

REPORT TO: REGULATORY SUB COMMITTEE

DATE: 23 NOVEMBER 2021

TITLE: APPLICATION FOR STREET TRADING LICENCE – MILL HATCH

LEAD OFFICER: MICHAEL PITT, ENVIRONMENT AND LICENSING MANAGER
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CONTRIBUTING OFFICER: ROWLAND W WILSON,
SENIOR LICENSING OFFICER
(licensing@harlow.gov.uk)

RECOMMENDED that:

- A** 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 attached 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 attached 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. The Mill Hatch car park 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 Mill Hatch car park and surrounding roads which shows the extent of the adopted highway is set out in Appendix 4 to the report. The adopted highway, denoted by the black hatching, completely surrounds the Mill Hatch shops and includes the car park to the front of the shops and to the rear of the shops.
10. There is an active traffic order in place at Mill Hatch, in the car park at the front of the shops. A map detailing the parking restrictions is set out in Appendix 5 to the report. The blue dashed line on this map indicates a limited waiting Mon-Fri 7am-7pm 1hr and no return within 2hrs (blue dashed line). The orange line indicates no waiting Mon-Fri 7am-7pm. The blue dashed lines are the parking bay areas of the Mill Hatch car park.
11. Mill Hatch itself is a small parade of shops consisting of a barbers, bookmakers, double café unit with sit in and takeaway services and a takeaway Greggs bakers. There is a petrol station with small convenience store immediately adjacent to these shops. Within a short walking distance (approximately 500m away) is a large Tesco Supermarket. Mill Hatch is located just off the very busy A414 that links the M11 to the A10. The area surrounding Mill Hatch is predominantly industrial with a mix of warehousing and manufacture with large retail outlets within a short distance.
12. Records held by the Council show that there has been a hot food street trader in Mill Hatch since 2008. The street trading licence was previously only ever issued for evening trade right through to February 2020.
13. Ms Zeyep Icbayun commenced trading at this location from 25 October 2018 which was on an evening basis only. (5.00 pm to 05.00am).
14. On 18 December 2019 an application was received from Ms Zeynep Icbayun for trading hours from 06.00am to 10.00pm (i.e. extending the permitted hours into the daytime).
15. On 21 January 2020 the Licensing Team started the consultation period for that application. The application was not sent to external stakeholders (on the basis that it was a renewal application with no complaints on file) so Essex Highways were not on the consultation list.
16. No objections were received and so the street trading licence was granted from 8 February 2020 to 7 February 2021 for the extended hours of 6am to 10pm.

17. On 14 February 2020 a complaint was received via the Council's Environmental Health team from a local business about the Don and Bun trailer trading during daytime hours. The complainant was a local business and related to Don and Bun being a large trailer, taking up space in the car park and making it difficult to get in and out of the car park. The complaint was registered in respect of the licence and noted that **consideration should be given when reviewing any further application or renewal.**
18. Ms Icboyun submitted a renewal application, as set out in Appendix 6 to the report, in early February 2021, requesting the trading times of 6am to 10pm 7 days a week. The application was not submitted correctly with all the necessary documents required until early March 2021. As the previous licence expired on 7 February 2021 the application was now treated as a new application rather than a renewal.
19. On 3 March 2021 the Licensing team started the consultation process for the application. All internal stakeholders and Essex Highways were consulted as a complaint had been received (as detailed above) in the previous year's licence period. The consultation period was scheduled to end on 17 March 2021.
20. On 3 March 2021 Essex Highways objected to the application insofar as it related to daytime trading hours, and stated that the substance of the objection relates to public safety and public access to this location: On 24 March 2021 the below comments were received;
- a) The serving hatch must not open into another parking space as there would be a conflict between pedestrians and vehicles, this would be classed as a Health and Safety Issue.
 - b) If the serving hatch opened on to a verge this would discriminate against all pedestrians being able to gain access, for example disabled and mobility impaired not being able to get up the kerb.
 - c) During inclement weather the verge would become water logged, therefore slips and falls might occur which is another Health and Safety Issue.
 - d) It is not acceptable that more than one parking space is used by one vehicle during opening hours of the businesses.
21. By way of consultation with the applicant, she was asked via e mail if she was willing to accept the officers comments and revert back to the previous evening only trading times, but this was declined.

22. On 16 April 2021, the Council's Environment and Licensing Manager determined that due to the objection from Highways, in their capacity of 'managing and maintaining' this land that the daytime trading hours could not be granted. Therefore, the Council would grant a Licence on principal terms different from those specified in the application i.e. reduced trading hours (6.00pm-10.00pm).
23. A letter dated 30 April 2021, as set out in Appendix 7 to the report, was sent to Ms Icboyun informing her of the Council's decision, and also explaining her right of appeal to the Magistrates Court within 21 days of the date of the letter.
24. In early May 2021 Ms Icboyun did lodge an appeal to the Clerk to the Justices at Essex Magistrates' Courts regarding the council's decision.
25. On 11 May 2021 a meeting was held between the Council's Environment & Licensing Manager, the Council's Legal Team and members of the Licensing Team to consider communication received from the business and to review future options available to the business.
26. During this meeting it was confirmed that the decision not to renew the Licence was correct and would be maintained; and that the business was not permitted to trade in accordance with regulation 6 (11) of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 as they had failed to complete the street trading consent renewal process prior to the consent expiry date.
27. It is understood that following the granting of the licence on 22 June 2021 by the Council's Environment and Licensing Manager, as set out in Appendix 8 to the report, Ms Icboyun began trading on 23 June 2021.
28. The business was granted a street trading licence for Mill Hatch to trade from 6pm to 10pm, with consent from Essex Highways but with specific conditions as specified in conditions A to K as set out in Appendix 2 to the report. Trade was not permitted before 6pm due to the parking restrictions in place.
29. Following consultation with the Council's legal representative, (Cornerstone Chambers) advice was received dated 21 July 2021 in which it stated the decision made by the Council's Environment and Licensing Manager and the letter of grant being sent to the applicant contained incorrect information concerning the accuracy of a right of appeal to the Magistrates Court within 21 days.
30. It has been established that the applicant in accordance with the Council's Street Trading Licensing Procedure Page 2 – Contentious Applications, as set out in Appendix 3 to the report, should have been informed in writing that

she did have the right of appeal to the Councils Licensing Sub Committee within 7 days of the date of the letter sent, and not to the Magistrates Court.

31. The applicant has since stated that had this decision been correctly notified to her then she would have lodged an appeal to the Councils Licensing Sub Committee.
32. As a result of this incorrect information being provided to the applicant, and following further consultation with her, the full costs for the application fee, together with all fees previously accrued with her solicitor for preparation in the appeal has now been refunded.

ISSUES/PROPOSALS

33. 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 Councils 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
34. 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 Mill Hatch car park

Appendix 5 - Copy of Traffic Order for Mill Hatch

Appendix 6 - Copy of application for a street trading licence

Appendix 7 - Copy of Council decision letter dated 30 April 2021

Appendix 8 - Copy of Licence issued 22 June 2021