



Belfast City Council

Report to:	Licensing Committee
Subject:	Competing Applications for a Stationary Street Trading Licence - Donegall Square North
Date:	20th June, 2012
Reporting Officer:	Trevor Martin, Head of Building Control, ext. 2450
Contact Officer:	Stephen Hewitt, Building Control Manager, ext. 2435

1	Relevant Background Information
1.1	The Council has received two separate and competing street trading licence applications for the site in Donegall Square North which is situated at the front of City Hall, close to its junction with Donegall Square West.
1.2	Members are reminded that consideration of competing Street Trading Licence applications is a matter for this Committee and not delegated to the Director of Health and Environmental Services in the Council's Scheme of Delegation.
1.3	Members will recall that, further to your meeting on 15th February 2012, you agreed to change the designated commodities for this site to allow that a variety of commodities could be determined but to prohibit the sale of hot food and bus tour tickets. Both of the applications comply with the designating resolution for the site.
1.4	Details of the applications are outlined below: Applicant 1.
1.5	Miss Christina Rea has applied to renew her Street Trading Licence to sell flowers and plants. Miss Rea has held the Licence for one year.
1.6	Miss Rea has applied to sell the additional commodities of arts and crafts, hair accessories, health and beauty products, cosmetics, perfumes and toiletries, pop and sport memorabilia, wrapping paper and cards, jewellery, sun glasses, umbrellas, fancy dress costumes, stationary, novelty items; e.g. LED/glow products, CD's, seasonal items; e.g. Christmas novelties, religious and cultural merchandise, mobile phone covers and accessories, fruit and vegetables, fresh fruit juices and smoothies, slush puppies, hot and cold beverages, cold foods, walking tour tickets and event tickets, all from a traditional market type stall measuring 3m x 1.5m.
1.7	Her proposed hours of operation are as follows: Monday to Saturday from 9.00 a.m. to 9.00 p.m.,and Sunday from 10.00 a.m. to 5.00 p.m.

1.8	Miss Rea has held the licence for this site from 1st February, 2011. Our records indicate that when we have carried out 5 routine site inspections Miss Rea has not been trading during this period. Members are advised that the general Terms and Conditions of a street trading licence states that " <i>the Licence holder shall avail himself to a reasonable extent of his right to trade under this licence</i> ".
1.9	As such, Miss Rea was asked to provide evidence that she had traded at the designated site during the period she was licensed or to provide any reason why she did not trade.
1.10	Following the request for evidence of trade, Miss Rea's father, Mr Joseph Rea (a licensed trader) was found to be trading at the site under Miss Rea's licence on 17 March 2012.
1.11	In a letter to the Council (attached) Miss Rea has stated that the sale of flowers and plants is no longer providing a profitable income. She states that she traded on three occasions during the period of her licence; on Saturday 2nd April, 2011 for Mother's Day, Saturday 24th December, 2011 for Christmas, and on Tuesday 14th February 2012 for Valentine's Day and on each occasion was unable to generate enough income to pay for her stock.
1.12	Miss Rea states in her letter that the addition of the other commodities would generate sufficient income to allow her to trade on a regular basis.
	Applicant 2.
1.13	Mr Desmond Grehan has applied to sell drawings of listed buildings in Belfast, books, pamphlets and postcards from a trailer type stall measuring 4.35m x 1.4m. His proposed hours of operation are as follows: Monday to Sunday from 10.00 a.m. to 7.00 p.m.
1.14	The size of the stall is larger than a normal City centre street trading pitch which is 3m x 1.5m (4.5sqm) as stated at Section 5.4 of the Stall Design Policy. Members are however advised that Section 5.9 of the Policy allows in any individual case, and for whatever reason, that Committee may decide to grant a design which varies from the agreed Policy and that such a decision would not be taken to have created any kind of precedent in respect of future applications. The Committee has previously granted licences for larger pitch sizes at a number of different locations in the City centre.
1.15	The PSNI and DRD Roads Service have no objections to the larger stall size as there is adequate space to accommodate the small increase in size.

2	Key Issues
2.1	The Street Trading Act (Northern Ireland) 2001 (the Act) places a statutory obligation on a district council to grant an application for a street trading licence unless there are sufficient grounds to refuse it.
2.2	Section 8 of the Act sets out circumstances in which an application must be refused, however there are no such grounds of refusal applicable to these licence applications.
2.3	Section 9 of the Act sets out discretionary grounds under which a district council may refuse to grant an application. 9.(1) A council may refuse an application on any of the following grounds:- (a) that –

- (i) the location at which the applicant wishes to trade as a stationary trader is unsuitable;
 - (ii) the space in the designated street in which the applicant wishes to trade as a stationary trader is inadequate for the applicant to do so without causing undue interference or inconvenience to persons or vehicles using the street;
 - (iii) the area or areas of the district in which the applicant wishes to trade as a mobile trader are unsuitable for the applicant to do so without causing undue interference or inconvenience to persons or vehicles in the area or areas;
 - (iv) there are sufficient traders trading in the street, or at premises adjoining it, in the articles, things or services in which the applicant wishes to trade;
 - (v) the nature of the articles, things or services in which the applicant wishes to trade is such that their sale or supply, or their preparation for sale or supply, would adversely affect the general amenity of the area in which the applicant wishes to trade;
- (b) that the applicant has, in connection with the application, made a statement which he knows to be false in a material particular;
- (c) that the applicant is, on account of misconduct or some other reason relating to trading activities, unsuitable to hold a street trading licence;
- (d) that the applicant has, without reasonable excuse, failed to avail himself to a reasonable extent of a previous street trading licence;
- (e) that the applicant has at any time been granted a street trading licence by the council, which was revoked or could have been revoked on the grounds that he had refused or neglected to pay fees or other charges due to the council in respect of the licence;
- (f) that the applicant has failed to provide the particulars required by the council to deal with the application;
- (g) that the applicant has failed to provide or identify suitable or adequate arrangements for storing any articles, things or receptacles in or with which he proposes to trade.

2.4 There is a right of appeal to the Magistrate's Court against any refusal on these grounds.

2.5 Members are reminded that the Council, in March 2011, agreed an amended Street Trading Licensing Policy to allow for circumstances where there are two or more applications for the same designated pitch within the City. Section 5 of the Policy provides guidance on how to deal with competing licence applications and states that, without prejudice to the discretionary grounds for refusing an application, the Council may also take the following into account:

1. The suitability of the application in the context of the area or street;
2. The suitability of allowing more than one application in the area or street;
3. The commodities or services which each applicant intends to sell or supply;
4. The merits of each application in the context of the character and appearance of the proposed area;
5. Whether a mobile trader/a number of mobile traders will affect the character and appearance of the proposed area;

	<p>6. Any potential adverse impact caused to the character and appearance of the proposed location by the application, by a mobile trader or by a number of mobile traders;</p> <p>7. The extent to which the sale of the commodity will provide a useful service not otherwise provided in the area.</p>
2.6	Members are reminded that the ability to trade on the public highway should not be regarded as a right in perpetuity, but a privilege, and there is no absolute right for someone holding a licence to be granted it again when it comes up for renewal, consideration must be given to the merits of each application for the site.
2.7	The applicants have been invited to appear before Committee and make a brief presentation on matters such as how the business will be operated, the design of the stall, how the commodities they propose to sell will add to the area and address any concerns with their proposals.
2.8	After considering representations from the applicants you will then be required to grant one of the applications and refuse the other.

3	Resource Implications
3.1	<p><u>Financial</u></p> <p>If the Committee grants a licence, the Street Trading Licence fee is as follows:</p> <ul style="list-style-type: none"> • application fee of £100, and • a Licence fee, for Monday to Sunday, of £1017 per annum.
3.2	<p><u>Human Resources</u></p> <p>None.</p>
3.3	<p><u>Asset and Other Implications</u></p> <p>None.</p>

4	Equality Implications
4.1	There are no equality or good relations issues

5	Recommendation
5.1	<p>Based on the submissions presented and considering any amendments to the applications, the Committee is requested to consider each application in turn, taking into account Section 5 of the Street Trading Licensing Policy outlined in paragraph 2.5, and decide whether it is minded to:</p> <ol style="list-style-type: none"> 1. grant and approve the Licence to Miss Christina Rea; or 2. grant and approve the Licence to Mr Desmond Grehan; or, 3. grant and approve the Licence to one of the applicants with additional conditions, and then; 4. refuse the licence application, under the discretionary grounds as outlined at paragraph 2.3

	<p>above, of the applicant who has not been granted a licence.</p> <p>Members may attach any reasonable conditions when granting a licence.</p>
5.2	When minded to refuse a licence application, the applicant must be informed that they will be permitted to make representation regarding the refusal to the Council, with such representations to
5.3	be made not less than twenty-one days from the date of notice.
5.4	As a consequence, the actual decision to grant and refuse the licences will be considered at a meeting on a later date. There is a right of appeal to the Magistrate's Court against any refusal on these grounds.

6	Decision Tracking
<p>If a licence is granted and assuming all outstanding technical matters have been dealt with, the applicant will be sent a copy of the licence within 7 days of the Council decision. The person responsible for this action is Trevor Martin, Head of Building Control.</p> <p>If you are minded to refuse an application, the applicant will be advised in writing within seven days of their right to make written representation regarding this decision. The person responsible for this action is Henry Downey, Democratic Services Officer, Chief Executive's Department.</p>	

7	Key to Abbreviations
<p>Act – The Street Trading Act (N.I.) 2001 PSNI - Police Service of Northern Ireland DRD – Department for Regional Development</p>	

8	Document Attached
<p>Letter from Ms Rea</p>	