



## Belfast City Council

<b>Report to:</b>	Licensing Committee
<b>Subject:</b>	<b>Application for the Variation of a Mobile Street Trading Licence</b>
<b>Date:</b>	11th December, 2013
<b>Reporting Officer:</b>	Trevor Martin, Head of Building Control, ext. 2450
<b>Contact Officer:</b>	Stephen Hewitt, Building Control Manager, ext. 2435

1	Relevant Background Information
1.1	Members are reminded that, at your meeting on 18 <sup>th</sup> September, you considered an application by Mr Kevin McShane to vary his Mobile Street Trading Licensed route to include the additional area of the Falls on his Licence.
1.2	<p>In considering the application Committee noted the following:</p> <ul style="list-style-type: none"><li>• Mr McShane is already licensed for the Turf Lodge, Ladybrook, Finaghy, Andersonstown and Suffolk areas of the City for the sale of ice cream, confectionery and non alcoholic beverages from Monday to Sunday between the hours of 2.00pm and 10.30pm.</li><li>• There are already 4 Mobile Street Trading Licences for the sale of ice cream, confectionery and non alcoholic beverages operating in the Falls area.</li><li>• Objections had been received from Mr William O'Halloran, Mr Robert Morelli Jnr, Mr Robert Morelli Snr and Mr Angelo Morelli who all hold Mobile Street Trading Licences for the sale of ice cream in the Falls area. The objectors had been invited to attend the meeting to assist Members in their discussions. The nature of their objections were that:<ol style="list-style-type: none"><li>1. The Falls area already has sufficient mobile vans;</li><li>2. They (the objectors) are already struggling financially;</li><li>3. Consideration should be given to residents who will be oversupplied with ice cream and mobile shop vans; and</li><li>4. The applicant, in their opinion, is already licensed for enough areas.</li></ol></li><li>• Mr. R. Morelli addressed the Committee and reiterated the above objections which had been outlined within the report. He indicated that, should the Committee accede to the request to vary the applicant's licence, it would impact on existing trade within the area. He pointed out that the number of vans which operated in the area was sufficient to meet current demand. In addition, he suggested that any variation to the applicant's licence would, given the loss of income which might be incurred, result in further applications being submitted by the objectors to vary their own particular mobile trading licences to enable them to operate in additional areas.</li></ul>



1.3	<ul style="list-style-type: none"> <li>Mr. McShane addressed the Committee and suggested that his request was reasonable given that the objectors had, he claimed, been operating outside the areas which had been specified within their licences. This, he pointed out, had impacted on his own trade and he explained that the variation to his licence would enable him to compete for business on an equitable basis.</li> </ul> <p>A copy of the minute from that meeting is attached at Appendix 1.</p>
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2	Key Issues
2.1	<p>The Committee, having heard from the applicant and the objectors, agreed that it was minded to refuse the application which had been submitted by Mr McShane for the variation of his Mobile Street Trading Licence, on the grounds that there are sufficient traders within the Falls area offering the goods in which he wishes to trade.</p>
2.2	<p>As a consequence of this decision, Mr McShane was notified that he would be permitted to make written representation to the Council with such representation to be made within twenty-one days from the date of notice.</p>
2.3	<p>Members are advised that Mr McShane's solicitor has made written representation (Appendix 2) on his behalf to the Council in respect of this application. The main points from the letter are:</p> <ul style="list-style-type: none"> <li>The Falls Road is an area with a large population which is currently serviced by four licensed traders.</li> <li>Mr Morelli senior obtained the licence in August 2013 to trade in the public parks of West Belfast and they state that it would be difficult for him to provide an adequate service to the Falls area together with these public parks.</li> <li>Given the size of the area and the population covered there is no evidence upon which the committee could properly conclude that four traders was a sufficient number for the Falls Road.</li> <li>The Committee failed to have adequate regard for the prohibition under European Law of anti-competition regulations and the need to ensure that no one business obtains dominance in a given market.</li> <li>The restricted number of licences that have been issued fails to meet the demand of the public for goods and services and this could lead to the proliferation of illegal ice cream vans.</li> <li>Mr McShane has been a licensed trader for the past five years and his intention, if granted the variation on his licence, would be to employ more staff to cover the additional area. In the current economic climate the creation of any employment in area of deprivation such as west Belfast should be encouraged by the Council rather than discouraged.</li> </ul>

3	Resource Implications
3.1	<p><b><u>Financial</u></b></p> <p>If the Committee grants a variation of licence, the Street Trading Licence fee remains the same. The applicant was charged an administration fee of £50.</p>



	<b><u>Human Resources</u></b>
3.2	None.
	<b><u>Asset and Other Implications</u></b>
3.3	None.

<b>4</b>	<b>Equality and Good Relations Considerations</b>
4.1	There are no equality or good relations issues.

<b>5</b>	<b>Recommendation</b>
5.1	The Committee is requested to either: <ol style="list-style-type: none"> <li>1. Affirm its decision of 18<sup>th</sup> September 2013 and refuse Mr McShane's application, or</li> <li>2. Amend its decision of 18<sup>th</sup> September 2013.</li> </ol>
5.2	Should Members uphold the decision Mr McShane may appeal the Council's final decision within 21 days of notification of that decision to the Magistrates' Court.
5.3	If Members amend their decision of 18 <sup>th</sup> September 2013 and grant the variation they should give the grounds for so doing.
5.4	On varying a licence, Members may attach any reasonable conditions to it they so decide.

<b>6</b>	<b>Decision Tracking</b>
<p>If Members uphold their decision of 18<sup>th</sup> September 2013, Mr McShane will be advised in writing of the final decision of the Council within 7 days and advised of his right to appeal the Council's decision within 21 days of notification of that decision to the Magistrates' Court.</p> <p>The person responsible for this action is Henry Downey, Democratic Services Officer, Chief Executive's Department.</p> <p>If Committee amend their decision of 18<sup>th</sup> September 2013 and grant the variation, assuming all outstanding technical matters have been dealt with, Mr McShane will be sent a copy of the licence within 7 days of the Council decision.</p> <p>The person responsible for this action is Trevor Martin, Head of Building Control.</p>	

<b>7</b>	<b>Documents Attached</b>
<p>Appendix 1: Minute of meeting of 18<sup>th</sup> September 2013.</p> <p>Appendix 2: Mr McShane's letter of appeal.</p>	