

REPORT TO: REGULATORY SUB COMMITTEE

DATE: 23 NOVEMBER 2021

TITLE: APPLICATION FOR STREET TRADING LICENCE – EDINBURGH PLACE HARLOW

LEAD OFFICER: MICHAEL PITT, ENVIRONMENT AND LICENSING MANAGER
(env.health@harlow.gov.uk)

CONTRIBUTING OFFICER: ROWLAND W WILSON,
SENIOR LICENSING OFFICER
(licensing@harlow.gov.uk)

RECOMMENDED that:

- A** That Members consider the report, and determine:
- i) To grant the application as applied for; or
 - ii) 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 appropriate; or
 - iii) To refuse the application.

BACKGROUND

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. Street trading is only permitted in Licence or Consent Streets if the Council has given permission by way of a licence or 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, or in areas covered by one of the exemptions within the legislation.
3. Harlow Council has designated all the streets within the Harlow district as either "PROHIBITED" or "LICENCE" streets for the purposes of street trading. A list of Street Trading Prohibited and Licence Streets is set out at Appendix 1 to the report.

4. In September 2001 the Council adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982. This made it an offence for any person to carry out certain street trading activities in Harlow without first obtaining a Street Trading licence issued by Harlow Council.
5. The Council under the legislation can make suitable licencing requirements and in determining applications may apply appropriate conditions within the scope of the law with a view to minimising any adverse impact of street trading. The standard licence conditions are set out in Appendix 2 to the report.
6. In accordance with the Council's Street Trading Licensing Procedure, as set out in appendix 3 to the report, applications that do not attract objections can be dealt with via delegated powers to officers. However, if an objection is received, the application would be a 'Contentious Application'.
7. Within the Street Trading Licensing Procedure it states:

"Determination of contentious applications will be undertaken by Harlow Council's Licensing Committee (who may delegate the matter to a Licensing Sub Committee) or Licensing Manager under delegated authority. The main reasons why an application will be deemed contentious are:

- a) *An objection from consultees have been received which are relevant to grounds for refusal*
- b) *An objection has been received as a result of the public notices***
- c) *An Officer decision has been taken to refuse an application and a notice to that effect has been served on the applicant. The applicant then has seven days in which to make a relevant representation and this will be referred to a Licensing Sub Committee."*

8. Edinburgh Place referred to in this report is freehold land owned by Harlow Council but adopted by Essex Highways under Section 38 of the Highways Act 1980. An adopted highway is a highway that was a privately-owned road, but has/becomes a public road, managed and maintained by the highway authority (in this case, Essex Highways). They can also be referred to as a 'maintained highway'. A highway is a legal right over land. It does not imply freehold ownership of the land. The majority of the freehold on which there is highway maintainable at public expense are not owned by the highway authorities, as is the case here. A freehold owner of land on which there are highway rights cannot obstruct or interfere with such public rights the legal maxim is 'once a highway always a highway' which means highways can only be extinguished by statutory power. It is not possible to adversely possess a

highway so as to claim ownership after 12 years. There are no limitation periods on unlawful encroachments of a highway.

9. A plan of the proposed location in Edinburgh Place Harlow and surrounding roads which shows the extent of the adopted highway is set out in Appendix 4 to the report.
10. There is an active traffic order in place in Edinburgh Place. A map detailing the parking restrictions is set out in Appendix 5 to the report. This indicates no waiting Mon-Fri 7am-7pm.
11. Edinburgh Place itself is a road consisting of industrial units including a scrap metal yard, a timber merchants, a tyre shop and MOT garage, and a petrol station. Edinburgh Place is located just off the very busy A414 that links the M11 to the A10. The area surrounding it is predominantly industrial with a mix of warehousing and manufacture with large retail outlets within a short distance.
12. On 22 September 2021 a completed application, as set out in Appendix 6 to the report, was received for a new Street Trading Licence. The applicant Ms Zeynep Icbayun is requesting to trade from private land situated at Unit 6, 2 Edinburgh Place, Templefields, Harlow, CM20 2DJ.
13. Within the application it states that trading would take place from a mobile catering van to operate at this location Monday to Sunday between the hours of 6.00am and 6.00pm. A picture of the van is set out in Appendix 7 to the report.
14. Following receipt of the application on 22 September 2021 the Licensing Team started the consultation period (14 days) for this application. The application process includes:
 - a) A Public notice placed in local newspaper – for new applications for a mobile street trading licence.
 - b) Notice prominently displayed at fixed site for 14 days
 - c) Landowner
 - d) Harlow Council Environmental Health – Commercial Team
 - e) Harlow Council Properties and Facilities Management – Parking Services
 - f) Harlow Council Properties and Facilities Management – Property Officer
 - g) Harlow Council Regeneration (for premises/locations within the Town Centre)
 - h) Harlow Council Community Safety Team
 - i) Essex Highways

15. The consultation period closed on 6 October 2021, and it was noted that none of the statutory bodies had any representations in connection with the application.
16. Three representations were received from businesses operating within the immediate vicinity of the location of the proposed application. A copy of the complaints are set out in Appendix 8 to the report.
17. To comply with the current Street Trading Licensing procedure this application is required to be determined by a Licensing Committee.

ISSUES/PROPOSALS

18. Having taken into account this report and all other evidence provided, the Licensing Sub Committee should now determine this application with consideration to the points below:
 - a) Each application shall be looked at on its own merits;
 - b) Using the Council's Street Trading Licensing Procedure;
 - c) Dealing with the hearing in a balanced and impartial manner;
 - d) Ensuring that the rules of natural justice are applied in any hearings held;
 - e) Giving all parties sufficient opportunity to present their case and ask questions;
 - f) Present information for consideration
19. That Members consider the report, and determine:
 - a) To grant the application as applied for; or
 - b) 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 appropriate; or
 - c) To refuse the application

IMPLICATIONS

Environment and Planning (Includes Sustainability)

As contained within the report.

Author: Andrew Bramidge, Director of Strategic Growth and Regeneration

Finance (Includes ICT, and Property and Facilities)

None specific.

Author: Simon Freeman, Deputy to the Chief Executive and Director of Finance

Housing

As outlined in the report.

Author: Andrew Murray, Director of Housing

Community Wellbeing (Includes Equalities and Social Inclusion)

None specific.

Author: Jane Greer, Director of Communities and Environment

Governance (Includes HR)

Members must have due regard to the application before them, the representations received (including any from statutory bodies) and determine the application in accordance with policy. Further legal advice in relation to any aspect of this application will be provided by an Officer at the Sub-Committee hearing to enable the process to be fair to all parties.

Author: Julie Galvin, Legal Services Manager on behalf of Simon Hill, Director of Governance and Corporate Support

Appendices

Appendix 1- Copy of Street Trading Prohibited and Licence Streets

Appendix 2 - Copy of Street Trading Licence conditions

Appendix 3 - Copy of Street Trading Licensing Procedure

Appendix 4 - Copy of plan of Edinburgh Place Harlow

Appendix 5 - Copy of Traffic Order for Edinburgh Place Harlow

Appendix 6 - Copy of application for a street trading licence

Appendix 7 - Picture of mobile catering van.

Appendix 8 - Copy of 3 representations received.