

**LICENSING PANEL
30 JANUARY 2023
10.00 - 11.25 AM**



Present:

Councillors Leake (Chair), Brossard and Allen

Also Present:

Mrs Hatice Anil Oz, Applicant

Amanda Ward, Licensing Officer, Public Protection Partnership

Wayne Scott, Traffic Manager, Highways, Bracknell Forest Council

Donald Adams, Legal Advisor

Hannah Harding, Clerk

5. Declarations of Interest

There were no Declarations of Interest.

6. The Procedure for Hearings at Licensing Panels

The procedure for hearing at Licensing Panels was noted and understood by all parties.

7. Application to Renew Street Trading Consent - B & B PLUS Kebabs, Crowthorne Road North

The Panel came to the decision to grant a new 6-month Street Trading Consent, which was to run from the date when the currently closed layby pitch, from which the business traded from, was re-opened and available to use following the ending of current highway and utility works that were taking place there.

The Panel was informed at the Hearing that the applicant had submitted their application for renewal of the 6-month Street Trading Consent on the 3 November 2022, prior to the expiry of the then existing Consent and that the applicant had paid the appropriate 6-month renewal fee. The Panel was informed, however, that owing to on-going highway and utility works currently taking place in connection with the impending adjacent housing development works on the former Coopers Hill Community Facility site, the layby within the business pitch was situated, and has been trading at since 2017, had been fenced off and would remain closed until those works were completed, which was currently estimated to be in February or March 2023.

In reaching its decision on the Street Trading Consent renewal application, the Panel noted that although The Local Government (Miscellaneous Provisions) Act 1982 afforded the Council ultimate discretion to determine such Street Trading Consent applications, that discretion is subject to the public law principles and duty of legality, procedural fairness, and rationality.

In reaching its decision the Panel had regard to the Council's "*Policy For Determination Of Street Trading Consents*", as set out in the published Agenda pack.

That Policy prescribed six factors that the Council was to have particular regard to in determining such applications, namely;

- i. The likely impact on the existing highway users either as a result of the use of the road by the trader or by the trader's customers.
- ii. The location relative to any residents or businesses likely to be affected by the use of the site.
- iii. The nature of the trade.
- iv. The trading times.
- v. Appearance.
- vi. Impact upon the street scene.

The Policy though prescribes that the above factors were not at the exclusion of others that the Panel, at its discretion, may wish to take in to account. The Panel in the case noted that they would include any likely adverse impact on constructors, their agents and prospective house purchasers visiting the adjacent housing development site and any adverse impact on impending future visitors and residents of that housing development site. The Panel's decision was based on its consideration of all the evidence put before it.

The Panel carefully considered all the information presented, both written and oral, from:

- the Licensing Officer who outlined the issues;
- the Applicant,
- the Objector from the relevant Highways Authority

Including noting the written representations received both from statutory consultees, Thames Valley Police and Environmental Health as well as one objection received after the close of consultation from the developer of the adjacent housing development site. The Panel also noted 23 emails from customers, again received after close of consultation, in support of the application for continued Street Trading Consent at the said pitch.

In making their decision, the Panel took account of the following key points:

- There had been no complaints or issues raised about B and B Plus Kebabs current business practice or about its trading at the current pitch, including no complaints received about litter noise or odour nuisance.
- The Panel noted the applicants comment that they used a silent generator and use biodegradable food packaging.
- There had been a total of 23 customer submissions/references made supporting the application and the business.
- There had been no objection raised by Thames Valley Police, Environmental Health or any other Responsible Authority based on the current situation and information available pending the progression of the development of the adjacent housing development site.
- The Panel noted the applicants comments that their customers receive their food orders in a mixture of ways, either by coming on foot and collecting it, often via the pedestrian access from the Station end of the road that was beyond your pitch, by driving and collecting it themselves, parking for short

periods in doing so, or by way of employed drivers of yours stopping to collect food orders from you for home delivery to customers who have ordered food via food delivery internet applications.

- The Panel considered several site plans that had been produced for use at the Hearing, showing the current location of the kebab van, the changes that are currently being made and will further be made to the layby pitch site and road both during and after the development of the adjacent housing development site.
- From the detailed site plan of the impending adjacent housing development and of its relationship to the current and future landscape of Crowthorne Road North as presented at the Hearing by the relevant Highways Authority Officer, the Panel noted that Crowthorne Road North is and will remain a cul-de-sac, closed at the far end to vehicular traffic and that the layby where the pitch is situated is located at that far closed-off end, with only a pedestrian/cyclist access path beyond the layby pitch which leads to Bracknell Station area and beyond. The Panel also noted from the proposed development plans that that the layby pitch in question is beyond the two proposed new vehicular access roads to be constructed into the impending adjacent housing development. The Panel considered this would mean that the trading pitch will be as far away as possible from the new residential properties on the adjacent housing development which should thus alleviate the risk of any issues or complaints arising.
- From the evidence before it, the Panel was not persuaded that the trading pitch would be adjacent to front gardens of individual new properties on the development, which had been a concern raised by the objector. The Panel was also not persuaded, based on evidence before it, that granting the Street Trading Consent renewal in respect of this pitch would adversely impact on the safety of residents arriving and leaving the adjacent new housing development, not least because the pitch will remain beyond the two proposed new vehicular access routes from Crowthorne Road North to and from the new housing development.
- The Panel also considered, based on the evidence and plans put before it, that there was already alternative parking provision at various points along the length of Crowthorne Road North which the panel considered ought to be ample both to accommodate the trade and prospective purchasers coming to view the new housing development prior to its completion.
- The Panel also noted that the applicant's hours of trading each day commence after 16:30. Based on evidence before it, the Panel was not satisfied that the hours of trading would adversely impact either construction traffic to the housing development site or prospective house purchasers wishing to view the site once the marketing suite is operational.
- The Panel also noted the current housing development timetable that was detailed at the Hearing and in the agenda pack. The Panel considered that, based on the proposed housing development construction dates provided, the granting of the renewal of a 6-month Street Trading Consent should not have an adverse effect on the development of the adjacent housing development site.

At the conclusion of the proceedings and before the Panel reached its decision all participants present confirmed that they had been given the opportunity to say all they wished to say.

In summary, the Panel agreed to grant renewal of your Street Trading Consent, together with the existing standard conditions which the Panel considered were reasonably necessary to continue to attach to the Street Trading Consent. The Panel was not persuaded, based on the evidence before it, of the necessity to vary or amend either the permitted hours of Street Trading Consent or the conditions attached to your Consent.

The Panel thus granted a renewed 6-month Street Trading Consent for the same pitch and with the same conditions attached and with the same permitted hours of trading, namely,

Sunday to Thursday from 16:30 – 00:00
Friday and Saturday from 16:30 – 02:00

However, in noting that the layby pitch in question was currently closed pending the completion of highways and utility works, the Panel determined that the new 6-month Street Trading Consent would only start to run from the date on which that layby pitch had been re-opened and the applicant was able to access and to trade from it, therefore affording the applicant the opportunity to trade there for up to 6-months from the date of re-opening, subject to any review decision. The Panel also noted that the applicant had already paid in November 2022 the relevant 6-month Street Trading Consent renewal fee and requested officers to duly take that into account.

You are reminded that under paragraph 7 of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 the Council may grant a Street Trading Consent if it sees fit. The Council may also attach such conditions to such Consent as it considers reasonably necessary. The Council may also vary the conditions of a Street Trading Consent and / or revoke the Consent at any time on taking the above-stated factors into account.

The Panel reminded the applicant and all interested parties that if there were any material changes to the Street Trading Consent, or to the pitch, or any breaches of the attached conditions or any concerns raised or complaints received about the continued suitability and appropriateness for trading at this pitch, then this would be reviewed at the appropriate time and the Consent may be subject to withdrawal.

The Panel's decision was binding upon the applicant and the Licensing Authority. There was no Statutory right of Appeal under the Local Government (Miscellaneous Provisions) Act 1982 against a Council's determination in respect of a Street Trading Consent application. Any party not satisfied with the Council's decision could, however, seek to challenge it by way of Judicial Review as appropriate.

CHAIRMAN