Esplanade, Porthcawl from the Grand Pavilion to Cosy Corner.**
 - (d) **No trading in any venue which is within the curtilage of the Splash Up event except with the written permission of the Council.**
 - (e) **No trading on the Wales Coast Path or in any area likely to obstruct access to the Coast Path.**

4.5 The consultees have responded and some revisions to the streets have been proposed and a request for additional information submitted. The applicant was notified in writing on 15 July 2015 of the proposed terms of the consent, if granted, which included the list of streets where it was proposed that mobile trading would not be permitted. These relate mainly to Porthcawl, Bridgend and Maesteg Town Centre streets, as follows:

- James Street Porthcawl
- John Street Porthcawl
- Dock Street Porthcawl
- Well Street Porthcawl
- The Esplanade Porthcawl, from Cosy Corner to The Seabank Hotel
- Rhych Avenue Porthcawl
- Nolton Street Bridgend
- Derwen Road Bridgend
- Rhiw Hill Bridgend
- Commercial Street Maesteg, from the Police Station to the traffic lights)
- Talbot Street Maesteg

4.6 However, the Rhych Avenue site was also included within the restricted streets as the applicant had not at that time provided the land owner's consent to occupy the site. To ensure continuity of trading, it was suggested that the application proceed excluding the Rhych Avenue site, with a review once satisfactory documentation was produced. At the time this report was prepared this had not been agreed by the applicant.

4.7 Paragraph 5.1 of the Council's street trading policy sets out the issues for consideration before determining an application.

"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."

4.8 Paragraph 6.3 of the Council's policy sets out the pre-licensing requirements:

"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."

4.9 If the Sub-Committee is minded to grant the application, it is requested to consider including the special conditions set out in paragraph 4.4.1 above, a stipulation regarding the location of any fixed trading sites as set out in paragraph 4.4.2 above, together with a list of streets specifically to be excluded from the consent.

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 annual fee for the grant of 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. A street trading consent may be granted for any period not exceeding 12 months.

8.1.2 To refuse the application. Members are advised that there is no statutory right of appeal against the decision to refuse a street trading consent but an internal means of redress has been established within the policy.

Andrew Jolley
Assistant Chief Executive Legal and Regulatory Services

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Contact Officer: **Yvonne Witchell**
Licensing and Registration Officer

Telephone: (01656) 643105

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

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

Background documents

Application for Street Trading Consent
Criminal Record Subject Access Search
Council's Street Trading Policy