



## Belfast City Council

**Report to:** Licensing Committee

**Subject:** **Application for the Grant of a Mobile Street Trading Licence**

**Date:** 11th December, 2013

**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	Mr Simon Allen has applied for a mobile street trading licence to trade in the areas of Sydenham, Belmont, Strandtown, Ballynafeigh, Ballymacarrett, Bloomfield, Ballyhackamore and Knocknagoney to sell ice cream, confectionery and non alcoholic beverages.
1.2	Mr Allen's proposed times of trade are Monday to Friday between the hours of 3.00 p m to 9.00 p m and Saturday and Sunday between the hours of 1.00 pm and 9.00 pm.
1.3	There is already one other Mobile Street Trading Licence for the sale of ice cream, confectionery and non alcoholic beverages operating in some of the areas applied for by Mr Allen, namely Belmont, Strandtown, Ballynafeigh, Ballymacarrett and Ballyhackamore.
	<b>Statutory Consultees</b>
1.4	The PSNI and the DRD Roads Service have no objections to the application.
	<b>Objection</b>
1.5	An objection has been received from the other Licensed Street Trader, Mr Neal Adair, on the grounds that two vans operating in his area would affect his business.
	<b>Legal Opinion</b>
1.6	Counsel's advice has now been received 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.
1.7	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.
1.8	Members will note that the objection received relates 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 objection cannot be taken into account.

1.9	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 holder or businesses within the area.
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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	<p>9.(1) A council may refuse an application on any of the following grounds:-</p> <p>(a) that –</p> <ul style="list-style-type: none"> <li>(i) the location at which the applicant wishes to trade as a stationary trader is unsuitable;</li> <li>(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;</li> <li>(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;</li> <li>(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;</li> <li>(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;</li> </ul> <p>(b) that the applicant has, in connection with the application, made a statement which he knows to be false in a material particular;</p> <p>(c) that the applicant is, on account of misconduct or some other reason relating to trading activities, unsuitable to hold a street trading licence;</p> <p>(d) that the applicant has, without reasonable excuse, failed to avail himself to a reasonable extent of a previous street trading licence;</p> <p>(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;</p> <p>(f) that the applicant has failed to provide the particulars required by the council to deal with the application;</p> <p>(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.</p>

2.5	<p>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:</p> <p>(a) The suitability of the application in the context of the area or street;</p> <p>(b) The suitability of allowing more than one application in the area or street;</p> <p>(c) The commodities or services which each applicant intends to sell or supply;</p> <p>(d) The merits of each application in the context of the character and appearance of the proposed area;</p> <p>(e) Whether a mobile trader/a number of mobile traders will affect the character and appearance of the proposed area;</p> <p>(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;</p> <p>(g) The extent to which the sale of the commodity will provide a useful service not otherwise provided in the area.</p>
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 to make a brief presentation on 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	Mr Adair has also requested to address the Committee to discuss his objection.
2.9	After considering the representations you will then be required to either grant or refuse the application.

3	Resource Implications
3.1	<p><b><u>Financial</u></b></p> <p>If the Committee grants a licence, the Street Trading Licence fee is as follows:</p> <ul style="list-style-type: none"> <li>• Application Fee of £120, and</li> <li>• A Licence fee, for Monday to Sunday, of £882 per annum.</li> </ul>
3.2	<p><b><u>Human Resources</u></b></p> <p>None</p>
3.3	<p><b><u>Asset and Other Implications</u></b></p> <p>None</p>

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

<b>5</b>	<b>Recommendations</b>
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 it is minded to: <ul style="list-style-type: none"> <li>1. Grant and approve the licence; or</li> <li>2. Grant and approve the licence with additional Conditions;</li> <li>3. Refuse the application, under the discretionary grounds as outlined at paragraph 2.4 above.</li> </ul>
5.2	Members may attach any reasonable conditions when granting a licence.
5.3	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 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 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.

<b>6</b>	<b>Decision Tracking</b>
<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 the application, the applicant will be advised in writing within 7 days of their right to make written representation regarding this decision. The person responsible for this action is Henry Downey, Democratic Services Officer, Chief Executives Department.</p>	

<b>7</b>	<b>Key to Abbreviations</b>
Act - Street Trading Act (N.I.) 2001	

<b>8</b>	<b>Document Attached</b>
Email from objector	