

Street Trading Appeal – Mr Osborne - 23/01709/STRCON

Timetable	
Meeting	Date
Licensing Sub Committee	13 th July 2023

Will this be a Key Decision?	No
Urgency	Not Applicable
Final Decision-Maker	Licensing Sub Committee
Lead Head of Service	John Littlemore
Lead Officer and Report Author	Lorraine Neale
Classification	Public
Wards affected	Lenham

Executive Summary

In line with our Street Trading Policy an application for Street Trading consent has received a recommendation for refusal by the Head of Housing and Regulatory Services and the appeal of that recommendation, and therefore a decision on whether to grant consent, must be determined by Licensing Sub Committee.

Purpose of Report

Members are asked to consider and determine the application from Mr Frankie Osborne following the recommendation to refuse a street trading consent to trade on a piece of private land on New Shelve Farm in Lenham, on the corner of Ashford Road (A20) and Rayners Hill.

This report makes the following recommendations to the Licensing Sub-Committee.

Members give consideration to the application for a street trading consent by Mr Frankie Osborne taking into account the consultation representations, Council's policy and giving regard to the information provided by all parties in advance of and at the meeting; and to.

1. Grant the consent as applied for, subject to the standard conditions found at page 18 of the Street Trading Policy, or:-

2. Grant the consent subject to such additional conditions that the Sub Committee considers appropriate, or:-
 3. Refuse the application for a street trading consent
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1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<ul style="list-style-type: none"> <i>There is no direct impact on Corporate Objectives, the matter has been dealt with in accordance with our Street Trading policy. Determination of applications in accordance with policy and merits provides a consistent approach to trading on the streets of the Borough.</i> 	Senior Licensing Officer
Cross Cutting Objectives	<ul style="list-style-type: none"> <i>No implications have been identified</i> 	Senior Licensing Officer
Risk Management	<ul style="list-style-type: none"> <i>Risk Management issues are covered within the approach taken by Street Trading policy and the processing of this application has been in accordance with policy. Any appeal against this decision will be by way of judicial review and a consistent policy should mitigate against success of any such challenge.</i> 	Senior Licensing Officer
Financial	<ul style="list-style-type: none"> <i>No implications have been identified</i> 	Senior Licensing Officer
Staffing	<ul style="list-style-type: none"> <i>No implications have been identified.</i> 	Senior Licensing Officer
Legal	<ul style="list-style-type: none"> The street trading consent process is established by Part III and Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, which have been adopted by the Local Authority. There is no right of appeal against the decision of a Local Authority regarding street trading consents and any legal challenge would be by way of a judicial review. 	Legal Team

Information Governance	<ul style="list-style-type: none"> The recommendations do not impact personal information (as defined in UK GDPR and Data Protection Act 2018) the Council processes. 	Senior Licensing Officer
Equalities	<ul style="list-style-type: none"> <i>No implications have been identified</i> 	Senior Licensing Officer
Public Health	<i>No implications have been identified</i>	Senior Licensing Officer
Crime and Disorder	<ul style="list-style-type: none"> There are no implications to Crime and Disorder 	Senior Licensing Officer
Procurement	<ul style="list-style-type: none"> <i>No implications have been identified</i> 	Senior Licensing Officer
Biodiversity and Climate Change	<ul style="list-style-type: none"> There are no implications on biodiversity and climate change. 	Senior Licensing Officer

2. INTRODUCTION AND BACKGROUND

- 2.1 On 4th May 2023, an application for a street trading consent was received from Mr Frankie Osborn to trade on a piece of private land on New Shelve Farm in Lenham, on the corner of Ashford Road (A20) and Rayners Hill attached as Appendix 1.
- 2.2 The days and hours applied to trade are Monday to Sunday 7am to 9pm and the goods sold will be cooked breakfast, burgers, fries, pizza and various hot and cold sides.
- 2.3 A location map showing the proposed trading site is attached as Appendix 2.
- 2.4 The 14 day consultation period for this application ran from 4th – 18th May 2023. The following applicable consultees were consulted: -
- Kent Police
 - Kent Highways
 - Maidstone Planning
 - Environmental Health
 - Community Protection Team
 - Parish Council
 - Ward Members

Residents were not consulted as there were none within 100 yards of the site as stipulated in the Street Trading Policy.

One objection was received from Lenham Parish Council which is attached as Appendix 3.

2.5 Mr Osborne supplied additional information in relation to the site on 25th May 2023:

- that the landowner has agreed with Mr Osbourne, a parking area (Green) and that his van would be off the road (pink).



- that vehicles could access the site via Rayners Hill, where there is a gate for access.

As this was information that could alleviate some of the concerns raised by Lenham Parish Council it was forwarded to them on the 30th May 2023 to consider. They were also advised that KCC highways had been consulted in relation to the application and had not commented. (Appendix 4).

2.6 On 31st May 2023 Lenham Parish council advised that Mr Frankie Osborne was going to attend the Parish Council meeting on 7th June 2023 to discuss the matters relating to his application.

2.7 On 1st June 2023 comments were received from Kent Downs Area of Outstanding Natural Beauty Unit, although the comments were received after the 18th May 2023 deadline they are considered relevant and are attached to be considered (Appendix 5).

- 2.8 On the 9th June 2023 Lenham Parish advised that following the meeting on the 7th June 2023 they continued to uphold their objection. The full response is attached as Appendix 6.
- 2.9 The objections were considered in relation to the criteria for determining street trading applications found in the Street Trading Policy (STP).
6.4.2 Account will be taken of objections and/or letters of support made during the consultation period. The authority will consider the suitability of the site and the applicant taking account of, but not exclusively, the criteria in this policy.
- 6.4.3 Each application will be decided on its own merits.*
- 2.10 The matter was referred to the Head of Housing and Regulatory Services for decision. Their decision was to refuse the licence on the following basis:
- *The proposed location is sited on a busy trunk road (A20) with insufficient or no designated safe stopping areas. I believe there is a risk of a serious accident occurring if vehicles are parking around the proposed location in order to use the facilities proposed in the Street Trading Consent application.*
 - *The location is adjacent to a junction with the A20 and vehicles stopping to make use of the street trading facility may cause the sight lines to be blocked or reduced, increasing the risk to road users.*
 - *The area is designated as an Area of Outstanding Natural Beauty and I concur with the comments made by the Council's planning manager - "taking into account the rural location of the proposed siting of the van, and it's particularly sensitive siting at the base of the escarpment of the Kent Downs, the main target of the AONB designation, the proposal would neither conserve nor enhance the Kent Downs AONB and would be in conflict with the overall aims and principles of the Management Plan."*
- I have considered Mr Osborne's rights, including his rights covered by the Human Rights Act. On balance, I have concluded that Mr Osborne's application should not override the safety concerns for the wider population and those related to protecting the AONB.*
- 2.11 The Head of Housing and Regulatory services decided to refer the matter to Licensing Sub Committee as the applicant had already notified his intent to appeal any negative outcome.
- 2.12 Mr Osborne was notified of the Head of Housing and Regulatory Service's decision by email on 19.06.2023.
- 2.13 Attached to this report is the procedure that is used for hearing applications with representations. The Committee in considering the application may wish to follow the procedure, adapting as necessary (Appendix 7)

3. AVAILABLE OPTIONS

- 3.1 To grant the consent as applied for, subject to the standard conditions found at page 18 of the Policy.
- 3.2 To grant the consent subject to such additional conditions that the Sub-Committee considers appropriate.
- 3.3 To refuse the application.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 Members need to consider the application in accordance with our Street Trading Policy and consider whether the reasons for refusal were reasonable and proportionate when determining this application for Street Trading Consent.

5. RISK

- 5.1 The matter has been dealt with in accordance with our Street Trading policy, as a failure to do so would not meet our legal requirements and could be challenged.

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 6.1 Not Applicable

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 7.1 Not Applicable

8. REPORT APPENDICES

[The following documents are to be published with this report and form part of the report:

- Appendix 1: Application Form
- Appendix 2: Location Map
- Appendix 3: Objection – Lenham Parish Council (LPC)

- Appendix 4: Further site information to LPC
 - Appendix 5: Relevant comment from Kent Downs AONB
 - Appendix 6: Result of LPC 7/6/23 meeting
 - Appendix 7: Hearing Procedure
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9. BACKGROUND PAPERS

[Street Trading Policy](#)