

Meeting:	Licensing sub-committee
Meeting date:	16 June 2017
Title of report:	Street Trading Appeal: Site at Unit 19 Lower Road Industrial Estate, Ledbury, HR8 2DJ
Report by:	Licensing officer – street trading

Classification

Open

Key decision

This is not an executive decision.

Ward affected

Ledbury West

Purpose

To consider an appeal against a decision to refuse a street trading consent application for a site at Unit 19, Lower Road Industrial Estate, Ledbury, HR8 2DJ.

Recommendation

THAT:

The sub-committee determine the appeal with a view to promoting the objectives of regulating street trading, as outlined in the street trading protocol (Appendix A)

Options

- 1 To refuse the appeal – for the same reasoning the original application was turned down, or for other reasoning.
- 2 To allow the appeal and approve a street trading consent, along with any specific conditions that may be deemed necessary over and above the standard ones for street

trading.

Reasons for recommendation

3. To ensure compliance with the street trading protocol.

Key considerations

4. This appeal is set against a history of two virtually identical applications by Mr Ozer or his agent. Both applications were turned down and neither appealed against:

Previous applications:

Applicant	Mr Mehmet Ozer
Basic details of application	Unit 19 Lower Road Industrial Estate, Ledbury Snack Bar Food, Afternoons/Evenings
Date Determined	August 2016
Representations?	Yes, objecting to the application
Decision and summary	Refused: <ul style="list-style-type: none">- Potential negative impact on nearby residences- Parking/Highways safety issues- No evidence provided of demand for evening facility

Applicant	Mr Mehmet Ozer
Agent	Home Plan Design Services
Basic details of application	Unit 19 Lower Road Industrial Estate, Ledbury Snack Bar Food, Afternoons/Evenings
Date Determined	November 2016
Representations?	Yes, objecting to the application
Decision and summary	Refused: <ul style="list-style-type: none">- Potential negative impact on nearby residences- Parking/Highways safety issues- No evidence provided of demand for evening facility

5. This appeal is based on the following application::

Applicant	Mr Mehmet Ozer
Agent	One Licensing

Basic details of application	Site: Unit 19 Lower Road Industrial Estate, Ledbury Trading Unit: Snack Bar, 3.6m x 2.1m Product Range: Kebabs, Burgers, Wraps, Salad, Chips, Hot and Cold drinks Days: Monday to Sunday Times: 15:00 to 23:00 hrs
Date Determined	March 2017
Representations received from:	BBLP Highways Officer Police Environmental Health Herefordshire Council Ward Members Ledbury Town Council Local resident (received since application was determined) Amcors Ltd (received since application was determined)
Decision	Refused
Appeal received?	Yes, 13 April 2017

6. To ensure a consistent approach in dealing with street trading applications the protocol document outlines the process for assessing street trading applications.
7. Applications for street trading are dealt with in the first instance by the council's street trading panel, which comprises officers from a range of departments to ensure relevant expertise is sourced. This application was submitted in February 2017 (Appendix B). A report was then produced which included consultative feedback (Appendix C), with the chair of the panel ultimately determining the application in March 2017.
8. A map showing the proposed trading site can be found at Appendix D.
9. Representations were received in relation to this application (Appendix E)
10. The application which is being appealed was turned down for the following reasoning:
 - There are residential properties close by and an evening catering facility at the proposed location was not judged to be suitable by the council.
 - Feedback from the police and the council's environmental health officer was that if consent was granted, it could lead to a concentration of people in that location and an associated increased number of vehicles to use the facility. This could cause a nuisance to nearby residential properties, from the negative impact of odours and noise at the times proposed.
 - Furthermore, it was noted there was very limited support for this venture from the residents consulted and given there is no clear indication that the customer base would be drawn from the locality, then it was considered that it was likely that the customer base would be drawn from further afield, thereby giving rise to the issues highlighted by both the police and environmental health.

11. In terms of the grounds for the appeal submitted (Appendix F), the following points are considered relevant:
- i) With regard to the residents, notification carried out by One Licensing, subsequent information provided to the council indicates there were only 2 valid responses out of the 20 houses they surveyed, both of which opposed the siting of the snack bar. A further resident from within the zone of houses notified of the application has since e-mailed the council opposing the idea of a snack bar.
 - ii) Amcor Flexibles Ltd who are a large factory operation at the end of the road where the proposed unit would be sited have sent an e-mail since the application was determined. They have a range of concerns including those relating to an increase in traffic and parking issues.
 - iii) Should anti-social behaviour arise as a result of the snack bar trading, then the applicant would only be able to deal with them properly by involving the police and/or council which presents a resource issue and difficulties in remedying the situation in a timely manner.
 - iv) The application being ultimately turned down was based on the opinion and judgement from the professionals engaged in these fields. The street trading protocol states an application may/will be turned down if *“there is likely to be resultant nuisance to members of the public, residents and local businesses due to the likely noise, smell, litter, disturbance or other problems which may be caused”*.
 - v) With regard to the request to the three month trial suggested by One Licensing, legal advice received by the council is that this has no advantages over the usual twelve month consent period in terms of the potential to revoke the consent, should problems arise. The council would need a reasonable amount of reliable evidence to revoke a consent however long the licensable period e.g substantiated complaints to the police and/or council. This means revocation of the consent would take a period of time to implement, meaning problem issues could continue until trading ceased.
12. Planning services have indicated that planning permission would also be required in addition to a street trading consent to operate a snack bar at this location.
13. The council already licence another snack bar to operate elsewhere on the industrial estate during the daytime (until 5pm). An application by that trader to operate into the evening was turned down by the council in March 2015.

Community impact

14. Should the appeal be allowed and a street trading consent granted, then based on the representations received, the potential for adverse impacts exist from noise, anti-social behaviour, parking and traffic issues.
15. Should the appeal be allowed, it would provide an evening fast food option away from fixed premises establishments found in the town centre. It should be noted though that the proposed trading site is within walking distance of Ledbury town centre where the same product types can be found at several outlets.

Equality duty

16. There are no equality issues in relation to the content of this report.
17. This report has human rights implications for both the applicant and the residents from the local neighbourhood. Should the appeal be rejected or upheld, this may have financial implications for a licensee's business and livelihood and/or may have impact upon the day to day lives of residents living in close proximity to the proposed trading site.
18. Article 8(i) of the European Convention of Human Rights provides that everyone has the right to respect for his/her private and family life and his/her home (which includes business premises). This right may be interfered with by the council on a number of grounds including the protection of rights and freedoms of others. The First Protocol – Article 1 – also provides that every person is entitled to the peaceful enjoyment of his possessions and shall not be deprived of his possessions except in the public interest and conditions provided for by law. Members must accordingly make a decision which is proportionate to the hearing and endeavour to find a balance between the rights of the applicant, residents and the community as a whole.

Financial implications

19. If the appeal was allowed and a consent granted, there would be a cost to the applicant in recognition towards the department's overall cost of administering and enforcing the street trading scheme in the county.

Legal implications

20. The legal framework for the issue of street trading consents is contained part 3 and schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
21. A 'street' for street trading purposes can also include some areas of private land, as is the case here.
22. The council can grant a street trading consent if they think fit. In the event the council choose to grant a consent, they can attach such conditions that they consider reasonably necessary. A consent cannot be granted for a period in excess of 12 months. There is no statutory right of appeal.
23. Two external representations regarding the proposed venture were received by the council since the original application was determined. These were received without any further consultation being carried out and are ruled admissible for the purposes of this hearing.

Risk management

24. There is little risk associated with the decision at this time. This right of appeal is over and above the legal obligations on the authority, with no automatic right of appeal required to be in place for a street trading consent scheme.

Consultees

25. None

Appendices

Appendix A - Herefordshire council street trading protocol

Appendix B - Completed application form

Appendix C - Application report to street trading panel

Appendix D - Map showing proposed trading location

Appendix E - List of representations received

Appendix F - Appeal covering letter from One Licensing on behalf of the applicant

Background papers

None identified.