

Application for Street Trading Consent

Applicant:	Mr Muhammad Hotak
Proposed Trading Site:	Outside 62 The Broadway, Amersham, HP7 0HJ
Proposed Trading Hours:	Every Day 13:00hrs – 23:00hrs
Proposed Articles:	Kebabs, Burgers, Donors, Chicken, soft drinks
Relevant Legislation:	Local Government (Miscellaneous Provisions) Act 1982

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 5**, applications that attract objections must be determined by the Regulatory Sub-Committee (formerly Licensing & Regulation Committee for the Chiltern area).

3. The application

- 3.1. An application has been made by Mr Muhammad Hotak for a street trading consent to trade from outside 62 The Broadway, Amersham, HP7 0HJ in order to sell doner, burgers, chicken and kebabs. The application is to trade 7 days a week between 13:00 – 23:00 (see **Appendix 1**).

4. Site details

- 4.1. The proposed location is on The Broadway, Old Amersham. The proposed position is near double yellow lines and has bus stops to both sides (see **Appendix 2** for application site plans).

5. Consultation

5.1. The application was deemed to be valid on the 16 January 2024.

5.2. Consultation letters were sent to Ward Councillors, Amersham Town Council, Thames Valley Police, Environmental Health and Buckinghamshire Council Highways. A Public Notice was also displayed at the site proposed and the expiry date for consultation was set for 7 September 2022.

5.3. The responses to the consultation were as follow: **(Appendices 3)**

5.3.1. The Town Council objected on grounds of:

- Blocking of the public footpath would be hazardous to pedestrians, forcing them into the highway.
- The proposal would significantly obscure visibility to vehicles at busy A-road roundabout.
- Additionally, the location would obscure visibility and potential access to a local business park, nursery as well as a bus stop.
- The location is on a double yellow line.
- The business was considered to be out of keeping with the area.

5.4. Councillors – objections were received from Ward Councillors on the following grounds:

- From the photograph the proposed location is on the pavement which is for pedestrian use and not for the permanent siting of this food outlet. The application states that no one owns this land this is incorrect it is Buckinghamshire Council land.
- The road as you can see from the photograph has double yellow lines at the point of this proposed location, which means it would not be appropriate for a food takeaway business where cars would stop as close as possible to pick up their purchase. This would be encouraging motorists to break the law and create congestion in a restricted area impacting road safety.
- Old Amersham is a conservation area and this unit would be totally out of keeping with the character of the area.
- The potential for noise and disruption going on until 23.00 each day, so close to residential properties would be totally unacceptable.
- We would strongly recommend that this application is not granted.

5.5. Thames Valley Police – Stated:

Objection. The proposed position is entirely double yellow lines and bus stops to both sides. The business intends to site the van on the slightly widened pavement area, very close to the junction with the Tesco roundabout. This could adversely affect traffic flow and visibility splays, especially when considering that most clientele will arrive in vehicles and park in the roadway nearby; impacting the bus stop and the busy roundabout. It might also encourage customers to use the three nearby private car parks of local businesses: one of which appears to be a children's nursery, which is highly likely to have overlapping business hours. Not only might this cause difficulties for these businesses, it would also increase the risk of these sites becoming adopted congregation points; promoting anti-social behaviour.

5.6. Buckinghamshire Environmental Health

Objection. The proposed siting of the street trader and the proposed operating days and hours are considered unsuitable for this type of trading activity. Environmental Protection have significant concerns about the potential impact of both noise and odour from the proposed trading. Odour from cooking hot food from a mobile trailer/van in this setting is likely to impact on nearby residents. Similarly, noise from both the general operation of the trailer/van (i.e. possible generator, engine running, cooking noises) as well as potential noise from customers of the trader also have the potential to significantly disturb local residents.

5.7. Buckinghamshire Council Highways Authority – No objection.

5.8. Amersham Old Town

- Blocking of the public footpath would be hazardous to pedestrians, forcing them into the highway.
- The proposed would significantly obscure visibility to vehicles at busy A-road roundabout.
- Additionally, the location would obscure visibility and potential access to a local business park, nursery as well as a bus stop.
- The location is on a double yellow line.
- The business was considered to be out of keeping with the area.

5.9. Public Response – 1 objection was received from local residents on the following grounds:

- As the father of a primary school child I will not be comfortable with having to walk past a burger and kebab van every day on the way home from school given the negative health consequences of the foods and drinks they will sell. Many primary school children pass this location on their way home from the local school. Are Buckinghamshire Council happy that primary school children will be exposed to this van every day?
- The trading hours mean that customers will be at the van up until 23.00 hrs. The van is proposed to be located outside 62 The Broadway Amersham, which also places it outside The McCarthy & Stone Amersham Retirement Living development and several historic houses. The noise from customers and their potential anti- social behaviour common to these vans up until 23.00hrs will I imagine be very disturbing for these residents, who I believe do not know about this application (the street sign was located away from these properties for the short time it was there) and would object if they did.

5.10. Applicant comments – the applicant was given an opportunity to respond to the objections which can be found at **Appendix 4**.

6. Officer considerations

6.1. Competition / Need

There are a number of retail food outlets in the vicinity of the proposed site. No evidence of an unfulfilled need has been provided.

6.2. Location.

6.3. Having regard to the proposed hours of trading and the location of the proposed site, it is considered likely that any customers will reach the site by vehicle as opposed to being on foot. It is arguable that the proposed site would be more likely to attract passing traffic and drivers of visiting HGV's. As a result, it is likely that there would be a significant change and detrimental impact on the locality.

6.4. Road Traffic Movements

Concerns have been raised about an increase in road traffic movements and the perceived dangers. Thames Valley Police responded to the consultation and stated that they object to the application at the proposed site for the reasons given at 5.5.

6.5. Aesthetics / AONB

The Town Council have stated that the proposed site is out of keeping with the area and that they object to the application being granted.

7. Policy considerations

7.1. 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:

7.2. 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.

7.3. Public Order

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

7.4. 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.

7.5. 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.

7.6. 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.

8. Decision

- 8.1. 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).
- 8.2. 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.
- 8.3. Accordingly, the Sub-Committee may:
 - 8.3.1. Grant the application as it stands in which case it will be subject to the Council's approved standard conditions.
 - 8.3.2. 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.
 - 8.3.3. Refuse the application.
- 8.4. The Council has already approved a set on standard conditions which are shown as Annex 3 of Appendix 5 which will apply to and will be imposed on any Street Trading Consent that is granted in the Chesham legacy area.
- 8.5. 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 party's costs.

9. Conclusion

- 9.1. In determining this application consideration should be taken of the objections received from the Local Ward Councillors, town council, police and local residents and also the comments received from the applicant in response to the objections.
- 9.2. The main objection seems to relate to possible safety concerns of the proposed site both for vehicle and pedestrian traffic.
- 9.3. Competition from a new food outlet could be considered healthy in terms of greater customer choice, flexibility and the natural application of market forces. Customers who may not previously have had the benefit of this service provisions (such as passing drivers) are likely to benefit.