

Committee Report

Committee	LICENSING SUB COMMITTEE
Date	TUESDAY 12 MARCH 2024
Title	TO DETERMINE AN APPLICATION FOR A STREET TRADING CONSENT UNDER SCHEDULE 4, LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 FOR THE SALTY SIREN, PRINCES ESPLANADE, GURNARD, ISLE OF WIGHT.
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Background

1. A street trading consent authorises the holder of a consent to sell, expose or offer for sale any article (including a living thing) in the street.
2. For the purposes of street trading a Street includes:
 - any road, footway, beach or other area to which the public have access without payment; and
 - a service area as defined in section 329 of the Highways Act 1980.
3. An application for a street trading consent is made to a council under Schedule 4 to Part III of the Local Government (Miscellaneous Provisions) Act 1982 (the Act).
4. Paragraph 1 of Schedule 4 of the Act defines a “consent street” as a street in which street trading is prohibited without the consent of the district council.
5. An application for a street trading consent was submitted by Ms Carly Sykes on 22 January 2024 (Appendix 1) for permission to trade on Princes Esplanade, Gurnard, Isle of Wight.
6. A plan submitted with the application shows the proposed trading location. (Appendix 2). Two locations were selected in order of preference.
7. Ms Sykes’ business is known as ‘The Salty Siren’. Items that are proposed to be sold include ice creams, lollies, tea and coffee, slushies, popcorn, pre-packaged baked goods along with buckets, spades, crabbing nets and beach shoes.
8. When the application was first submitted, it was proposed that trading would take place from a converted horsebox. However, since this time the applicant

has purchased a catering pod which is purpose built for this activity. Specific dimensions and a photograph of the catering pod can be found at Appendix 3.

- Ms Sykes has applied for a 12 month consent commencing on 20 May 2024, for trading each day between 9am and 5pm, Monday to Saturday and from 10am to 4pm on Sunday.

Consultation

- The Isle of Wight Council Street Trading Policy 2022 - 2024 prescribes a twenty one day consultation period, commencing the day after the application has been correctly served. Applicants are required to advertise the application on site and in a local newspaper.
- This application for a street trading consent was received on 22 January 2024. Consultation commenced on 23 January 2024 and ended on 12 February 2024.
- The application was advertised in the Observer on 26 January 2024 and at the proposed trading location.
- Throughout the consultation period the application has been available to view on the council's website.

Responsible Authorities

- The licensing department consult with relevant authorities. The outcome of the consultation is as follows:

Responsible Authorities	
Environmental Health	No adverse comment to the application. Further comments made on request of licensing officer in response to representations received. These are referenced later in the report.
Fire and Rescue Service	No Representation made
Police	No Representation made
NHS	No Representation made
Planning Services	No Representation made
Highways	No objections. Request made that the unit when parked faces in the direction of travel to protect both the unit and the drivers.

Other Persons

- 19 representations were received during the consultation opposing the application. Many of the comments submitted cannot be considered as part of

the determination and therefore the document has been redacted to show only relevant comments or those that require commenting on in accordance with the IWC Street Trading Policy. This document can be found at Appendix 4.

16. In determining an application for the grant or renewal of street trading consent the licensing authority will consider the following:
 - a) Public Safety
 - b) Prevention of Crime and Disorder
 - c) Prevention of Public Nuisance
 - d) Protection of Children from Harm
 - e) The Visual Impact
17. In respect of Public Safety and the Protection of Children from Harm – concerns have been raised that the fumes, noise, and vibrations of the generator pose a risk to the public and employees along with the risks involved with refuelling in this location.
18. One objector states that she has hidden disabilities and the impact of a generator, smell, noise and vibrations will have an impact on her safety.
19. Concerns have also been raised in respect of road safety around children wandering off to buy beach items, crossing the road on a bend and congestion of the pavement if there is a queue of customers waiting to be served.
20. A further comment received states that “The application suggests a permanent fixture and this will bring a criminal element to the area which is dark and unlit at night. As a woman I can safely walk along the esplanade at night but this would deter me and I am afraid for my safety.”
21. In respect of Crime and Disorder- concerns have been raised that if the trading unit is left in situ overnight that it could “encourage youths to commit crimes. They will know that there will be items left on the vehicle and may try to break into it to retrieve them.”
22. In respect of Public Nuisance – concerns have been raised around the use of a generator, particularly in relation to noise, fumes and vibrations that may be omitted. Local residents are concerned that a generator running all day will impact on the enjoyment of their homes and gardens.
23. Concerns have also been raised in respect of litter. Objectors perceive that the granting of a consent will lead to an increase in litter along the seafront, which will have an impact on residents and visitors, as well as endangering local wildlife. Concerns have also been expressed that an increase in litter may attract vermin.
24. With regards to the use of the generator, comments have been received stating that a generator should not be used in rain or wet conditions, and that it needs to stay dry. Also that there is a risk from chemicals leaking from a flooded generator which may cause damage to public foot paths and wildlife.”
25. Also, in respect of public nuisance, concerns have been raised that this location “requires pumping of all black and grey water and therefore any waste from this caravan can only be discharged into the sea.”

26. Finally in respect of nuisance, concerns have been raised that the trader will take up valuable parking spaces and this may lead to an increase in illegal parking or the blocking of resident's drives.
27. In respect of visual impact – concerns were initially raised that a converted horsebox was not in keeping with the area and the unit will block the views of local residents. The horsebox has now been replaced with a catering pod, details of which have been provided to all responsible authorities and objectors.
28. Following the consultation, the applicant was provided with a copy of the redacted representations to which she provided a response. This at her request was forwarded to all of the objectors. A copy of her response can be found at Appendix 5.
29. Details of the specific concerns raised by the objectors were also sent to the Environmental Health department and Island Roads. Officers from these services are qualified to assess the likelihood of the concerns raised and the impact of any of such outcomes.
30. Further comments from a Senior Environmental Health Practitioner can be found at Appendix 6.
31. Contact was also made with the Isle of Wight Council's Service Manager for Climate and Environment in order to obtain his views regarding the concerns raised around the environmental impact of the generator. Details of the generator provided by the applicant were sent to him and in response he stated that:

“The Isle of Wight Council advocates the use of renewable sources of energy where it is safe and practicable to do so over fossil fuel generators, we would encourage business to ensure that their environmental impact is reduced to so far is reasonably practicable, and look to use hybrid systems and the Best Available Technology (BAT) to reduce the environmental impact from their business.”

Financial/Budget Implications

32. Broadly, Council expenditure on licensing matters, and specifically those administered and enforced through licensing, balances income generated from fees.

Legal Implications

33. The primary legislation in relation to street trading is Schedule 4 of Part III of the Local Government (Miscellaneous Provisions) Act 1982 (the Act).
34. Section 2 of Schedule 4 to the Act provides for a council to designate any street as a) a prohibited street; b) a licence street or c) a consent street.
35. On 20 April 2004 the Isle of Wight Council resolved that for the purposes of street trading all current and future streets, council car parks, recreation grounds and open spaces along with public parks, gardens, amenity areas, sports areas and parking bays adopted by the council in the Isle of Wight be adopted as “consent streets” with effect from 28 May 2004.

36. Paragraph 7(2): Subject to paragraph (3) below, the council may grant a consent if they see fit.
37. Paragraph 7(4): when granting or renewing a street trading consent, the council may attach such conditions to it as they consider reasonably necessary.
38. Paragraph 7(5): Without prejudice to the generality of sub-paragraph (4) above, the conditions that may be attached to a street trading consent by virtue of that sub-paragraph include conditions to prevent obstruction of the street or danger to persons using it; or nuisance or annoyance (whether to persons using the street or otherwise).
39. Paragraph 7(8): The council may include in a street trading consent permission for its holder to trade in a consent street from a stationary van, cart, barrow or other vehicle, or from a portable stall.
40. Paragraph 7(9): If they include such a permission, they may make the consent subject to conditions as to where the holder of a street trading consent may trade by virtue of the permission; and as to the times between which or periods for which he may so trade.
41. Paragraph 7(10): A street trading consent may be granted for any period not exceeding 12 months but may be revoked at any time.
42. Local opposition or support (in whatever form) for a proposal is not in itself grounds for refusing or granting a licensing permission, unless that opposition or support is based upon valid reasons and concerns, which can be sustained.
43. There is no right of appeal against the refusal to grant a consent or against the revocation or variation of a consent.

Implications under the Crime and Disorder Act 1998

44. Members are advised that without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

Human Rights

45. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.
46. It is considered that there is one convention right, which needs to be considered in this context:

Article 6 - Right to a Fair Trial

47. In the determination of his civil rights and obligations, or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

48. It has been held that any person aggrieved by a decision of the licensing committee in relation to street trading has the right to challenge that decision in the High Court by way of judicial review.

49. The Licensing Authority acknowledges the right of businesses in its area to operate, but equally acknowledges the fact that this must be balanced against the rights of residents not to be disturbed by unreasonable noise and nuisance caused by licensed premises. The Sub-Committee needs to be clear as to the rights granted and the need to ensure that the reasons given for any interference are proportionate and in accordance with the Council's legitimate aim.

Equality and Diversity

50. There is no requirement for an equality impact assessment to be carried out.

Options

Option 1: To grant a street trading consent in accordance with the application and subject to the standard conditions.

Option 2: To grant a street trading consent in accordance with the application and subject to the standard conditions, and subject to any further conditions the Sub Committee deem necessary.

Option 3: To grant a street trading consent in accordance with Option 1 or 2 for a period of up to twelve months.

Option 4: To grant a street trading consent in accordance with Option 3 with the option to extend to twelve months, following a review of the trial period.

Option 5: To refuse to grant a street trading consent.

Risk Management

51. With regard to Options 1 - 4: Should the street trading consent be granted, the concerns raised by objectors to this application may not be addressed. The objectors will have no right of appeal. However, the Council could be challenged by way of judicial review.

52. With regards to Option 5: Should the Committee refuse to grant a street trading consent, Ms Sykes will be unable to trade. She has no right of appeal against this decision but could challenge the decision by way of judicial review.

Evaluation

53. In making its decision, the Licensing Sub-Committee should have regard to the Isle of Wight Council's Street Trading Policy 2022 – 2024.

54. Under the policy 'need' and 'competition' are not factors to be considered when determining street trading applications. The committee should assess the impact of the grant of this application when making its decision on:

- Public Safety/Protection of Children from Harm
- Prevention of Crime and Disorder
- Prevention of Public Nuisance
- Visual Impact

55. There has been a number of representations that have referenced competition and the issue of need, along with other matters that cannot be considered in line with the policy. These comments have been redacted from the representations and members should be mindful that these matters cannot be referred to during the hearing or considered when determining this application.

56. In respect of the concerns that have been raised with regards to the generator, specifically in respect of fumes, the applicant has provided further details in her submissions. She states:

“Dual fuel Generators are more environmentally friendly than standard generators which run on either gasoline or diesel. Dual fuel Generators have a highly efficient engine and use cleaner propane reducing toxic gas emissions. This generator will run off the lpg 98 % of the time, leading to a much cleaner environment, as an example you often see these generators used on coffee bikes.”

57. In respect of noise she states:

“Most generators come as standard as 75 decibels upwards, our Generator comes in at just 58 decibels, this is well below the standard. As an example this produces the same level of noise as a conversation. Another example is that standard Mr whippy machine creates 70 decibels upwards, again the generator coming in under this level.”

58. The applicant has also confirmed that the generator –

“will be encased in a weather proof case suitable for when in use and also creates another sound barrier, as stated by Island roads, the location is 50 metres away for nearest properties and with being encased and on the other side of the pod it will also act as a shield, it will not disturb any residents.”

59. A Senior Environmental Health Practitioner has carried out a site visit and assessed the location and the specifications of the generator in relation to noise, fumes, safety, control of noise at work and vibrations. His report can be found at Appendix 6.

60. The Isle of Wight Council's Service Manager for Climate and Environment has confirmed that -

*“They are using the *BAT with the use of a low emission generator, and they are looking to get solar panels in the future which shows a commitment to going carbon neutral in the future, which is what we are looking for as a LA.”*
* best available technology

61. In respect of the concerns that have been raised regarding road safety around children wandering off to buy beach items, crossing the road on a bend and congestion of the pavement if there is a queue of customers waiting to be served; these concerns can no more be attributed to this trader than any other.

62. The responsibility of ensuring the safety of a child sits with the parents or carers. The hazards of water, a road and venues selling items that are appealing to children already exist in this location and therefore pose no further or greater risk.
63. Congestion of the pavement is a factor that Island Roads officers will have considered when granting permission for trading to take place. The Streetworks Manager for Island Roads states –
- “The footway is more than wide enough for people to be waiting to make a purchase and still have space for others to freely pass by – I would estimate the footway being 4 metres wide.”*
64. The Streetworks Manager will be attending the hearing to answer any questions that members may have.
65. In respect of crime and disorder and the concerns raised that if this is a permanent overnight fixture that it will attract a criminal element to the area, the applicant requests permission to trade until 5pm Monday to Saturday, and until 4pm on a Sunday. The unit will be removed each day and therefore there is no risk in this regard.
66. In respect of public nuisance – concerns regarding the use of the generator have already been addressed at paragraphs 55 – 60.
67. Regarding litter - conditions placed on all street trading consents require traders to keep, maintain and leave their trading locations in a clean and tidy location. Conditions also require that any waste arising from the activities of the consent holder shall be removed from the site on a daily basis and disposed of in an approved manner. A copy of the standard static street trading conditions can be found at Appendix 8.
68. The applicant has also confirmed that she will be providing a litter bin and will be carrying out spot checks throughout the day as well as providing a choice of edible ice cream tubs.
69. It should also be noted that no trader can be held responsible for the actions of any individual who is accountable in their own right if they choose to engage in anti-social behaviour by discarding litter.
70. With regards to the concerns raised around the discharging of waste water into the sea, the applicant has confirmed that the only waste water will be from the sink which will be taken home and emptied each night.
71. Finally in respect of nuisance, concerns raised that the grant of this consent may lead to an increase in illegal parking or the blocking of resident's driveways - as with the issue of littering, no trader can be held responsible for the actions of another.
72. Island Roads as the landowner have granted permission for this trader to trade in the location requested. They grant permission as they see fit and will do so based on their own determination criteria.

73. In respect of visual impact – concerns were initially raised that a converted horsebox was not in keeping with the area and the unit will block the views of local residents. The horsebox has now been replaced with a catering pod, details of which have been provided to all responsible authorities and objectors.
74. The proposed trading location does not impede any resident's view of the Solent as it is proposed to be sited opposite an unoccupied area of woodland.
75. The pod itself is in very good condition and in terms of visual impact is not considered in any way to be a negative addition to the seafront.
76. If a consent is granted and the conditions are breached, or if there were to be substantiated issues of concern connected to any aspect of trading, then the legislation allows officers to vary the conditions or revoke the consent at any time.

Recommendation

Option 1: To grant a street trading consent in accordance with the application and subject to the standard conditions.

Appendices Attached

Appendix 1	Application for a Street Trading Consent
Appendix 2	Plan showing proposed trading location
Appendix 3	Picture and dimensions of catering pod
Appendix 4	Redacted representations
Appendix 5	Applicant's response to representations
Appendix 6	Report from Senior Environmental Health Practitioner
Appendix 7	Street trading conditions

Background Papers

- Isle of Wight Council Street Trading Policy
<https://iwc.iow.gov.uk/documentlibrary/download/iwc-street-trading-policy-13-1-2022>

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