



Subject:	To consider a Temporary Street Trading Licence for Donegall Place.
Date:	20th February, 2019
Reporting Officer:	Stephen Hewitt, Building Control Manager, ext. 2435
Contact Officer:	James Cunningham, Regulatory Services Manager, ext 3375

Restricted Reports	
Is this report restricted?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, when will the report become unrestricted?	
After Committee Decision	<input type="checkbox"/>
After Council Decision	<input type="checkbox"/>
Some time in the future	<input type="checkbox"/>
Never	<input type="checkbox"/>

Call-in	
Is the decision eligible for Call-in?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

1.0	Purpose of Report or Summary of main Issues
1.1	Committee is reminded that at your meeting of 16 January 2019, you approved the application for a Temporary Street Trading Licence to Mr Gavin Gregg of City Picnic to trade Tuesday to Thursday from 8am to 5pm and Friday and Saturday 8am to 2am the following morning selling hot and cold food and non-alcoholic beverages from a catering trailer on Donegall Place.
1.2	4 inspections have been carried out including at night and there were no issues found.
1.3	It was agreed that authority is delegated to the Director of Planning and Building Control to renew the licence upon application on not more than four further occasions, and that the Licensee must undertake to maintain the area adjacent to the premises with regard to litter.

<p>1.4</p> <p>1.5</p> <p>1.6</p>	<p>It was further agreed that the City Solicitor would provide a legal opinion for consideration at the February meeting regarding protocol for future applications for Temporary Street Trading Licences in Donegall Place. A copy of the Minute is attached as Appendix 1.</p> <p>The Licence expires on 19 February 2019.</p> <p>Mr Arthur McAnerney of City Picnic has now applied to trade the same days and hours selling the same products from the same trailer in Donegall Place.</p>
<p>2.0</p>	<p>Recommendations</p>
<p>2.1</p> <p>2.2</p> <p>2.3</p> <p>2.4</p>	<p>Based on the information presented and considering any representations received, the Committee is requested to consider the application and decide whether it is minded:</p> <ol style="list-style-type: none"> 1. To grant and approve the Licence, or; 2. To grant and approve the Licence with additional conditions, or 3. To refuse the Licence application. <p>Members may attach any reasonable Conditions when granting a Street Trading Licence.</p> <p>If Members are minded to grant the Temporary Licence, you are then requested to delegate to the Director of Planning and Building Control authority to grant any further Temporary Licences that may be required.</p> <p>If the licence is refused, the applicant may appeal the Council's decision within 21 days of notification of that decision to the Magistrates' Court.</p>
<p>3.0</p>	<p>Main report</p>
<p>3.1</p> <p>3.2</p> <p>3.3</p> <p>3.4</p> <p>3.5</p> <p>3.6</p>	<p><u>Key Issues</u></p> <p><u>Legislative background for Temporary Street Trading</u></p> <p>The Street Trading Act (NI) 2001 Section 14 permits the Council to issue a Temporary Street Trading Licence where a full-term Licence may not be appropriate, for example, for special events such as festivals, fairs, etc. The Act permits temporary trading to take place in an undesignated street or in goods or services which are normally prohibited in that street.</p> <p>The legislation permits the Council to grant a temporary licence to an applicant for up to 7 days. No more than 5 Temporary Licences may be issued to any one applicant in a year.</p> <p>Members may be aware that the Council, through the Health and Environmental Services Committee, had previously agreed a Policy in 2001 with respect to the granting of Temporary Licences.</p> <p>Applications to permit Temporary Street Trading are normally only permitted at special events such as Christmas Lights Switch-on, New Year's Eve, Halloween Events, Festival & Civic Events, Community Organised Events and Cultural Parades/Events.</p> <p>The Committee is however entitled to depart from its usual policy where there are exceptional circumstances, which would warrant it to do so.</p> <p>It is also important that the holder of a Temporary Licence should not have an unfair advantage over the holder of a full-term licence who may only trade in designated streets.</p>

Extenuating Circumstances

3.7 In considering this application, Members may wish to have regard to the exceptional circumstances relating to the Primark fire that have led to extreme financial and emotional hardship for the owners of City Picnic (and others) who were unable to operate at all for a number of weeks and had to lay off staff as a result.

3.8 It is also the case that as soon as the remedial works to Bank Buildings are complete City Picnic intend to return to their existing premises and resume trading. The latest indications from Primark are that Castle Street should be accessible to the public by Easter and we would expect City Picnic to be open and trading again by the end of April at the latest.

Consultation on the Application

3.9 DfI Roads, PSNI and Belfast City Centre Management have been asked for their views on the proposal. None has any objection. (Attached as Appendix 1)

Legal Opinion

3.10 Members will recall that at their last meeting, the Director of Economic Development advised that the proposed grant of temporary licences was intended to provide assistance to a business which had been displaced because of the cordon that surrounded Bank Buildings. Efforts to find a unit for the business to occupy on a temporary basis had been fruitless, as landlords and letting agents were unwilling to provide short-term leases to food and beverage businesses. He added that the site on Donegall Place appeared to be the only option available to the applicants to continue trading until they were able to return to their premises on Castle Street.

3.11 Abuse of process is a two-fold test. It must involve the improper use of procedure and it must be for an unintended, malicious, or perverse purpose.

3.12 The restriction within the legislation relates to the number of licences which can be granted to a particular applicant, it does not restrict the number of temporary licences which can be granted for any particular location. Therefore in principle there is nothing to prohibit the Council from granting more than 5 Temporary Licences for a particular location.

3.13 On a strict interpretation of the legislation it could be argued that the grant of additional licences for the benefit of the same business is using proper procedure for an unintended purpose. However, in exercising its powers the Council has an obligation to do so fairly and in a manner which is consistent with the purpose of the legislation.

3.14 Upon consideration of the legislation as a whole it is clear that the intention was to allow some flexibility whilst at the same time ensuring that an applicant could not circumvent either the requirement to apply for a permanent licence or the fact that a site was not designated.

3.15 It is clear that the business is not intending to do either of these things. In the context of the exceptional circumstances in which the business finds itself, it is considered that the further grant of 5 licences is unlikely to be an abuse of process.

Fee

3.16 The Council's Economic Development Division of the Place and Economy Department have agreed that they will pay the Licence fees required for the duration of the applicant's stay at this location given the exceptional circumstances the applicant finds himself in. Depending

	<p>on the success of the continued trading and the ongoing works at the Primark Building, the applicant may require up to 5 Temporary Street Trading Licences at a cost of £2,500. Members are asked to consider once more waiving the fee on this occasion, as the payment is an internal Council transaction.</p> <p>Delegated Authority</p> <p>3.17 Members are reminded that the normal process for dealing with a Temporary Street Trading Licence application, which is not the subject of objections is that the Director of Planning and Building Control will grant the Licence as provided for in the Council's Scheme of delegation. This application is before Committee as it is contrary to the Committee's current policy position in that it would permit trading in areas where street trading is not usually permitted and also involves the sale of hot food in the city centre.</p> <p>3.18 If Committee agree to grant the Licence for 7 days, it is requested that delegated authority be granted to the Director of Planning and Building Control to impose Conditions and grant any subsequent applications made by the applicant.</p> <p><u>Financial and Resource Implications</u></p> <p>3.19 If the Committee is of the mind to grant the applicant a Street Trading Licence, the fee is as follows:</p> <ul style="list-style-type: none"> • Application Fee of £180, and • A Licence fee, for Monday to Sunday £320. <p>The fees will be met from the existing budget of the Council's Economic Development Division.</p> <p><u>Equality or Good Relations Implications/Rural Needs Assessment</u></p> <p>3.20 There are no issues associated with this report.</p>
4.0	Appendices – Documents Attached
	<ul style="list-style-type: none"> • Appendix 1 – Consultation responses