

Report to: Licensing Sub-Committee (Street Trading), 26 April 2019

Report of: Head of Worcestershire Regulatory Services on Behalf of Worcester City Council

Subject: APPLICATION FOR RENEWAL OF A STREET TRADING LICENCE

1. Purpose of Report

- 1.1 To consider an application for the renewal of a static Street Trading Licence submitted by Mr Ben Fisher in respect of a street trading unit trading as Habaneros located on:

**The Shambles
Worcester**

2. Recommendation

- 1.1 That the Licensing Sub-Committee consider and determine whether to grant or refuse the application made by Mr Fisher for the renewal of a static Street Trading Licence in Worcester City Centre.**

3. Background

- 3.1 The Council currently controls street trading within the city under schedule 4 of the provisions of the Local Government (Miscellaneous Provisions) Act 1982. All streets within the City have been designated as Licensed Streets, which means that a licence is required from the Council before any business can engage in street trading.
- 3.2 Under the Worcester City Street Trading Licence scheme, a static street trading licence has been issued by the Council to a street trading unit to operate on the Shambles, at the junction of Church Street and Mealcheapen Street since the introduction of the scheme.
- 3.3 Mr Fisher the current licence holder trading as "Habaneros" has been licensed by the Council to trade in a static capacity from that location since Oct 2015.
- 3.4 On the 2nd January 2019 the Licensing Office processed a completed street trading renewal application which had been submitted by Mr Fisher in respect of the static street trading unit. A copy of the renewal application is attached at **Appendix 1**. An image of the current street trading unit is also attached at **Appendix 2**.
- 3.5 In response to the renewal application, the Council has received 3 representations, all from organisations objecting to the grant of a renewal street trading licence. Representations have been submitted by The County Council Highways Authority, the Council's Planning & Economic Development department and The Churches Conservations Trust.

- 3.6 All of the representations object to of the grant of the renewal of the licence on the grounds that the area of the Shambles pertaining to this application is now part of the Public Realm redevelopment improvements works and that when complete, any street trading unit sited in this particular location would not leave enough space in the street for the licence holder to trade without causing undue interference or inconvenience to any persons using the street. Copies of the representations are attached at **Appendix 3**.
- 3.7 In light of the above Mr Fisher has been offered an alternative trading location in Angel Place, as part of Worcester's Market by the Council. However this offer has not been taken up by Mr Fisher, as he feels that it is not a viable option.
- 3.8 Due to the current public realm works and due to Severn Trent water-main repair works which have been taking place on the Shambles over the last 4 months, Mr Fisher has been unable to trade since November 2018.
- 3.9 Prior to the above Mr Fisher has only traded intermittently over the last two years.
- 3.10 During November 2018, it was noted by officers that the original street trading unit had been replaced by different unit, which appeared to be operating under the trading name "The Northfield Grill". When approached the trader gave his name as Mr Darren Harris, trading in partnership with Mr Fisher. An image of this trading unit is attached at **Appendix 4**.
- 3.11 Officers concerned that the licence and location may be being sub-let, which is a breach of the conditions of licence, contacted Mr Fisher who stated that the unit "The Northfield Grill" was in fact his unit. He went on to say that the unit was only being used as a temporary measure due to his original unit having been damaged when it was moved in November as part of the water-main repair works.

4. Implications

Financial and Budgetary Implications

- 4.1 No financial or Budgetary implications have been identified.

Legal and Governance Implications

- 4.2 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:

- 4.3 Paragraph 3 states that:

*(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.

4.4 Paragraph 4 states that:

(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 subparagraph (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.*

4.5 Paragraph 6 states that:

(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.

- 4.6 On the 8th March 2019 Mr Fishers was contacted and given formal notice that the street trading licence renewal application was being referred to the Council's Licensing Sub Committee for determination, this was in light of the three objections having been received. Mr Fisher was also invited to put forward a representation in support of his application.
- 4.7 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.

Risk Implications

- 4.8 No Risk implications have been identified.

Corporate/Policy Implications

- 4.9 A copy of the current Worcester City street trading policy and guidance is attached at **Appendix 3.**

4.10 The Licensing Sub-Committee should have regard to the Regulators Code. The regulators Code seeks to promote proportionate, consistent and targeted regulatory activity through the development of transparent and effective dialogue and understanding between regulators and those they regulate.

Equality Implications

4.11 The Licensing Sub-Committee will ensure it has regard to the desirability of exercising its functions with regard to the need to eliminate discrimination and to increase equality of opportunity.

Human Resources Implications

4.12 No human resource implications have been identified.

Health and Safety Implications

4.13 No health and safety implications have been identified.

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Background Papers: None