

SUBJECT:	APPLICATION FOR A STREET TRADING CONSENT BY: Mr Ahmed Morjane in respect of Market Square, Chesham, HP5 1ES
REPORT OF:	Application under Local Government (Miscellaneous Provisions) Act 1982, Part III and Schedule 4.
Responsible Officer	Brian Whittall – Licensing Officer
Report Author	Brian Whittall – Licensing Officer
Ward/s Affected	Chess Valley

1. Purpose of Report

- 1.1. To provide Members with information to enable the determination of an application for a new street trading consent, which is subject to representation.

2. Background

- 2.1. The Local Government (Miscellaneous Provisions) Act 1982 contains adoptive provisions enabling local councils to control street trading by designating streets as Licence Streets, Consent Streets or Prohibited Streets.
- 2.2. Street trading is only permitted in Licence or Consent Streets if the Council has given permission by way of a licence/consent. Permission cannot be given to trade in Prohibited Streets. Street trading is not controlled in streets that have not been designated by the Council.
- 2.3. The former Chiltern District Council adopted these provisions in 1984 and following a consultation exercise designated a large number of streets throughout the former district as Consent Streets which are primarily in and around town centres.
- 2.4. In accordance with the transformation regulations that applied to the creation of the new unitary Council, the associated policies and procedures previously adopted in the legacy District Council areas continue to apply until such time as Buckinghamshire Council resolves to adopt a single approach. In accordance with the Licensing Service's harmonisation workplan, the service intends to adopt a single policy, set of procedures and fee structure for street trading for the Council over the next 12 months. In the meantime, the former District Councils' policies and procedures relating to street trading matters continue to apply in the respective legacy areas.
- 2.5. In accordance with the Street Trading Policy for the Chiltern area, adopted in 2012 and attached as **Appendix 1**, applications that attract objections must be determined by the

Regulatory Sub-Committee (formerly Licensing & Regulation Committee for the Chiltern area).

- 2.6. There are currently no other authorised traders within the consent area. There is another street trader the opposite end of the High Street on The Broadway with the following consent times Monday to Tuesday 0800 – 1800; Thursday to Friday 0800 – 1800.

3. The application

- 3.1. An application has been made by Mr Ahmed Morjane for a street trading consent to trade from the Market Square, Chesham to sell Italian styles food, including pizza, pasta and burgers. The application is to trade 6 days a week between 17:00 – 23:00 (see **Appendix 2**).
- 3.2. The proposed location is within an area of craft beer bars, and retail food outlets. (See **Appendix 3** for application site plans).
- 3.3. The application was originally received on 23 December 2022 and was deemed to be valid on the 17 January 2023 when all relevant documentation had been made as part of the application.
- 3.4. The former Chilterns District Council did not designate any streets Licence Streets and only Consent Streets and a Prohibited Street exist in the former Chiltern District Council and South Bucks legacy area. In light of this whilst the applicant at Section 5 to 11 has identified the type of application as “Street Trading licence” it has been accepted and treated as an application for “Street Trading Consent” and processed in accordance with the Chiltern District Council Street Trading Policy 2012.

4. Consultation

- 4.1. Consultation letters were sent to Ward Councillors, Chesham Town Council, Thames Valley Police and Buckinghamshire Council Highways.
- 4.2. A Public Notice was also displayed at the proposed site and the expiry date for consultation was set for 14 February 2023
- 4.3. During the consultation period representations were received from Chesham Town and Buckinghamshire Councillors, Buckinghamshire Council Highways and Environmental Health Services, and three local businesses, one of whom is supportive of the proposal.
- 4.4. The representations are shown in **Appendix 4** and summaries of the comments are provided below:
- 4.4.1. Councillors and the Parish Council objected on grounds that:
- The application is not in line with Council plans to re-generate the area and improve the Night Time Economy (NTE).
 - If granted the applicant would undercut existing rate paying retail food businesses that are currently experiencing financial hardship due to a loss of footfall.
 - There are already existing complaints regarding the current food van located on the Broadway. It is considered that if granted this application would lead to further complaints.
 - It would be detrimental to the aesthetics of the clock tower area.
- 4.4.2. Buckinghamshire Council Highways Service objected on grounds that:

- Market Square has limited space and is designated as a pedestrian zone (with vehicles only permitted for loading/unloading).
 - There is likely insufficient space to accommodate both a towing van and mobile food van.
 - It is unclear from the submitted application whether the food will be 'take away' only, or if there is a desire to place some tables / chairs by the mobile unit. If this is the case, the applicant would need to apply for a Pavement Licence from Buckinghamshire Highways. If needed, and if granted, it could further reduce available highway space.
- 4.4.3. Buckinghamshire Environmental Health Service commented that the following matters needed to be considered:
- Access to WCs for staff during trading hours.
 - Arrangements for access to power and water.
 - Refuse arrangements.
- 4.4.4. The Fire Service had no representation.
- 4.4.5. Two local businesses objected on grounds that:
- A food van "dilutes the integrity" of the local heritage and conversation area.
 - A fast food van fails to encourage healthy eating habits.
 - Lack of available seating and increase in rubbish.
 - The application would detract from retail food businesses in that locality.
 - There is no power supplier for non-retail traders, so noisy generators would need to be used.
 - Potential damage to existing infrastructure.
 - There is already a food van in the town.
- 4.4.6. One local business supports the proposal on grounds that:
- Adds to cultural diversity and promotes food offering in the town.
 - No evidence that healthy eating will not be promoted.
 - A condition can be added to the licence to provide bins and recycle packaging.
 - Outside eating in Market Square should be permitted. Local residents will benefit from the facility.
 - Can be of benefit to the local economy.
 - The infrastructure issue related to the "ancient" Culvert has been resolved.
 - A mix of street food and traditional restaurants should be promoted.

5. Consideration

5.1. In considering applications for the grant of a Street Trading Consent, as well as the individual merits of the application and the relevant legislation, the Street Trading Policy provides that the following factors should be considered:

5.1.1. Public Safety

Whether the street trading activity represents, or is likely to represent, a substantial risk to the public from the point of view of obstruction, fire hazard, unhygienic conditions or danger that may occur when a trader is accessing the site.

5.1.2. Public Order

Whether the street trading activity represents, or is likely to represent, a substantial risk to public order.

5.1.3. The Avoidance of Public Nuisance

Whether the street trading activity represents, or is likely to represent, a substantial risk of nuisance to the public from noise or misbehaviour particularly in residential areas.

5.1.4. Highway

The location and operating times will be such that the highway can be maintained in accordance with Buckinghamshire Council's requirements and that there are no dangers to those who have a right to use the highway and no obstruction for emergency access.

5.2. The Council's Street Trading Policy states that the Council will normally grant a street trading consent unless, in its opinion:

- a) A significant effect on road safety would arise either from the siting of the trading activity itself, or from customers visiting or leaving the site;
- b) Where there are concerns over the recorded level of personal injury accidents in the locality where the street trading activity will be sited;
- c) There would be a significant loss of amenity caused by traffic, noise, rubbish, potential for the harbourage of vermin, odour or fumes;
- d) There is already adequate like provision in the immediate vicinity of the site to be used for street trading purposes but note that competition issues will not be a consideration;
- e) There is a conflict with Traffic Orders such as waiting restrictions;
- f) The site or pitch obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use for street trading purposes;
- g) The trading unit obstructs the safe passage of users of the footway or carriageway;
- h) The pitch interferes with sight lines for any road users such as at road junctions, or pedestrian crossing facilities;
- i) The site does not allow the consent holder, staff and customers to park in a safe manner;
- j) The street trading activity is carried out after dusk and the site is not adequately lit to allow safe access and egress from the site for both customers and staff

6. Decision

6.1. Schedule 4 paragraph 7 (2) of the 1982 Act provides that the Council may grant a consent if they think fit subject to the Mandatory grounds for refusal at subparagraph (3).

6.2. The Council is not under any duty to grant a Street Trading Consent and need not specify any of the statutory grounds for refusal. Therefore, the matter to grant or refuse an application for a Street Trading Consent is at the total discretion of the Council. However, the Council must have regard to its Street Trading Policy, which outlines the approach that it will take in determining applications of this sort and will need to give full reasons for its decision.

6.3. Accordingly, the Sub-Committee may

- 6.3.1. Grant the application as it stands in which case it will be subject to the Council's approved standard conditions.

- 6.3.2. Grant the application with any variation deemed reasonably necessary subject to the Council’s approved standard conditions and any other specific conditions or restrictions the Committee deem reasonable and necessary.
- 6.3.3. Refuse the application.
- 6.4. The Council has already approved a set on standard conditions which are attached at **Appendix 5** which will apply to and will be imposed on any Street Trading Consent that is granted in the Chesham legacy area.
- 6.5. There is no statutory right of appeal against the Council’s decision to refuse to grant a Consent but any decision could be the subject of a judicial review which would result in legal fees to defend the review and further costs which we would seek to recover if the review was unsuccessful. In the event of a successful review the Council may also have to pay the other parties costs

Informative/s -

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Background Papers:	Application papers The Local Government Miscellaneous Provisions Act 1982. The Council’s Street Trading Policy (Chesham area).