

Licensing Committee

16th October, 2013

Extract of Minutes

Competing Applications for a Stationary Street Trading Licence – Site 2, Berry Street

The Committee was advised that competing applications had been received from two persons wishing to trade from a vacant designated site in Berry Street, 46 feet from its junction with Royal Avenue. The Head of Building Control reviewed the applications, one of which had been submitted by Ms. Monika Szczesna, who had applied to sell, from a traditional market stall measuring 3 metres by 1.5 metres, hand crafts, e-cigarettes, e-cigarette accessories and refills, seasonal accessories, leather goods and jewellery from Monday to Saturday between the hours of 9.00 a.m. and 7.00 p.m. and on a Sunday from 1.00 p.m. till 6.00 p.m. He explained that the applicant had, in September, 2013, been granted a Street Trading Licence to trade from a designated site in Lower Garfield Street. However, she had advised Council officers that her preferred site was that in Berry Street and that, should her application be successful, she would vacate her current site.

He reported that the second applicant, namely, Mr. Peter Robinson, was seeking to sell, from a traditional market stall measuring 3 metres by 1.5 metres, hand crafts, football souvenirs, vintage and collectable clothing, bags and fashionable accessories and seasonal flowers from Monday to Saturday between the hours of 9.00 a.m. and 7.00 p.m. and on a Sunday from 12.00 noon till 6.00 p.m. The applicant had held a Licence in 2003 for a site in Fountain Lane, which he had operated in accordance with the Street Trading legislation.

The Head of Building Control informed the Members that written objections to both applications had been received from Mr. M. Gulusen, who had, in September 2011, been granted by the Committee a Street Trading Licence to sell a range of commodities from a designated site in Berry Street, 32 feet from its junction with Royal Avenue. The Committee had agreed that leather goods should comprise 50% of those commodities, in view of the fact that they were handmade and unique and would add value to tourism. Mr. Gulusen's objections had been based primarily on the fact that he provided currently many of the goods which the applicants were proposing to sell and that his trade could be affected, should the Committee approve either of the applications.

He confirmed that all three parties had been invited to attend the meeting and that it was normal practice for the objector to address the Committee in advance of the applicants. However, having been advised that Mr. Gulusen had not yet arrived, the Committee agreed to receive the applicants and Mr. P. Robinson was welcomed to the meeting.

Mr. Robinson outlined the extent of his trading experience to date and confirmed that he was proposing to sell, from an attractive stall, well-presented original high quality goods of local significance which would add interest and vibrancy to the area. Those goods, which would include distinct handmade pendants and necklaces, would differ from those sold by Mr. Gulusen and would, therefore, be unlikely to impact upon his trade.

Mr. Robinson thanked the Committee for receiving him and he retired from the meeting.

Ms. M. Szczesna, together with Mr. B. Brzezinski, her advisor, were then admitted to the meeting.

Ms. Szczesna circulated for the Members' information photographs of the type of stall from which she wished to trade. She outlined the range of commodities which she was proposing to sell, which would include unique hand-crafted items made of ceramic, glass, metal or wood, and pointed out that they would add to the attractiveness of her stall and to the general area. In terms of Mr. Gulusen's objection, she pointed out that, since he was not selling items such as e-cigarettes or their accessories, which she would be offering, his business would not be affected.

In response to a question from a Member, Ms. Szczesna confirmed that she had applied to trade from the site in Lower Garfield Street until such times as her application for the one in Berry Street had been processed. She pointed out that, whilst she had held the Licence for Lower Garfield Street for a few weeks, she had yet to trade from there and that she was willing to vacate that site should the Committee grant her current application, as Berry Street was her preferred location.

The Chairman thanked Ms. Szczesna and Mr. Brzezinski for being in attendance and they left the meeting.

It was reported that Mr. M. Gulusen was now available to address the Committee and he was admitted to the meeting.

Mr. Gulusen informed the Members that he had built up his street trading business over a number of years. He explained that he was not objecting to the presence of another street trading stall in Berry Street but on the basis that he was providing already many of the commodities which the applicants were proposing to sell, which would have a detrimental effect upon his business. He added that e-cigarettes and their accessories were not in keeping with the type of commodities which the Committee had licensed him to sell and that the Council should not be seen to be promoting such products.

Mr. Gulusen was thanked by the Chairman and he left the meeting.

The Council's Solicitor informed the Committee that, under the provisions of the European Union legislation and the European Union Services Directive in particular, the Committee could not refuse an application solely on economic grounds. It could, however, as had been the case with previous applications, refuse an application on the grounds, as set out within Section 9(iv) of the Street Trading Act (Northern Ireland) 2001, that there were sufficient traders trading in the street in the commodities in which the applicant wished to trade.

After a lengthy discussion, it was

Moved by Councillor Hussey,

Seconded by The Deputy Lord Mayor Alderman Stalford,

That the Committee, in its capacity as Licensing Authority, agrees, in view of the unique nature of the commodities which he is offering for sale, that it is minded to grant to Mr. P. Robinson a Stationary Street Trading Licence to sell hand crafts, football souvenirs, vintage and collectable clothing, bags and fashionable accessories and seasonal flowers from Monday to Saturday between the hours of 9.00 a.m. and 7.00 p.m. and on a Sunday from 12.00 noon till 6.00 p.m. in Berry Street, 46 feet from its junction with Royal Avenue, at a site which has been designated previously for the sale of those commodities, subject to:

- (i) the applicant providing all necessary documentation; and
- (ii) the receipt of the appropriate licensing fees.

Amendment

Moved by Councillor Keenan,
Seconded by Councillor Mallon,

That the Committee, in its capacity as Licensing Authority, agrees, in view of the fact that her application was the first to be submitted, that it is minded to grant to Ms. M. Szczesna a Stationary Street Trading Licence to sell hand crafts, e-cigarettes, e-cigarette accessories and refills, seasonal accessories, leather goods and jewellery from Monday to Saturday between the hours of 9.00 a.m. and 7.00 p.m. and on a Sunday from 1.00 p.m. and 6.00 p.m. in Berry Street, 46 feet from its junction with Royal Avenue, at a site which has been designated previously for the sale of those commodities, subject to:

- (i) the applicant providing all necessary documentation; and
- (ii) the receipt of the appropriate licensing fees.

On a vote by show of hands eight Members voted for the amendment and five against and it was accordingly declared carried.

The amendment was thereupon put to the meeting as the substantive motion when eight Members voted for and seven against and it was accordingly declared carried.

As a consequence of the decision to grant the Licence to Ms. Szczesna and the fact that there was only one designated site available, the Committee agreed that it was minded to refuse the application which had been submitted by Mr. P. Robinson, on the grounds set out in Sections 9(i) and 9(iv) of the Street Trading Act (Northern Ireland) 2001, namely, that the location at which he wished to trade was unsuitable and that there were sufficient traders trading at that location in the articles, things or services in which he wished to trade.

The Head of Building Control informed the Members that the unsuccessful applicant would be advised that, in accordance with Section 12 (2)(b) of the Street Trading Act (Northern Ireland) 2001, he would be permitted to make written representation to the Council within twenty-one days from the date of notice.