

Public Protection Committee: 30 November 2021

Report of the Head of Shared Regulatory Services

Control of Street Trading in Whitchurch

1. Background

- 1.1 Street Trading is controlled by Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
- 1.2 The Act provides that a district council may by resolution designate any street in their district as:
 - i) a “prohibited street” where street trading is prohibited;
 - ii) a “consent street” where street trading is prohibited without the consent of the district council; and
 - iii) a “licence street” where street trading is prohibited without a licence granted by the district council.
- 1.3 This report requests consideration of the streets surrounding the junction of Tynwydd and College Road in Whitchurch as Prohibited Streets.
- 1.4 A request was previously made in 2015 to designate roads in Whitchurch and Tongwynlais as prohibited, which included the roads to be considered in this report. The request in 2015 was made on the basis that “the streets are in close proximity to schools in the area and the street trading of food such as burgers is not considered conducive to healthy eating and the health and well-being of pupils in the schools”. At the meeting of 8 September 2015, Members resolved not to designate the roads as prohibited as they “felt that they were unable to make a decision on the issue as no evidence was put forward to support the application”. A link to the minutes of the 2015 meeting are available [here](#).

2. Details.

- 2.1 The Licensing Department have received requests from local residents and the Land and Asset Team within the Housing Department to designate Tynwydd and College Road in Whitchurch as prohibited streets for the purposes of street trading. This request is due to the site being used by mobile catering vans causing a nuisance to residents and causing a potential safety concern to members of the public. A file note detailing the

- issues at the site, created by the Land and Asset Team is detailed at Appendix A.
- 2.2 The Land and Asset Team received a report on the 8th October 2020, advising that a catering van had set up on the corner of Tynewydd/College Road. As they had previously successfully removed a different owner of a catering van due to objections from local residents, they wrote to them on 12th October 2020. The letter stated that they were trading on Housing land and did not have permission. It also stated that they were causing a safety concern with regards to the junction, causing congestion with the road users and pedestrians and that it is also causing damage to the open space. The letter advised that previous requests to site a catering van on this land had been denied due to objections. A photograph of this trader, taken by Google Maps in November 2020, is contained at Appendix B.
 - 2.3 The Legal Department of Cardiff Council subsequently wrote to the owner of the van and a hearing was diarised for 19 April 2021. However, the trader vacated the site on 19 March 2021.
 - 2.4 The Highways and Housing departments of Cardiff Council subsequently worked together to improve the junction at Tynewydd and College Road, due to the health and safety implications of the junction and works were agreed and started late August 2021. The works were completed beginning of September 2021, to improve the safety of the junction, renew footpaths, install bollards to protect the Housing owned land, and to install a crossover to the rear parking spaces at 241 College Road. They also provided a formal parking bay, where the Highways land had become damaged from residents continually parking on it.
 - 2.5 Starting in October 2021, the council received reports of a new catering van, known as 'The Pit Stop', trading from the new parking layby taking up two parking spaces. Complaints were received that the van is causing a nuisance, and is a potential safety risk due to an extension cable running from an adjacent property to the van, across the grass and an adopted footway. Concerns were also been raised that customers that use the van are illegally parking and causing an obstruction on a busy junction that is used by School children who attend the Schools nearby. A photograph of 'The Pit Stop' is detailed in Appendix C.
 - 2.6 Following concerns that the power cable running from the nearby property to the van was a trip hazard and could cause electrocution, a visit was made by Officers from the Highways Department of Cardiff Council, 'The Pit Stop' subsequently stopped running an extension cable from a nearby property and started to use a fuel generator for power. This led to noise complaints from nearby residents. A photograph of the van showing the extension cable from the nearby property is detailed at Appendix D.

- 2.7 In order to help ensure that other nearby roads are not used for the purposes of street trading in the event that the roads listed in paragraph 2.1 are designated as prohibited, Members may also wish to consider designating College Close and Tynant as prohibited for the purposes of street trading.
- 2.8 Redacted excerpts of complaints, received by the Licensing Department from local residents, in relation to 'The Pit Stop' are detailed at Appendix E and F.
- 2.9 A map of the area is detailed at Appendix G.

3. Achievability

- 3.1 This report contains no equality personnel or property implications.

4. Legal Implications

- 4.1 If the Committee are minded to designate the streets mentioned in 2.1 and 2.5 above as prohibited streets it would be necessary to follow the statutory public notice procedure set out in the Local Government (Miscellaneous Provisions) Act 1982. This requires the Committee to give notice of its intention to designate the street and invite representations. The matter would then come back to the Committee. Any representations received in response would have to be considered by the Committee before proceeding any further.
- 4.2 All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council eg. standing orders and financial regulations; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

5. Financial Implications.

- 5.1 The cost of advertising the designation as required by statute and the cost of enforcing the designation will be met from the existing budget.

6. Recommendation

- 6.1 That the Committee indicate its intention to designate the following as prohibited streets for the purpose of street trading:
- College Road, Whitchurch
 - College Close, Whitchurch
 - Tynewydd, Whitchurch
 - Tynant, Whitchurch
- 6.2 That the Head of Legal Services be authorised to publish legal notice of the Committee's intention and report to the Committee in due course so that it may consider passing the necessary resolution.

Dave Holland
Head of Regulatory Services

5 November 2021

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

Background Papers: [Public Protection Committee report 8 September 2015](#)

Appendix A

FILE NOTE

6th OCTOBER 2021

The Land and Asset Team within the Housing Department received a report on the 8th October 2020, advising that a second catering van had set up on the corner of Tynewydd/College Road. As we had previously successfully removed a different owner of a catering van due to objections from local residents, we wrote to them (dated) 12th October 2020. The letter stated that they were trading on our land and did not have permission. It also stated that they were causing a safety concern with regards to the junction, causing congestion with the road users and pedestrians and that it is also causing damage to the open space. The letter advised that previous requests to site a catering van on this land had been denied due to objections.

The owner of the van rang me on 14th October 2020 with regards to the letter. The letter requested that he stop parking his catering van on the grass with immediate effect, as he did not have permission to do so. The owner advised that he spoke to Paul Griffiths in the Licencing Section (ext 71748) who advised him where the prohibited streets were.

I then spoke to Paul Griffiths who advised that he would have sent a generic email to the owner, details of which are below:

Please find attached a copy of the Designated Streets List.

The streets listed as prohibited streets are not suitable for street trading, it would be illegal to trade there. You are able to trade in any street that is not prohibited provided you are not within 35m of a prohibited street or causing an obstruction and you do not need a licence to do so. You are also permitted to trade on private land e.g an industrial estate or car park, providing you have obtained permission from the land owner.

The streets listed as consent streets are only available when there are events taking place in the Millennium Stadium and a consent is issued. With regards to event days, consents are issued on a fair basis so that all applicants would get the opportunity to trade at least one of the events applied for. Consents are only issued to traders selling event related merchandise or food.

The streets listed as licence streets are only available to the current historic sites in those streets. The current sites located on licensed streets have been in place for many years, I'm afraid we do not accept any applications for new Licences.

Paul Griffiths also advised that Neil Hotchkiss, Enforcement Officer, had visited the site on 23rd September 2020.

The owner then contacted Councillor Dilwar Ali who his local councillor (Llandaff North ward) and as a result of the query, Daniel Cook provided a full update to Councillor Ali on 20th October 2020. Councillor Ali then requested whether his constituent could apply for permission to use the land. He was advised by Daniel Cook that the catering

van is causing a safety concern in the area and to contact the Land and Asset team, but no request for information had been received from Councillor Ali at that time.

I spoke with Shaun James on 28th October 2020 who is a Neighbourhood Services Officer from Pollution Control, who was already aware of the case. Shaun stated that all the powers they have are to do with noise or odour, so that he would not be able to help us with asking him to stop trading. He advised that he had a number of complaints regarding the noise, including a local councillor from the Whitchurch ward.

After he visited on the 29th October, Shaun James rang to advise that the generator was very loud and it was likely that action could be taken, due to excessive noise.

On 30th October 2020, I received a complaint from a resident in Tynewydd advising that he had previously made a complaint about the burger van that had started trading from the land by the junction of College Road and Tynewydd. He was extremely concerned and reported that the van had been moved off the Housing owned land, onto the Highways land which is right on the junction! The complainant was extremely concerned that once the children go back to school on Monday that a child will be run over. This is because the pavements and junction are being blocked by cars parking on the corner, to get close to the catering van. He rang Highways for advice and was advised that it would be an issue for the police, not them. I advised the same – requesting that he call 101 and call me after to advise the outcome of his call.

As requested, the complainant called rang 101 and said that it was not something they usually deal with, however the officer he spoke to advised that as far as he was concerned, it would pose an obstruction and that he was going to try his best – did not promise - to get a team down there on Monday morning (2nd November 2020), as there is serious concern for children's safety.

As a follow up, I emailed Highways, requesting that someone call me urgently regarding a potentially dangerous obstruction at the junction of College Road/Tynewydd. They emailed me back, simply stating "If it's a dangerous obstruction it would be a police matter".

I rang Shaun Yemm-James, for an update on 30th October 2020 and to advise that I had received another (more) disturbing complaint from a resident of Tynewydd. Shaun advised that he only observed and visited his complainants without drawing attention to himself and did not engage with the owner of the van. He did notice that the catering van was closer to the pavement, but not on it, but he did confirm that he is still trading from the site.

Richard Crane, OM Principal Solicitor was contacted and provided with an overview of the case, seeking advice on 30th October 2020.

Shaun Yemm-James, who is a Neighbourhood Services Officer from Pollution Control (07891 218153) rang on 5th November 2020 to provide me with an update regarding the catering van. He advised that they cannot take any further action, or issue a notice, because the owner had removed the generator and is now using electricity from the upstairs flat at 241 College Road!

Shaun advised that he will be closing his case but that if we needed his assistance in the future, he would be happy to assist.

The Legal Department wrote to the owner of the van and a hearing was diaried for 19th April 2021. [REDACTED] He vacated the site on 19th March 2021.

Highways and Housing worked together to improve this junction, due to the health and safety implications of the junction and works were agreed and started late August 2021. These works were completed beginning of September 2021, to improve the safety of the junction, renew footpaths, install bollards to protect the Housing owned land, install a crossover to the rear parking spaces at 241 College Road. We also provided a formal parking bay, where the Highways land had become damaged from residents continually parking on it. These works are a great improvement to the site and the residents were pleased that the burger van had vacated and they had more formal parking in this area.

I was contacted on 4th October and 6th October 2021 by two separate residents in College Road and Ty Newydd, advising that there is now a new catering van parked on the newly created parking bays, taking up two spaces. They are using the upstairs flat at 241 College Road as before, but after I spoke with Gareth Jones in Highways (who was already aware that a catering van had moved onto the site) it is understood that it is a different van/owner from the first two who set up in this area. It is believed they are affiliated with the builder's yard across the road (who also own the flats at 241 College Road).

I spoke with Daniel Cook on 6th October 2021 who agreed to meet on site on 7th October 2021 with myself and Gareth Jones with a view to having the street designated.

Completed works



Toni Murphy
Assistant Regeneration Officer

241 College Rd

Cardiff, Wales



Street View - Nov 2020

Appendix B



Google

Image capture: Nov 2020, © 2021 Google



Appendix C



Appendix D



Appendix E

On 18 Oct 2021, at 12:19, [REDACTED] > wrote:

Hi Dan

I just wanted to give you a update as I'm not sure if where I'm ment to report this.

Friday we had a situation on the road where two vans blocked the road whilst buying the burgers the traffic build up for about 7 minutes and as you can imagine we had horns being honked continuously and people getting out of there cars. To which the van owners thought it was funny to film it all and laugh.

Whilst this was going on my client was parked on the road whilst in the studio with me and came out to having a smashed wing screen!

Many thanks

[REDACTED]

-----Original Message-----

From: [REDACTED]
Sent: 12 October 2021 13:20
To: Cook, Daniel <Daniel.Cook2@cardiff.gov.uk>
Subject: Burger van

Hi Dan

Unfortunately the burger van situated [REDACTED] has now started using a generator that is consistently running and causing a lot of noise.

It can be heard in my house [REDACTED] [REDACTED] [REDACTED]

[REDACTED] Can anything be done about this.

Many thanks

[REDACTED]

Appendix F

From: [REDACTED]
Sent: 02 November 2021 16:47

I wish to report a takeaway cafe that would appear to be trading as a 'fixed' concern. For the past month, the van shown in Photo 1 has been parked in a newly created residents parking bay near the junction of College Road and Tynewydd in Whitchurch, Cardiff. It has been permanently parked day and night over this period. The van displays signage on the main College Road to attract customers (Photo 2)

Given that 'proper' cafe traders in Whitchurch and Llandaff North have to pay business rates for their premises, on their behalf, I query whether this van has the appropriate licenses or planning permissions to trade as a static business premises.

The van used to have power cable pulled across the pavement and grass running into the window of the adjacent house but, as you will note in one of the photos, it now has its own power supply installed (Photo 3).

It does not display any food hygiene rating certificate that I could see.

In addition, when I have walked past this catering truck, almost daily, I have never seen the proprietor wearing any face covering whilst serving customers nor does she have any perspex shielding in place. You will also note that there is no signing or observation of social distancing, with customers often leaning on the service shelf very close to the food and the proprietor.

In this current time, it is concerning to see someone who appears to be undermining the business efforts of legitimate cafe traders and is creating a possible health and safety hazard to road users and pedestrians by using a residential lay-by to operate a fixed business from.

I would appreciate an update on any action that you take.

Yours sincerely

[REDACTED]



From: [REDACTED]

Sent: Thursday, November 4, 2021 5:19 pm

Dear Mr Cook

Thank you for the prompt and diligent manner in which you have followed up on my concern over this trader creating a nuisance and possible safety hazard to pedestrians, including school children.

I am glad that you will request that the Public Protection Committee reconsidering their 2015 decision which seems to make no sense at all considering the residential nature of the area concerned nor the siting of this trader:

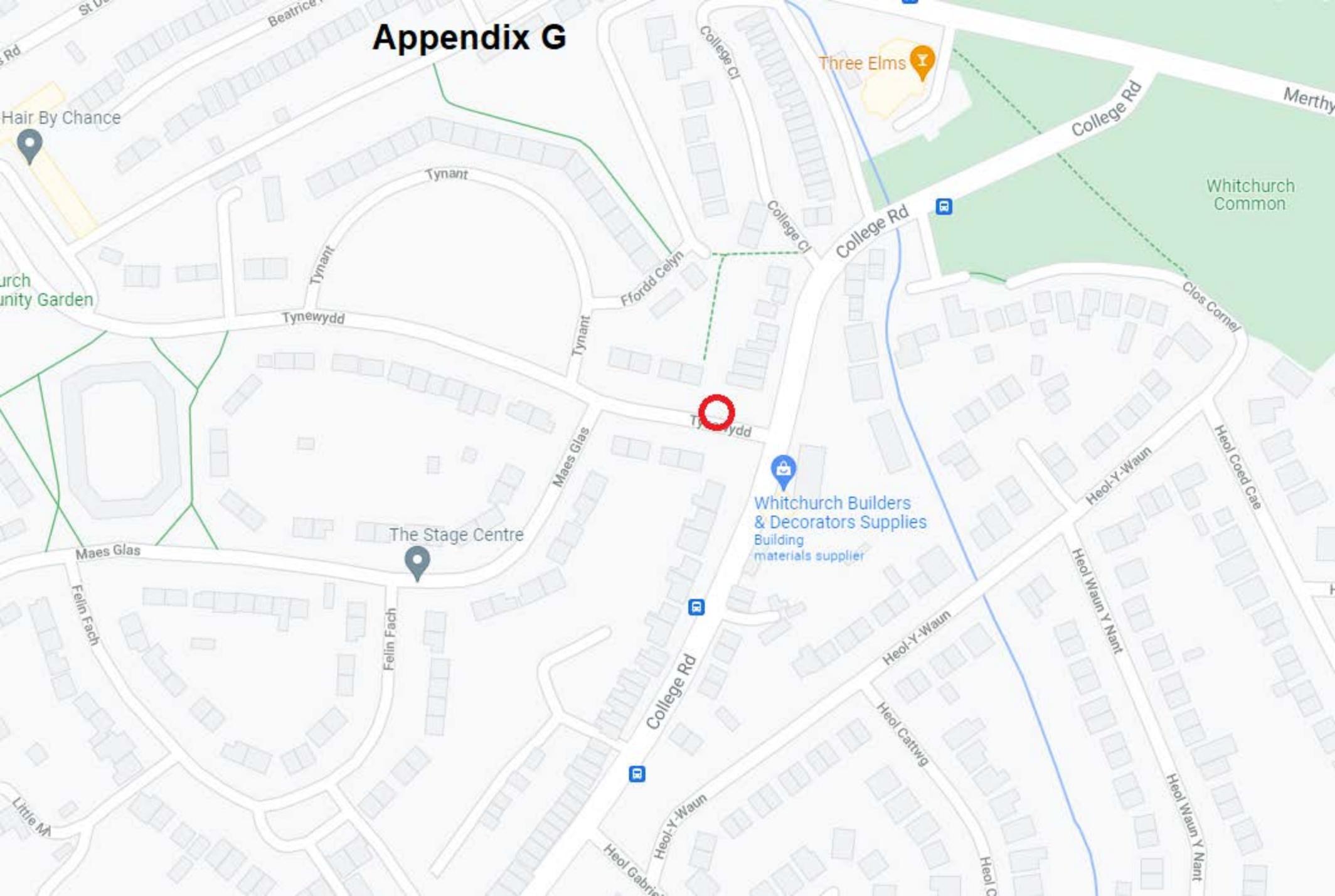
- a) so close to very busy road junction;
- b) close to pedestrian road crossing (zebra);
- c) creating congestion on a residential road;
- d) potential noise pollution through the use of a generator for nearby houses.

To compound the issue, Cardiff Council have only just built a residential lay-by for local houses so that residents do need to park on the grass verges. The intent of this lay-by is now circumvented by the trader permanently parking their truck in the parking space. All paid for by the ratepayers of Cardiff.

I would suggest that one potential solution is for the highways department to designate this as a residential parking area within the usual hours, as is done for most of the residential areas of Whitchurch. Although the trader might ignore this, at least the traffic wardens could issue parking tickets daily so as to recoup some of the building costs of the lay-by for the Council.

I am very interested in whether the trader is registered as a food business operator and has all the required hygiene certification. Please keep me 'posted' on how this issue is resolved.

Appendix G



Three Elms

Hair By Chance

Whitchurch Community Garden

Whitchurch Common

The Stage Centre

Whitchurch Builders & Decorators Supplies
Building materials supplier

Little MA