

Report to: Licensing Sub-Committee (Street Trading), 3rd July 2015

Report of: Head of Worcestershire Regulatory Services (on behalf of Worcester City Council)

Subject: TO CONSIDER AN APPLICATION FOR STREET TRADING LICENCE (STATIC) IN RESPECT OF MR STEPHEN CONNELLY ON BEHALF OF BEARS GREAT ESCAPES LIMITED

1. **Purpose of Report**

1.1 To consider an application to grant a street trading licence (static) for Mr Stephen Connelly, on behalf of Bears Great Escapes Limited.

2. **Background**

2.1 On 1st May 2015, the licensing department received an application for a street-trading (static) licence. The application is attached as **Appendix 1**.

2.2 The applicant wishes to apply to sell ice-cream, sorbets and yoghurts from an ice-cream trike (Monday–Sunday 10:00-22:00).

2.3 The applicant is seeking to trade from a static pitch in the vicinity of the Riverside and Fountains Area.

2.4 The Members of the Licensing Sub-Committee should be aware that Mr Connelly, on behalf of Bears Great Escapes Limited, currently has a number of street trading licences for various locations within the City. All existing licences held by the applicant are mobile licences.

2.5 On 1st May 2015, the licensing department consulted with a number of statutory consultees:-

- *West Mercia Police (Licensing)*.
- *West Mercia Police (Traffic Management)*
- *Highways Authority*
- *Hereford & Worcester Fire Authority*
- *Environmental Health*
- *Worcester BID*.

The email sent to the consultees is attached as **Appendix 2**.

2.6 In addition, the licensing department consulted with a number of businesses that could be affected by the grant of this licence:-

- *Piccadilly Whip*
- *Browns @ The Quay*
- *LSD Promotions (Riverside Arts Market contractor)*

The emails sent to interested parties are attached as **Appendix 3 & 4 respectively**.

- 2.7 The licensing authority did not receive a response from West Mercia Police (Licensing), Highways, Hereford & Worcester Fire Authority.
- 2.8 On 1st May 2015, the licensing department received an email from Worcester BID confirming they had no objections to the granting of a static licence in the proposed area. The email is attached as **Appendix 5**.
- 2.9 On 8th May 2015, the Environmental Health department requested that a condition should be added to any licence that may be granted to state that:-

The applicant should ensure suitable rubbish bins are provided.

The comments provided by Environmental Health are attached as **Appendix 6**.

- 2.10 On 21st May 2015, the licensing department received written confirmation from West Mercia Police (Traffic Management) that they did not object to the granting of this application. The comments received are attached as **Appendix 7**.
- 2.11 On 22nd May 2015, an objection was lodged by LSD Promotions. This company has been awarded the contract to provide a number of markets in various locations throughout the City (including the Riverside). A copy of the letter is attached as **Appendix 8**.
- 2.12 Finally, on 29th May 2015, a representation was received from Mr Jeffrey Bright (trading as Piccadilly Whip). Mr Bright currently has two 'mobile' ice-cream trike licences that operate within the vicinity of the Riverside. A copy of the representation is attached as **Appendix 9**.

3. Legal Implications

- 3.1 The relevant legislation relating to street trading licences is contained within the Local Government (Miscellaneous Provisions) Act 1982, Schedule 4, the pertinent sections being set out below:-

Paragraph 3

(5)..... it shall be the duty of the council to grant an application for a street trading licence or the renewal of such a licence unless they consider that the application ought to be refused on one or more of the grounds specified in sub paragraph (6) below.

(6).... the council may refuse an application on any of the following grounds:-

a) That there is not enough space in the street for the applicant to engage in the trading in which he/she desires to engage without causing undue interference or inconvenience to persons using the street;

b) That there are already enough traders trading in the street from shops or otherwise in the goods in which the applicant desires to trade;

c) That the applicant desires to trade on fewer days than the minimum number specified in a resolution under paragraph 2(11) above;

d) That the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;

e) That the applicant has at any time been granted a street trading licence by the council and has persistently refused or neglected to pay dues to them for it or charges due to them under paragraph 9(6) below for services rendered by them to him in his capacity as licence holder;

f) That the applicant has at any time been granted a street trading consent by the council and had persistently refused or neglected to pay fees due to them for it;

g) That the applicant has without reasonable excuse failed to avail himself to a reasonable extent of a previous street trading licence.

(7) If the council consider that grounds for refusal exist under sub paragraph (6) (a) (b) or (g) above, they may grant the applicant a licence which permits him –

a) to trade on fewer days or during a shorter period in each day than specified in the application; or

b) to trade only in one or more of the descriptions of goods specified in the application.

Paragraph 4

(1) A street trading licence shall specify—

(a) the street in which, days on which and times between which the licence-holder is permitted to trade; and

(b) the description of articles in which he is permitted to trade.

(2) If the district council determine that a licence-holder is to confine his trading to a particular place in the street, his street trading licence shall specify that place.

(3) Matters that fall to be specified in a street trading licence by virtue of sub-paragraph (1) or (2) above are referred to in this Schedule as the "principal terms" of the licence.

(4) When granting or renewing a street trading licence, the council may attach such further conditions (in this Schedule referred to as the "subsidiary terms" of the licence) as appear to them to be reasonable.

(5) Without prejudice to the generality of sub-paragraph (4) above, the subsidiary terms of a licence may include conditions—

(a) specifying the size and type of any stall or container which the licence-holder may use for trading;

(b) requiring that any stall or container so used shall carry the name of the licence-holder or the number of his licence or both; and

(c) prohibiting the leaving of refuse by the licence-holder or restricting the amount of refuse which he may leave or the places in which he may leave it.

(6) A street trading licence shall, unless previously revoked or surrendered, remain valid for a period of 12 months from the date on which it is granted or, if a shorter period is specified in the licence, for that period.

Paragraph 6

(1) When a district council receive an application for the grant or renewal of a street trading licence, they shall within a reasonable time—

(a) grant a licence in the terms applied for; or

(b) serve notice on the applicant under sub-paragraph (2) below.

(2) If the council propose—

- (a) to refuse an application for the grant or renewal of a licence; or*
- (b) to grant a licence on principal terms different from those specified in the application; or*
- (c) to grant a licence confining the applicant's trading to a particular place in a street;*
or
- (d) to vary the principal terms of a licence; or*
- (e) to revoke a licence,*

they shall first serve a notice on the applicant or, as the case may be, the licence-holder—

- (i) specifying the ground or grounds on which their decision would be based; and*
- (ii) stating that within 7 days of receiving the notice he may in writing require them to give him an opportunity to make representations to them concerning it.*

(3) Where a notice has been served under sub-paragraph (2) above, the council shall not determine the matter until either—

- (a) the person on whom it was served has made representations to them concerning their decision; or*
- (b) the period during which he could have required them to give him an opportunity to make representations has elapsed without his requiring them to give him such an opportunity; or*
- (c) the conditions specified in sub-paragraph (4) below are satisfied.*

(4) The conditions mentioned in sub-paragraph (3)(c) above are—

- (a) that the person on whom the notice under sub-paragraph (2) above was served has required the council to give him an opportunity to make representations to them concerning it, as provided by sub-paragraph (2)(ii) above;*
- (b) that the council have allowed him a reasonable period for making his representations; and*
- (c) that he has failed to make them within that period.*

(5) A person aggrieved—

(a) by the refusal of a council to grant or renew a licence, where—

- (i) they specified in their notice under sub-paragraph (2) above one of the grounds mentioned in paragraph 3(6)(d) to (g) above as the only ground on which their decision would be based; or*
- (ii) they specified more than one ground in that notice but all the specified grounds were grounds mentioned in those paragraphs;*

in a case where they specified in their notice under sub-paragraph (2) above one of the grounds mentioned in paragraph 5(1)(b) to (d) above as the only ground on which their decision would be based or they specified more than one ground in that notice but all the specified grounds were grounds mentioned in those paragraphs,

may, at any time before the expiration of the period of 21 days beginning with the date upon which he is notified of the refusal or decision, appeal to the magistrates' court acting for the petty sessions area in which the street is situated.

(6) An appeal against the decisions of a magistrates' court under this paragraph may be brought to the Crown Court.

(7) On an appeal to the magistrates' court or the Crown Court under this paragraph the

court may make such order as it thinks fit.

(8) Subject to sub-paragraphs (9) to (11) below, it shall be the duty of the council to give effect to an order of the magistrates' court or the Crown Court.

(9) The council need not give effect to the order of the magistrates' court until the time for bringing an appeal under sub-paragraph (6) above has expired and, if such an appeal is duly brought, until the determination or abandonment of the appeal.

- 3.2 The Sub-Committee should have due regard to the legislation when considering this application and should give full consideration to the information supplied by the applicant in both his application and at the hearing, and to the representations made by other interested parties, where they are relevant to the matters set out in the legislation.
- 3.3 As will be noted from the relevant legislation, it is open to the applicant, on a refusal to grant a licence, to appeal any decision of the Sub-Committee to the magistrates court. The right of appeal against any decision is exclusively reserved to the applicant, and other interested parties do not have any similar rights.

4. **The Hearing**

- 4.1 The applicant and representors have been invited to attend this hearing to put forward their views to the Sub-Committee.

5. **Conduct of Hearing.**

- 5.1 The Sub-Committee is recommended to conduct the hearing in accordance with the attached procedure **Appendix 10**.

6. **RECOMMENDATION OF THE HEAD OF WORCESTERSHIRE REGULATORY SERVICES:**

- 6.1 **That the Licensing Sub-Committee considers whether to grant a static street trading licence to Bears Great Escapes Limited.**

Ward(s):	Cathedral
Contact Officer:	Carl Phillips 01527 548211
Background Papers:	None