

PUBLIC PROTECTION COMMITTEE: 2nd December 2014

Report of the Head of Regulatory and Supporting Services

STREET TRADING CONDITIONS – application to amend current conditions for St Mary Street

1. Background

- 1.1 The existing conditions attached to Street Trading licences and consents for St Mary Street were last approved by Committee in 2000, subject to minor amendments in November 2014, and are detailed in Appendix A of this report.
- 1.2 Street Trading legislation essentially regulates the sale of, or offer for sale of, anything in a street. The Council has designated St Mary Street as a ‘consent street’ for street trading purposes. The effect of this designation is that trading in St Mary Street is prohibited without first obtaining a “consent” from the Council. The responsibility of the licensing authority is to ensure that those individuals to whom consent is granted are conducting their business in a proper manner. In doing so, the authority is empowered to specify conditions that must be complied with. These conditions reflect the need to protect the public and the avoidance of nuisance.
- 1.3 A request has been received to modify the current conditions to allow the use of a vehicle to sell food at the St Mary Street market in the City centre. The current policy prohibits the presence of a vehicle at street markets unless it is for the purposes of loading or unloading. The applicant has requested permission to address the Committee on the matter with a view to changing the existing conditions.

2. The Proposal

The applicant operates a mobile pizza business. The operation entails the use of a three wheeled vehicle with a wood fired oven fitted into the body of the vehicle. The vehicle is relatively small, 1.5 m by 3.4m and the applicants believe that they can offer a unique dining experience to the people of Cardiff, but are prevented from doing so by the existing street trading conditions, in particular, Clause 8 of the current conditions. Details of the applicant’s submission are set out in Appendix B along with letters of support.

3. Street Trading Conditions

- 3.1 The full street trading conditions for St Mary Street are set out in Appendix A. The clause relevant to this request is:

Clause 8 - A licensed trader shall not leave his vehicle in the street in which he trades, apart from in approved parking spaces, except for the purpose of loading and unloading goods. Such loading and unloading shall be carried out as quickly as possible and the vehicle removed immediately on completion.

This clause is aimed primarily at minimising obstructions, public safety, and reducing any nuisance associated with noise and exhaust fumes. The Clause was originally incorporated into the conditions following representations from the Police and the Highways department of the Council.

- 3.2 A strict interpretation of the conditions would thus appear to prevent the applicant operating his business at street markets governed by these conditions. However, the applicant contends that the current conditions are inflexible, do not allow small, innovative businesses to trade in the City and do not allow Licensing officers any discretion when dealing with applications. Consequently, the applicant requests that the Committee consider the request for an amendment to the existing conditions.

4. Consultation

- 4.1 Consultation was undertaken with South Wales Police and the Council's Highways Department.
- 4.2 The Highway's Department were concerned that if this clause was removed from the Street Trading Licence Conditions it may have implications for the Traffic Regulations Order on fixed licence sites. It is therefore recommended that if the Committee are minded to approve the removal of this clause that it only applies to the St Mary Street/High Street Consent Conditions.
- 4.3 Highways also stated that the vehicle movements should be restricted to that of the traffic order in place, therefore the trading vehicle is only permitted on or off the site during the times that vehicles are permitted into the area to assemble/dismantle the stalls.

5. Achievability

This report contains no equality personnel or property implications.

6. Legal Implications

6.1 When granting a street trading consent the Council may attach such conditions to it as it considers reasonably necessary.

6.2 The relevant legislation imposes a general prohibition upon Consent Holders from trading from a van, other vehicle, stall, barrow, or cart. However it also says that the Council may include in a Street Trading consent permission for the Consent Holder to trade from a stationary van, cart, barrow, other vehicle, or portable stall.

Any such permission may be made subject to conditions as to location within the street and trading times.

7. Financial Implications.

7.1 The Council is empowered to charge such fees as it considers reasonable for the grant or renewal of a street trading licence or consent.

8. Recommendation

That the Committee considers the application to amend the existing St Mary Street/High Street Trading Consent conditions.

Dave Holland
HEAD OF REGULATORY AND SUPPORTING SERVICES

9th November 2014

This report has been prepared in accordance with procedures approved by Corporate Managers.

APPENDIX A

CITY AND COUNTY OF CARDIFF

ST MARY STREET/HIGH STREET: STREET TRADING CONSENT - STANDARD CONDITIONS LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 SCHEDULE 4



- General**
1. The grant of a Street Trading Consent shall not be deemed to give any approval or consent which may be needed under any By-law, enactment or regulation other than Part 3, Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
- For the avoidance of doubt, this includes the requirement to seek and obtain planning permission and/or advertisement consent.
- Commodities**
2. All commodities must comply with current Consumer Protection legislation. (For advice and information contact Trading Standards on 029 20872059).
- All merchandise sold from the receptacle/stall shall be of a good merchantable quality and sold at reasonable prices. The prices of all merchandise and services shall be either clearly marked or included on a price list to be displayed in a prominent position within the receptacle/stall visible to customers.
- The Consent holder shall immediately cease selling and remove from display at the receptacle/stall, any merchandise to which the Council shall object whether because of the nature of the merchandise, its quality or for any other reason.
- Day and Times**
3. Trading may only take place on the days and during the times specified on the Consent.
- Position**
4. The trader shall trade only from the position allocated to them by the market organiser Richard Eklof of Wigmores Bakery.
- Use of Site**
5. Where permission has been granted by the Council for a Consent Holder to use a receptacle/stall for the sale of goods, the receptacle/stall used for trading must be erected so as not to protrude or project outside the limits of the permitted area in any way.
- A trader or his assistant shall not cause or permit goods, or containers (except refuse containers used solely for the purpose) to be placed alongside or around a receptacle/stall or area approved under the Consent.
- The receptacle/stall shall not be left unattended on the site.
- The receptacle/stall shall not be used for any other purpose other than trading from the site.
- Nature and type**
6. Where permission has been granted by the Council for a Consent Holder to use a receptacle or stall for the sale of goods, such receptacle/stall must be

and size of receptacle/stall		of a type and style approved in writing by the Council and positioned entirely within the permitted area.
		The area occupied by the trader must not exceed 6 metres x 3 metres.
Removal	7.	Receptacles and stalls shall be easily and immediately removable.
		Traders or their assistants shall remove the receptacle/stall and goods for so long as may be necessary in the event of an emergency or in exercise of the Council's powers and duties, if reasonably required to do so by a police officer or a duly authorised officer of the Council.
		Traders or their assistants shall remove the receptacle/stall and goods within a reasonable time after the expiry of the time for trading specified in the Consent, if reasonably required to do so by a duly authorised officer of the council.
Trader's Vehicle	8.	A Consent Holder shall not leave his vehicle in the street in which he trades, apart from in approved parking spaces, except for the purpose of loading and unloading goods. Such loading and unloading shall be carried out as quickly as possible and the vehicle removed immediately on completion. This condition shall not apply when waiting restrictions are in force.
Consent holder	9.	<u>Fixed Unit</u>
		Where permission has been granted to trade from a receptacle or stall, the Consent Holder may employ any other person to assist in the conduct of the business, but may not let, assign or part with his interest or possession under this Consent or any part thereof but he may surrender it at any time. The rights granted by the Consent cannot be sublet, transferred or shared with any other person or party and is personal to the Consent Holder.
Personal attendance	10.	The Consent Holder shall be in attendance at the site and shall not appoint any other person to run the business on his behalf.
Offensive material	11.	The Consent Holder or his employees are forbidden to sell, display or wear any article which is or is intended to be offensive either in writing or pictures. <i>(If any doubt exists on whether an article/material could be considered offensive please contact the Licensing Section on Cardiff 029 20871651).</i>
Conduct	12.	Traders and any assistants employed by them shall ensure the public and Council officers are treated fairly and with courtesy.
		Traders shall ensure that their staff are competent, courteous and helpful.

- Refuse and Waste**
13. The trader shall keep the site at all times clean and tidy and free from litter; provide adequate facilities for the hygienic storage of refuse, ensure that they do not become overfilled and at the end of each trading day and as often as may be necessary during the trading day properly dispose of all refuse including cooking oils etc. in an authorised manner. The trader shall comply with all requirements of the Environmental Protection Act 1990 with respect to Duty of Care. *(For advice and information contact the Environment Agency on 029 20770088). (For advice and information, on commercial waste arrangements, contact the Commercial Waste Section on 029 29775444)*
- The trader shall collect and similarly properly dispose of all wrappings and litter within a 5 metre radius of the site (and beyond where it is the result of the trader's activities from the site) at the end of each trading day and as often as may be necessary during each trading day so as to keep and leave the street in a clean and tidy condition.
- The trader or his assistant shall comply with any directions given by the Council from time to time regarding the handling, storage and removal of the refuse.
- Food Hygiene**
14. The trader shall comply with all requirements of the Food Hygiene (Wales) Regulations 2006, General Food Regulations 2004, Regulation (EC) 852/2004 & Regulation 178/2002. All traders (food) shall give details to the appropriate registration authority having regard to Article 6 Regulation (EC) No 852/2004. *(For advice and information, contact Food Hygiene on 029 20871128).*
- Nuisance**
15. The Consent Holder shall not undertake any action or activity on the street, including trading from the site in a manner which, in the opinion of the Council causes an obstruction in the street or constitutes a danger, nuisance, annoyance or inconvenience to the Council or to the owners or occupiers of any adjacent or neighbouring premises or to members of the public.
- Highway surface**
16. The trader or his assistant shall not make any excavations or indentations of any description whatsoever in the surface of the highway or place or fix any equipment of any description on or in the said surface.
- Display of Sign**
17. Where permission has been granted to trade from a receptacle or stall, the Consent Holder shall have legibly and prominently displayed on his receptacle/stall a notice showing his name and Consent number.
- Identification**
18. A trader must produce his/her Street Trading Consent and identification which includes name and address and date of birth to any authorised officer of the Council or any police officer in the course of their duty.
- Advertisements**
19. No advertisement shall be displayed on the receptacle or stall which relates to any goods, commodities or services other than those offered for sale or provided on that site.
- Liquefield Petroleum Gas**
20. Traders shall ensure that they comply with the requirements of the Council's guidance document on the safe use, handling, storage and transportation of Liquefied Petroleum Gas used in mobile catering units or similar units. *(For advice and information contact Health and Safety on Cardiff 029 2087 1126)*
- Health & Safety**
21. The receptacle/stall shall be of sound construction and erected and maintained in a condition so as to protect the health and safety of employer, employees and members of the public.
- Health & Safety (Contd)**
- If freestanding canopies, umbrella or any other portable structures are used, they must be erected and maintained in accordance with the manufacturers' instructions. Where ground sockets are used to secure such equipment, permission must be obtained from the Head of Highways and Parks, County Hall, Atlantic Wharf, Cardiff.

Any electrical installation used in conjunction with the street trading unit must comply with the Electricity at Work Regulations 1989. Specifically, any appliances used in the installation must be subject to regular portable appliance testing, and the installation shall be protected at source, at the main junction or at the generator by a residual current device or some other equally suitable means of protection.

(For advice and information contact Health and Safety on Cardiff 029 20871126)

Safety of Equipment

22. Heat producing equipment (eg. Braziers) shall be so placed within the trading area as to offer maximum safety to the public. The position of such equipment in relation to other goods or materials shall be agreed with the Council's Officers.

Where mobile electrical generators are employed they shall be so positioned that :

- a) they do not present a danger to the passing public;
- b) they do not present a fire or similar hazard risk to the stall or goods displayed thereon;
- c) they do not cause any noise or fume nuisance;
- d) all petroleum spirit or other highly inflammable liquid used in connection with the generator shall be stored in a metal container with a secure leak proof cap not exceeding 23 litres or a plastic container not exceeding 5 litres capacity. The container to be labelled "Petroleum Spirit Highly Inflammable". The container shall be stored securely and remote from sources of ignition.

Amplification

23. No amplification equipment shall be used by the trader.

Directions by Council

24. The Consent Holder shall comply with all reasonable directions given by the Council or by any authorised Officer of the Council regarding any matter to which this Consent relates.

Revocation and refusal of Consent

25. In the event of any breach or non-compliance with the provisions of the Miscellaneous Provisions Act or the terms and conditions of this Consent by the Consent Holder (including any person associated with the Consent Holder), the Council may immediately revoke the Consent without notice and/or refuse to grant further Consents to the individuals concerned.

Offences

26. Any person who contravenes a condition imposed under the Consent shall be guilty of an offence. (Paragraph 7(9) Schedule 4 Local Government (Miscellaneous Provisions) Act 1982.

Advice and information

27. If you require any further advice and information relating to these Conditions, please contact the Licensing Section on Cardiff 029 20871651.

Ffwrnes
Flat 12 The Lansdowne
Beda Road
Cardiff
CF5 1LX

Mr David Holland
Regulatory Services
City Hall
Cardiff
CF10 3ND

Friday, October 24th 2014

Dear Sir,

We are writing to forward our request to Cardiff Council's licensing committee regarding a revision to the existing Street Trading Consent - Standard Conditions Local Government Act 1982 Schedule 4. Under the current conditions we are unable to participate at local street food markets on St. Mary Street, due to section 8 of the aforementioned policy. This rule prohibits the use of vehicles trading on the street and this, we feel, is unfair. We argue that our 'vehicle' should be permitted, as it is no larger than a trailer, produces less noise and emissions than a generator, and is a unique looking vehicle which would be a positive addition to the Cardiff street food scene, especially to the Castle area of the City.

To give you a clearer picture, here's a little about who we are. We are a new start up mobile pizza business called Ffwrnes and we're based in Canton, Cardiff. Our vehicle is a 3 wheeled Piaggio Ape (a regular fixture in little Italian towns), with a wood fired oven fitted into it's body. Although we're a new business we have had a very positive beginning, featuring at numerous festivals and community events this year. A recent WalesOnline poll voted us as the 3rd best pizza in Wales, ahead of many larger established brands. Our pizzas are made with the finest ingredients, using locally sourced produce and made to order. We have received a 5 star hygiene rating, reflecting the very high standards to which we operate. We feel that we offer a unique dining experience to the people of Cardiff and we'd like to do so regularly on the City centre streets and help put Cardiff firmly on the street food map.

The overall street trading licensing policy simply states that the use of a vehicle is prohibited without the permission of the council. The standard conditions for the market in question, however, state that vehicles must only be used for loading and unloading. We are sympathetic and understanding as to why these regulations were put in place, but we feel that the standard conditions don't offer ourselves and other small catering vehicles the opportunity to trade, neither do they allow council officers any discretion when dealing with applications.

We have enclosed supporting material that we feel reinforces our request to a review of the current policy, these include a letter of thanks from Principality following a community pizza making project at Albany Primary school, a letter of support echoing our views from Mark Drakeford AM and various pictures of the vehicle in question.

Finally, Thank you very much for your time and we look forward to hearing from you. We understand that this matter isn't as simple as 'changing a rule', however if you would be so kind as to consider our proposal it would be greatly appreciated. In the meantime if you would like to inspect the vehicle, speak to us in person or would like to visit please don't hesitate to contact us.

Kind regards,



Jeremy Phillips - Ffwrnes Pizza
ffwrnes@hotmail.com
07891 309450



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Flat 12 The Lansdowne
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Here is the vehicle in question, our 3 wheeled van, 'Smokey Pete' named by a competition winner.



We have appeared at numerous events throughout the Summer including Tŷ Hafan Family Fun Day (picture on the left), where we raised over £80 through pizza sales to support the charity.



Here is a view of the van open and fully operational with a shot of the final pizzas too. Please excuse the dodgy sunglasses though!

Mark Drakeford AM

Cllr Jacqueline Parry
Chair of Licencing Committee
County Hall
Atlantic Wharf
Cardiff
CF10 4UW

06.10.2014

Dear Jackie,

I am writing to you in your role as the chair of Cardiff Council's licencing committee, with regard to the council's policy on the licencing of street trading.

A very specific issue has been raised with me by one of my constituents and I have been in contact with officers in order to try and identify a solution.

It has, however, raised a more general issue on which I would welcome your comments.

My constituent has contacted me as he has attempted, unsuccessfully, to gain a licence for his catering business to trade at one or more of Cardiff's street markets. Their business relies on specialist equipment, and they have adapted a small vehicle (1.5m x 3.4m) that incorporates this in a mobile unit.

The specific issue in this case is that Cardiff Council appear to have a street trading licencing policy with a number of sets of standard conditions, and some of these standard conditions place a blanket ban on the use of vehicles.

The overall street trading licencing policy simply states that the use of a vehicle is prohibited without the permission of the council. The standard conditions for the market in question, however, state that vehicles must only be used for loading and unloading, and must only be left in designated parking spaces. The reasoning appears to be that these conditions are in place to minimise obstructions to the public highway and to reduce the nuisance caused to local residents by the noise and exhaust fumes created by vehicles. This clearly suggests that the vehicles at which these conditions are directed are normal sized cars and vans, etc. Meanwhile, permission for the use of a trailer and/or a generator is possible providing these are less than 2m x 4m in size.

My constituent argues that the use of their 'vehicle' should be permitted, as it is no larger than a trailer, produces less noise and emissions than a generator, and therefore would seem to be within the conditions of the licencing policy, interpreted according to the spirit rather than the letter. Meanwhile, council officers maintain that they must enforce the standard conditions without any discretion and therefore they

Mark Drakeford AM
Cardiff West Constituency Office
33-35 Cathedral Road
CF11 9HB

Mark Drakeford AM

are unable to enter into a dialogue about whether there would be any circumstances in which the vehicle could be used for trading at a street market.

Although the details of this case are specific, it raises a more general point that I feel it would be very helpful if you could examine.

My understanding is that public bodies are not legally permitted to 'unduly fetter their own discretion,' i.e., if a public body is given discretion to act then it is not permissible to decide itself to entirely rule out that discretion.

Although the licencing policy itself still allows the council its discretion, it appears that the standard conditions rule out any discretion, and do not provide any obvious means by which those who wish to challenge the rules can appeal to the council to use that discretion.

I would be grateful for your views as to what discretion officers have in enforcing the standard licencing conditions for street trading; and how, if someone disputes the decisions of officers, they would be able to appeal?

If it would be useful to discuss the details of this case further, please contact my office on 029 20 22 3207 and ask to speak to my caseworker, Dan Butler.

Yours sincerely



Mark Drakeford
Assembly Member for Cardiff West

Principality Building Society
PO Box 89, Principality Buildings,
Queen Street,
Cardiff,
CF10 1UA

principality.co.uk
Tel: 0330 333 4000*

Ffwrnes
Flat 12
The Landsdowne
Beda Road
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Wednesday 30th July 2014

Dear Jez,

Re: Albany Road Primary School Pizza Workshop

Please find enclosed a cheque for [REDACTED] as payment for the workshop you delivered at Albany Road Primary School.

The pizza making workshop was part of an exciting eco-mural project we were running with the school and was extremely well received by the pupils and the wider school community. Thanks to your help we were able to celebrate the completion of the mural in a very fitting way – championing local produce.

We received very good feedback on the pizzas and my colleagues reported back how impressed they were with your enthusiasm, commitment and skills in putting on the event at such short notice.

On behalf of the local team in Albany Road – a big thank you and we all look forward to working with you again soon. May I also take this opportunity to wish you all the very best with the tasty business venture and do not hesitate to get in touch if we can help you further or if you need a more detailed customer testimonial.

Kindest regards,



James Harper

Local Marketing Support Manager



