

# APPLICATION FOR A NEW TEMPORARY STREET TRADING PITCH LICENCE

<b>Committee</b>	Licensing Sub-Committee
<b>Officer Contact</b>	Lois King, Regulatory Services
<b>Papers with report</b>	<b>Appendix 1</b> – Application form <b>Appendix 2</b> – Site map and photos <b>Appendix 3</b> – Street Trading Policy <b>Appendix 4</b> - Objection from Cllr Roy Chamdal <b>Appendix 5</b> – Objection from Cllr Ekta Gohil <b>Appendix 6</b> – Objection from Highways <b>Appendix 7</b> – Correspondence with applicant <b>Appendix 8</b> – Correspondence from Food, Health and Safety Team
<b>Ward name</b>	Colham & Cowley

## 1.0 SUMMARY

An application has been received for a new Temporary Street Trading Pitch Licence for a pitch 3.0 metres by 2.0 metres in size on private land outside Jinli Chinese Restaurant, 92 Pield Heath Road, Uxbridge UB8 3NJ. The applicant seeks this new licence because the pitch is within 7metres of the public highway and therefore falls within the definition of a street according to the London Local Authorities Act 1990 (as amended). The applicant will cook and sell Mediterranean street food from a food trailer on this pitch. The application has attracted two objections from Ward Councillors and one objection from the Council's Highways Service.

A copy of the application form is attached as **Appendix 1**

A site map and photos of the premises are attached as **Appendix 2**

## 2.0 RECOMMENDATION

- 2.1 That the Licensing Sub-Committee consider the application, the responses received, the Council's adopted Street Trading Policy and the London Local Authorities Act 1990 (as amended) and determine whether to grant the application for 6 months or to refuse it according to any of the mandatory or discretionary grounds under paragraphs 10.3 and 10.5 respectively of the Street Trading Policy and having regard to the factors in paragraph 10.7.
- 2.2 Where grounds for refusal do exist the Sub-Committee may still award a licence, but this could be a modification from what was originally applied for e.g. a reduction in the size of the proposed trading area, a reduction in the days/times of trading activity, to only permit the trade of certain commodities.
- 2.3 Should the Sub-Committee be minded to grant the licence for 6 months, they may also consider additional conditions as they deem appropriate under paragraph 10.7 of the Council's Street Trading Policy. The Council's current adopted Street Trading Policy can be found in **Appendix 3**.

### **3.0 APPLICATION**

3.1 Name of applicant  
Mr Zabih Yakrang

Name of assistant  
Miss Munira Jimbah

3.2 Type of application applied for  
A new Temporary Street Trading pitch licence for a maximum period of 6 months.

3.3 Pitch details  
The application is for a street trading pitch 3.0 metres by 2.0 metres in size from which a food trailer will cook and sell Mediterranean street food.

### **4.0 CONSULTATION**

4.1 Closing date for objections  
9<sup>th</sup> May 2024

4.2 The relevant consultees were notified of the application on 18<sup>th</sup> April 2024. The consultees were:

- Highways
- Street Scene Enforcement Team
- Parking
- Environmental Protection Team
- Food, Health and Safety Team
- Transport & Town Centre Projects
- Colham and Cowley Ward Councillors

4.3 The application was posted on the Council's website.

4.4 A Notice of Application is not required for a street trading pitch licence.

### **5.0 RESPONSES TO THE CONSULTATION**

5.1 Two objections were received from local Ward Councillors and those are attached as **Appendices 4 and 5**.

5.2 The Highways Team, who are the primary advisors in matters relating to public safety and the highway for applications pertaining to street trading licences, submitted an objection. This is attached as **Appendix 6**

5.3 A response of "No objections from Parking as there are already pay and display bays opposite due to the shops and other areas covered by yellow lines" was received from Parking Services.

### **6.0 FURTHER INFORMATION**

6.1 On 5<sup>th</sup> April 2024, Mr Yakrang submitted a street trading shop front licence application to the Council. Clarification was subsequently sought in relation to the location and nature of

the business and the applicant advised that they would be operating a food trailer on vacant land adjacent to Jinli Chinese restaurant.

- 6.2 The applicant was advised that a street trading pitch licence would be required and that new licences were only granted for 6 months initially. The applicant agreed and the fee was adjusted accordingly with the difference in the amount paid refunded to the applicant.
- 6.3 Once a revised plan was received, the application was deemed valid and sent out for consultation on 18<sup>th</sup> April 2024.
- 6.4 On 19<sup>th</sup> April 2024 an email was received from local ward councillor, Cllr Chamdal. He raised questions about parking arrangements, the closing hours bearing in mind nearby residential properties, advertising having been affixed to a hedge by a roundabout, the trailer already operating at the site without a licence and the safety of the power supply to the food trailer.
- 6.5 On 23<sup>rd</sup> April 2024, clarification was sought from the applicant in relation to parking provision and the hours of operation. The issue of trading without a licence was highlighted to him (**see Appendix 7**).
- 6.6 The applicant advised that they did not have any customer parking as the brand operated as a street market seller with most people coming on foot. He advised that the operating hours were 12:00 – 22:00 hours. This was communicated to the local ward councillors.
- 6.6 The remaining matters were referred to the appropriate Council departments.
- 6.7 The Council's Street Scene Enforcement Team dealt with the issue of the advertising banner on the roundabout and notification was received on 14<sup>th</sup> May 2024 that the banner had been removed.
- 6.8 Environmental Health Officers from the Council's Food, Health and Safety Team visited the site on 29<sup>th</sup> April 2024, 3<sup>rd</sup> May 2024 and 17<sup>th</sup> May 2024 to investigate the concerns raised by Cllr Chamdal in relation to the electrical supply to the food trailer. An Electrical Installation Condition Report (EICR) for the food vehicle and its equipment was produced on 30<sup>th</sup> April 2024 (dated the same day). It highlighted areas for improvement but none were highlighted as an imminent risk. An electrician was subsequently contacted to undertake works in the building that was supplying the food trailer. On 20<sup>th</sup> May 2024, confirmation was received from Environmental Health Officers that the electrical supply for the food trailer appeared to now be compliant having reviewed the EICR and Building Regulations Certificate that have been provided to them.
- 6.9 The Environmental Health Officers attended on 3<sup>rd</sup> and 17<sup>th</sup> May 2024 between 14:00 and 15:00 hours and left the site between 15:00 and 16:00 hours. They reported that on those visits the trailer was open for trading. In addition, when officers were leaving the site on 17<sup>th</sup> May 2024 food was observed being served to customers (**see Appendix 8**)
- 6.10 On 7<sup>th</sup> May 2024, enforcement officers visited the premises and issued a Fixed Penalty Notice (FPN). The FPN was paid.
- 6.11 A visit was made on 28<sup>th</sup> May 2024 at 14:04 hours in order to take photographs of the site for this report. The premises appeared to be open but there were no customers seen on site at the time.

## 7.0 LEGAL COMMENTS

- 7.1 When considering an application for either the grant, renewal, revocation or variation of a permanent Street Trading Licence the Council will have regard to Part III of the London Local Authorities Act 1990 (as amended) ("the 1990 Act) and Hillingdon's Street Trading Policy.
- 7.2 The granting of a temporary street trading licence is discretionary and the 1990 Act does not set specific criteria for determining temporary applications. Determination of applications must therefore be in accordance with the Council's published Street Trading Policy (the "Policy"). Decisions must be in accordance with the policy unless there are strong reasons for departing from it.
- 7.3 The Sub-Committee can only consider matters within the application that have been raised through representations from interested parties these include:
- The trader or proposed trader in an application for the grant, renewal or variation of a licence
  - Any applicant for the variation or revocation of a licence
  - Any person who has made representations about an application for either the grant, renewal, revocation or variation of a licence
- 7.4 Upon considering and hearing the parties' representations the Sub-Committee can decide to:
- i. Grant the licence
  - ii. Refuse to grant the licence
  - iii. Grant the licence for a shorter period as determined by the Sub-Committee
  - iv. Grant the licence in full as per the application or with further conditions
- 7.5 If a mandatory ground is established, the application must be refused.
- 7.6 If discretionary grounds for refusal do exist, the Sub-Committee may still decide to award a licence, but this could be for a shorter period than required, or to allow trading only in certain commodities.
- 7.7 Standard conditions will be attached to every street trading licence. Where relevant, the Licensing Sub-Committee may attach specific trading conditions to a street trading licence.
- 7.8 In considering applications for the grant or renewal of a street trading licence the following factors specified in the Policy should be considered:
- **Paragraph 1.3 of the Policy** states: *"The Council is keen to create a thriving street trading environment which is sensitive to the needs of traders and residents and one which promotes consumer choice and enhances the trading and business opportunities in the borough."*
  - **Paragraph 1.5 of the Policy** states: *"The Council will not deviate from this policy unless there is an unavoidable reason to do so."*
  - **Paragraph 2.1 of the Policy** states: *"Traders should be aware that this policy relates only to street trading activities and it is the responsibility of the trader to ensure that they are*

*compliant with other legislation. Traders should consider whether their activities are likely to require authorisation and/or compliance with other regulatory regimes. For example; Planning, Building Control, Food Safety, Health & Safety, Control of Waste, Highway Obstruction, Trading Standards, Late Night Refreshment/Entertainment/Alcohol Licensing etc."*

- **Paragraph 3.2 of the Policy** states: *"The Council will assess the suitability of the applicant on a case by case basis and may have regard to any relevant enforcement history concerning the applicant and/or the location of the proposed street trading."*
- **Paragraph 4.1 of the Policy** states: *"A permanent licence will usually be issued to applicants for pitch, shop front and tables and chairs licences and will be valid for one year. In some circumstances, the Council may decide to issue a temporary licence to a new trader, or to a trader renewing a licence where there have been issues with enforcement."*
- **Paragraph 4.2 of the Policy** states: *"Temporary licences will be issued to applicants for pitch licences where trade is only proposed for one day to six months, or where the trading activity is part of an event or promotion. Temporary licences will also be available to applicants of pitch, shop front or tables and chair licences who may wish to trade seasonally or for short periods of time. For example; where a business is going to be sold and a licence is only required for a short time; a seasonal extension to accommodate trade at specific times of the year."*
- **Paragraph 6.5 of the Policy** states: *"Pitch applications*

*The Council will require details of the vehicle or stall set up being proposed. There will be an opportunity to give this information within the application form however, it may also be appropriate for the applicant to provide photographs or site plans of the proposed installations."*

- **Paragraph 9.1 of the Policy** states: *"Where the Council receives feedback or an objection to an application consultation, it will carefully consider whether that feedback/objection may influence the Councils discretionary decision making powers."*
- **Paragraph 10.1 of the Policy** states: *"The Council has powers to consider a wide range of matters on which to refuse street trading licences. Any decisions made upon these grounds will be evidenced and justified after careful investigation into any responses received to the consultation process. The Council's decision making powers are split between mandatory and discretionary grounds for refusal."*
- **Paragraph 10.3 of the Policy** states: *"The mandatory grounds for refusal are:*
  - a) *The applicant is under the age of seventeen.*
  - b) *The proposed trading location is not within a designated licence street*
  - c) *The applicant is proposing to sell goods or services which the Council has resolved to ban*
  - d) *There is not enough physical space within the proposed trading location and any trading activity would have an adverse impact on the surrounding area by causing obstructions to persons or vehicles using the street.*

- e) *The applicant has made an application to trade in a location which does not satisfy the definition of a “street” for the purpose of the legislation.*
- **Paragraph 10.5 of the Policy states:** *“The discretionary grounds for refusal are:*
    - a) *There are enough street traders in the area offering the same or similar goods to those of the applicant.*
    - b) *The applicant is unsuitable to hold a licence.*
    - c) *The applicant has previously demonstrated misconduct or unscrupulous behaviour whilst being the holder of a street trading licence.*
    - d) *The applicant has failed to comply with the terms or failed to pay a fee of a street trading licence.*
    - e) *The applicant has failed to propose suitable measures for the storage of perishable items when street trading is not taking place.*
    - f) *The applicant of a shop front licence is proposing to sell goods or offer services which are not sold or offered for sale within that shop.*
    - g) *The applicant is not the owner/occupier of a shop outside which a shop front trading licence is sought.”*
  
  - **Paragraph 10.7 of the Policy states:** *“ The Council may also have regard to the other following factors when considering the impact on the local area of the proposed trading activity. This may result in additional conditions being imposed upon any licence granted.*
    - a) **Public Safety** – *whether the street trading activity represents, or is likely to represent, a substantial risk to members of the public from the point of view of obstruction of the highway for emergency vehicles, or otherwise, a fire hazard, unhygienic conditions or other danger that can be reasonably foreseen, that may occur when a trader is using the site.*
    - b) **Prevention of Crime and Disorder** – *whether the street trading activity represents, or is likely to represent, a substantial risk to public order. This is potentially more of an issue for traders wishing to operate as part of the night-time economy.*
    - c) **Prevention of public nuisance or environmental damage** – *whether the street trading activity represents, or is likely to represent, a substantial risk of nuisance or environmental issues. Examples include; damage to street surfaces; noise; litter; refuse; vermin; fumes/odours etc.*
    - d) **Appearance of trading area** – *Whether the street trading area is properly constructed and presented and enhances the aesthetic street scene of an area. Guidance will be given to applicants regarding the standard expected by the Council.*
    - e) **Needs of the area** – *amongst other things, the Council will consider the demand for the articles for sale, and the geographical location of the proposed site. ”*
  
  - **Paragraph 10.8 of the Policy states:** *“Where grounds for refusal do exist, the Council may still award a licence but this could be a modification from what was originally applied*

*for. For example, it may be appropriate to reduce the days/times of trading activity, to reduce the size of the proposed trading area or add conditions.”*

- **Paragraph 13.5 of the Policy** states: *“The intention of the Council is to create a vibrant and thriving shopping environment for residents and also add to the aesthetics of a shopping area.”*
- **Paragraph 16. 1 of the Policy** states: *“The Council has powers to issue permanent licences for up to three years and temporary licences for up to six months.”*
- **Paragraph 16.2 of the Policy** states: *“The Council will normally issue permanent licences for one year. Temporary licences are issued for periods from one day to six months.”*

7.10 The Council in its capacity as Licensing Authority has a duty to have regard to its public sector equality duty under s.149 of the Equality Act 2010. In summary s.149 provides that a Public Authority must, in the exercise of its functions, have due regard to the need to:

- i. Eliminate discrimination harassment, victimisation and any other conduct that is prohibited by or under this Act;
- ii. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- iii. Foster good relations between persons who share relevant protected characteristics and persons who do not.

7.11 Section 149(7) of the Equality Act 2010 defines nine relevant protected characteristics these are:

- i. age
- ii. gender reassignment
- iii. being married or in a civil partnership
- iv. being pregnant or on maternity leave
- v. disability
- vi. race including colour, nationality, ethnic or national origin
- vii. religion or belief
- viii. sex
- ix. sexual orientation

7.12 Officers have provided the Sub-Committee with recommendations related to this application. Subject to the above-mentioned factors having been properly considered, the Sub-Committee may depart from the recommendations if there are good reasons for doing so. The Sub-Committee is advised that such departures could give rise to an appeal or judicial review.

7.13 Any person aggrieved by the Council's decision to refuse or revoke a permanent street trading licence may lodge an appeal to the Magistrates Court within 21 days of receipt of the written decision notice following the outcome of the Sub-Committee.

7.14 There is no right of appeal against a decision to refuse a temporary street trading licence notwithstanding statutory rights to seek Judicial Review proceedings.

7.15 All decision notices will contain full details of the appeal rights including how to lodge an appeal.