

**Licensing Committee**

**18<sup>th</sup> September, 2013**

**Extract of Minutes**

**Application for the Variation of a Mobile Street Trading Licence**

The Committee considered the undernoted report:

**“1     Relevant Background Information**

- 1.1     The Committee will recall that, at its meeting on 21st September, 2011, it had considered an application by Mr Kevin McShane to vary the route on his Mobile Street Trading Licensed to include the additional area of the Falls on his Licence.
- 1.2     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 p.m. and 10.30 p.m.
- 1.3     There are already 4 Mobile Street Trading Licences for the sale of ice cream, confectionery and non alcoholic beverages operating in the Falls area.
- 1.4     A table is attached for information of Members showing these 4 existing traders and the areas of west Belfast in which they trade as well as the applicant and his areas of trade.

**Statutory Consultees**

- 1.5     The Police Service of Northern Ireland and the DRD Roads Service have no objections to the application.

**Objectors**

- 1.6     Objections have 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 have been invited to attend the meeting to assist Members in their discussions. The nature of their objections is that:
  - 1. The Falls area already has sufficient mobile vans;
  - 2. They are already struggling financially;
  - 3. Consideration should be given to residents who will be oversupplied with ice cream and mobile shop vans; and
  - 4. The applicant, in their opinion, is already licensed for enough areas.

- 1.7 The Morrellis further state that if the Council licence Mr McShane for the Falls area, they will in turn apply for the areas he trades in.
- 1.8 Members will recall that at their meeting in September 2011 they agreed to defer the report to enable a legal opinion to be sought in respect of deciding on competing street trading licence applications and whether the Council can restrict the number of street traders on the basis that it would be detrimental to existing street traders and/or fixed business premises.

### **Legal Opinion**

- 1.9 Counsel's advice has now been received in relation this issue. In summary, he agrees that the Council can apply criteria over and above what the Street Trading Act states, provided it is in keeping with the intention of the legislation. However, the Council cannot restrict the number of traders on the basis that it would be detrimental to existing traders as it would be contrary to the European Services Directive and subsisting primary competition legislation, namely the Competition Act 1998.
- 1.10 Members will note that some of the objections received relate to the granting of a further licence having a detrimental effect financially on their businesses. In light of Counsel's opinion, that aspect of the objections cannot be taken into account.
- 1.11 In order to determine this application the focus must be on whether the services already provided within the area are sufficient, not whether the granting of a further licence or licences would reduce the revenue stream of the existing licence holders or businesses within the area.

## **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 this licence application.
- 2.3 Section 9 of the Act sets out discretionary grounds under which a district council may refuse to grant an application.
- 2.4 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.

**2.5** Members are reminded that the Council in March 2011, agreed an amended Street Trading Licensing Policy to allow for circumstances where there are multiple mobile licences in a similar geographical area within the City. Section 5 of the Policy provides guidance on how to deal with licence applications and states that without prejudice to the discretionary grounds for refusing an application the Council may also take the following into account:

- (a) The suitability of the application in the context of the area or street;
- (b) The suitability of allowing more than one application in the area or street;

- (c) The commodities or services which each applicant intends to sell or supply;
  - (d) The merits of each application in the context of the character and appearance of the proposed area;
  - (e) Whether a mobile trader/a number of mobile traders will affect the character and appearance of the proposed area;
  - (f) 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;
  - (g) The extent to which the sale of the commodity will provide a useful service not otherwise provided in the area.
- 2.6 There is a right of appeal to the Magistrate's Court against any refusal on these grounds.
- 2.7 The applicant has been invited to appear before Committee and to make a brief presentation on matters such as how the business will be operated, how the commodities he proposes to sell will add to the area and address any concerns or objections to his proposal.
- 2.8 After considering the representations, you will then be required to either grant or refuse the application to vary the Licence.

### **3 Resource Implications**

#### **Financial**

- 3.1 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.

#### **Human Resources**

- 3.2 None

### **4 Equality Implications**

- 4.1 There are no equality or good relations issues.

### **5 Recommendations**

- 5.1 Based on the submissions presented and considering any amendments to the application, the Committee is requested to consider the application, in accordance with the Council's Street Trading Policy, and decide whether:
- 1. to grant and approve the variation; or
  - 2. to grant and approve the variation with additional Conditions;

**3. it is minded to refuse the variation application, under the discretionary grounds as outlined at paragraph 2.4 above,**

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

The Head of Building Control reviewed the background to the application and it was reported that Messrs. R. Morelli, A. Morelli and R. Morelli Junior, together with W. O' Halloran, objectors to the application, were in attendance and they were admitted to the meeting and welcomed by the Chairman.

Mr. R. Morelli reiterated a number of the 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. Mr. Morelli responded to a number of Members' questions and the deputation retired from the meeting.

The Committee was informed that the applicant, Mr. K. McShane, was in attendance and he was admitted to the meeting where the Democratic Services Officer outlined the objections which had been raised. In response, Mr. McShane 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. The Chairman thanked Mr. McShane for attending and he retired from the meeting.

Accordingly, it was

Moved by Councillor Lavery,  
Seconded by Alderman Rodgers and

Resolved – That the Committee, in its capacity as Licensing Authority, is minded to refuse the application submitted by Mr. K. McShane for the variation to a Mobile Street Trading Licence to enable him to operate an ice-cream van within the Falls area on the grounds that there exists sufficient traders within that area for the goods which the applicant wishes to trade.