

LICENSING ACT 2003 SUB COMMITTEE MEETING

Date: Thursday 13 July 2023
Time: 10.30 am
Venue: Town Hall, High Street, Maidstone

Membership:

Councillors Coates, Garten, Joy and Springett (Substitute Member)

The Chairman will assume that all Members will read the reports before attending the meeting. Officers are asked to assume the same when introducing reports.

AGENDA

Page No.

1. Apologies for Absence
2. Notification of Substitute Members
3. Election of Chairman
4. Disclosures by Members and Officers
5. Disclosures of Lobbying
6. To consider whether any items should be taken in private because of the possible disclosure of exempt information
7. Street Trading Appeal – Mr Osborne 1 - 18

ALTERNATIVE FORMATS

The reports included in Part I of this Agenda can be made available in alternative formats. For further information about this service, or to arrange for special facilities to be provided at the meeting, please contact Democratic Services at committee@maidstone.gov.uk or call **01622 602899**.

Issued on Wednesday 5 July 2023

Alison Broom

Alison Broom, Chief Executive

Licensing Sub Committee

13th July 2023

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
-

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

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 Osborne, 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:

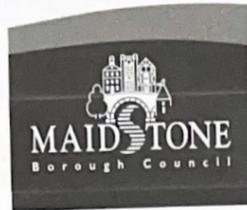
- Appendix 1: Application Form
- Appendix 2: Location Map
- Appendix 3: Objection – Lenham Parish Council (LPC)

- 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](#)

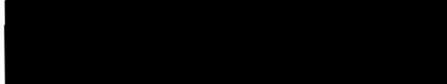
APPENDIX 1

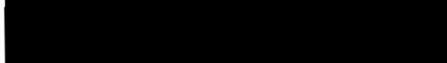


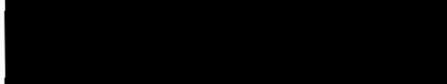
**Local Government (Miscellaneous Provisions) Act 1982
Application for a Street Trading Consent**

1. Name of Applicant (BLOCK CAPITALS) a) Surname MR/MRS/MISS Osborne
b) Forename (s) Frankie

2. Address of Applicant (BLOCK CAPITALS) 

3. Telephone Number 

4. Email Address 

5. Date of Birth 

6. National Insurance Number 

7. Details of the articles/food/drink that you propose to sell
Cooked Breakfast Items
Gourmet Burgers, loaded fries
Pizza, Various Hot & Cold Sides

8. Give details of the exact site from which you intend to trade (enclose plan with site detailed)
Attached - Red Circle indicates
Position on Poulton Road, Hastings

9. State precisely the days of the week and hours that you intend to trade.
Mon-Saturday 7am - 9pm

H:\Street Trading General\Application Forms\Street Trading - General\Application - Street Trading General.doc ↓

Please note that we do not intend on opening all of these hours, we would like to have the option so that we can test the best opening times

10. Give Details:
- a) if a stall/structure/vehicle A Van with trailer attached
 - b) of the approximate dimensions of the stall/structure/vehicle Approx 25 Ft
 - c) the vehicle registration number(s) TDC - Most likely
 - d) colour of vehicle TBC
 - e) the trading name you use Frankie R Finns
 - f) do you intend to use chimes or a loudspeaker No

11. If selling food or drinks:
- a) you need to be registered with the Environmental Health Department in respect of food hygiene. Are you so registered? Yes/No
(if registered elsewhere, please state with which local authority)
Both Maidstone and Ashford 5 Star rating
 - b) state where your goods will be stored when not being offered for sale
In Vehicle / trailer

12. State where trade refuse will be deposited Country Style Waste management
NOTE: UNDER THE 1990 ENVIRONMENTAL PROTECTION ACT YOU ARE UNDER A DUTY OF CARE TO DISPOSE OF ANY REFUSE IN A CORRECT MANNER, FOR WHICH A CHARGE CAN BE LEVIED.

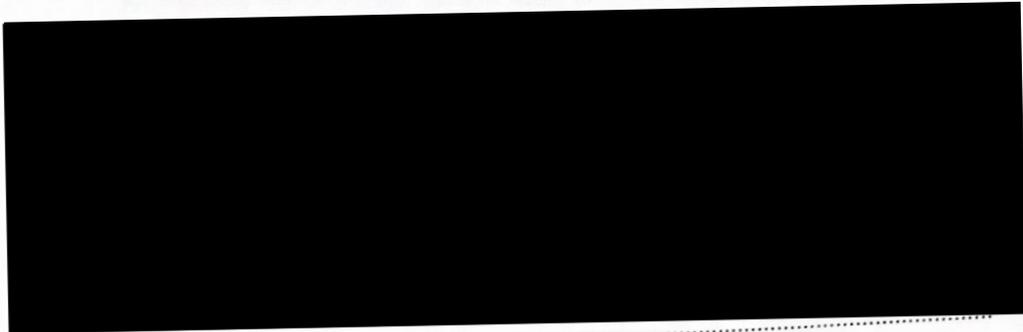
13. If not trading on the highway, state whether consent has been granted for use of land and provide proof of consent
yes, Attached Consent from

14. a) State whether an application for a street trading licence or consent has previously been made by you (or your assistant(s) if any) to any other local authority. Yes/No
- b) If yes, state whether such licence or consent has been:
- (i) Granted
 - (ii) Refused
 - (iii) Revoked
- c) If any licence or consent has been refused or revoked give details of the local authority and a brief outline of the circumstances

Granted - Ashford Council
 - Wood Church
 - Charing
 - Biddenden
 - Ham Street

Granted - Maidstone
 - Harrietsham

Refused
 - Pitch @ Victorias due to objection by local Council

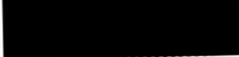


16. State the number of assistants that will be used (including their names and addresses, dates of birth and National Insurance Numbers). If none, please write "none". **Please note that assistants must be accompanied and supervised by the consent holder at all times.**

None at this stage, we will inform licencing of any changes.

17. If a consent is granted and you have a mobile vehicle (not a trailer), do you wish to be included on the Kent County Council's Emergency Plan list? Yes

(In the event of an emergency you may be contacted at short notice to provide food and drink to stranded lorry drivers parked on the M20 motorway in Maidstone. This would be supervised by the police)

I, , hereby apply for the grant of a street trading consent under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 and make the following declaration:

DECLARATION

- a) That if a consent is granted, I undertake to comply with the terms and conditions relating to the consent. I understand that failure by me or any of my assistants employed by me, with or without payment, will render both me and my assistants liable to prosecution and may also result in the revocation of my consent
- b) That I am over 17 years of age
- c) That the answers to the questions are true and complete in every way
- d) That the police may make enquiries into this application and may divulge the results to the Maidstone Borough Council
- e) That I have read and understood the notes attached to this application form.

Maidstone Borough Council takes its obligations under the data protection legislation very seriously and will not disclose information to any unauthorised person. Information may be shared with other services within the council or disclosed to other local and public authorities or government agencies that have a legitimate reason to request the

disclosure e.g. the prevention and detection of fraud. For further information please see the following link or contact Lorraine Neale on 01622 602528 or view the website at

http://www.maidstone.gov.uk/home/primary-services/council-and-democracy/primary-areas/information/primary-areas/data-protection#national_fraud_initiative

SIGNED [REDACTED] ... DATED 4/05/23

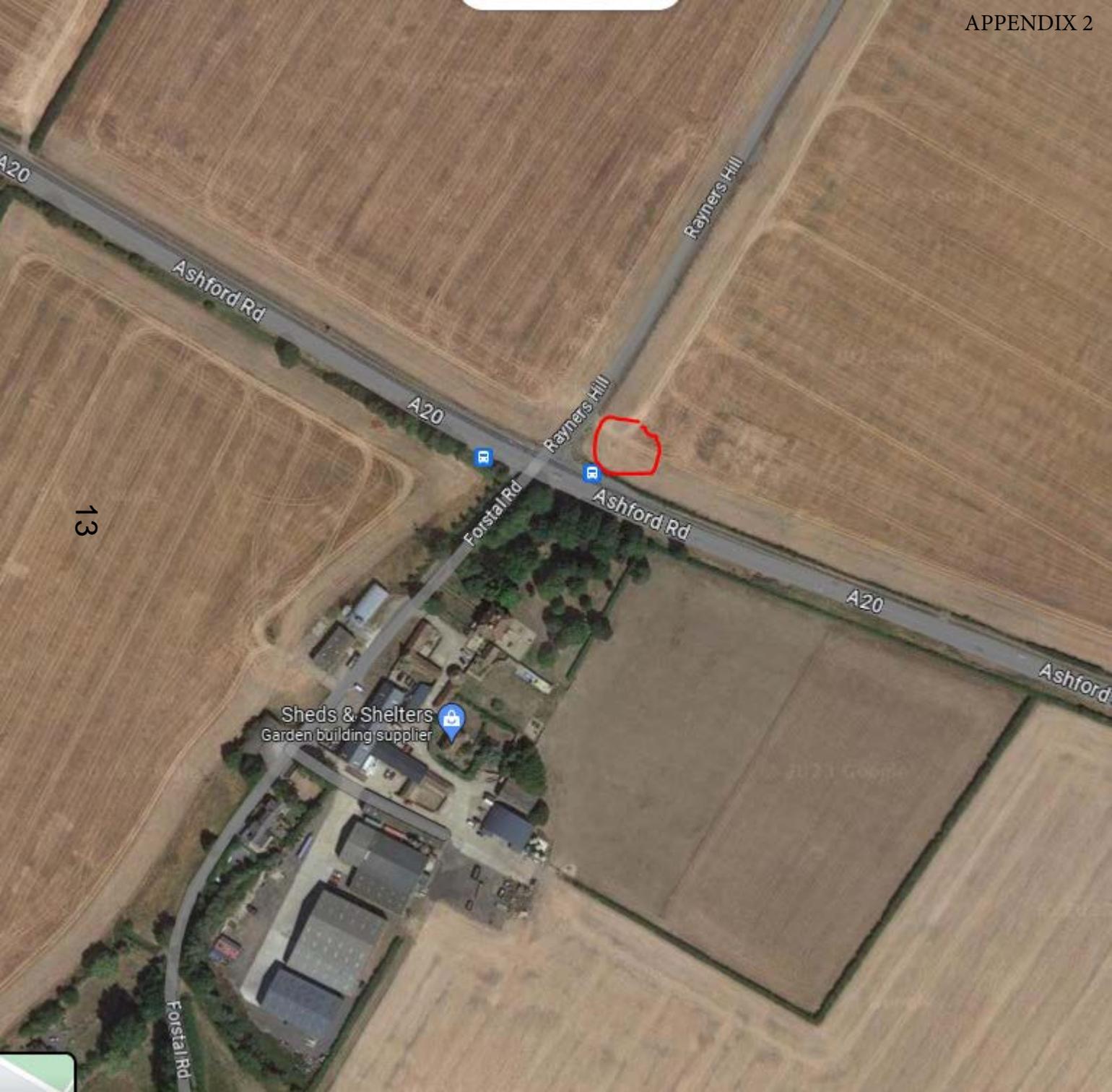
PLEASE CHECK THAT YOU HAVE PROVIDED THE FOLLOWING:

- i) A detailed plan showing the exact location on the highway/road where you intend to trade, one for each location
- ii) The correct fee (please circle relevant fee) up to 12 days (new applicants only) £33 full year - £156 (non-refundable) payable on application, then £263 payable on grant of consent
Payment reference/confirmation number:... [REDACTED]
*All cheques should be made payable to Maidstone Borough Council

*Alternatively you may pay over the phone by calling 01622 602888 stating your name and the expenditure code 961-CL00C207

*Please note the 12 days do not need to be consecutive days. These can be any time during the period of the Consent, but you must state the days and times on the form
- iii) 1 x passport style photo and 1 x additional form of ID, eg driving licence or passport. Please note these are also required for any assistants named on the form.
- iv) If you are unable to provide a National Insurance Number you will need to provide proof of right to work, i.e. passport, residency permit
- v) Basic DBS certificate (no more than: one month old for new applicants or 3 years for renewal applications). This can be submitted with the application form to save time, or after the consultation has ended. *A Basic DBS certificate is also required for any assistants trading with you.
- vi) Proof of Third-Party Public Liability Insurance up to £10,000,000

Please email the form and associated documents to licensingmbc@maidstone.gov.uk or you may post the documents to: The Licensing Team, Maidstone Borough Council, Maidstone House, King Street, Maidstone, Kent ME15 6JQ



13

From: Lisa Westcott <clerk@lenhamparishcouncil.org.uk>
Sent: 18 May 2023 15:04
To: Licensing (MBC) <LicensingMBC@maidstone.gov.uk>
Cc: Kerry Watson <KerryWatson@Maidstone.gov.uk>
Subject: RE: Street Trading Application - Frankie Osborne - New Shelve Farm, Lenham

Dear MBC Licencing,

Thank you for your consultation on the street trading licence application near New Shelve Farm, Lenham.

According to the map in the application, the proposed site for the food trading facility lies just off the A20. Lenham Parish Council objects to this application primarily due to concerns regarding road safety:

- The site is located at a bus stop – vehicles stopping to use the proposed facility will likely end up parking in the bus stops leaving limited space for the bus to stop and causing a hazard to those people getting on and off the bus.
- The A20 at this point is National Speed limit – vehicles entering and exiting the site will have to join very fast traffic.
- The site is located on a single track road junction with the A20 with an additional single track road junction opposite – these are already dangerous junctions on a fast road.

We recommend that KCC Highways are consulted on this application to provide their expert opinion on the potential road safety issues of a food trader operating at this proposed location.

Kind regards,

Lisa

Lisa Westcott
Clerk to Lenham Parish Council

From: Lorraine Neale <LorraineNeale@maidstone.gov.uk>
Sent: 30 May 2023 13:54
To: clerk@lenhamparishcouncil.org.uk
Cc: Louise Davis <LouiseDavis@Maidstone.gov.uk>; Kerry Watson <KerryWatson@Maidstone.gov.uk>
Subject: RE: Street Trading Application - Frankie Osborne - New Shelve Farm, Lenham

Dear Lisa

We have received further information from the applicant that we feel you may be interested know, he has provided a photo of the site and has advised that the land owner has agreed with him the following, a parking area (Green) and his van will be off the road (pink), he has also advised that vehicles can access the site via Rayners Hill, where there is a gate for access. Given this information which largely addresses your concerns and the fact that KCC highways, a statutory consultee did not comment do you wish your objection to stand and a hearing be arranged, or are you content to withdraw your objection and negate the need for the hearing. Could you please advise as soon as possible.



Kind Regards

Lorraine Neale

Senior Licensing Officer

Maidstone Borough Council, Maidstone House, King Street, Maidstone, Kent ME15 6JQ

[e lorraineneale@maidstone.gov.uk](mailto:lorraineneale@maidstone.gov.uk) [w www.digitalmaidstone.gov.uk](http://www.digitalmaidstone.gov.uk)

From: Katie Miller

Sent: Thursday, June 1, 2023 10:49 AM

To: Licensing <licencing@sevenoaks.gov.uk>

Subject: Current mobile food van licensing application at land at Rayners Hill, Lenham (adjacent to a junction of the A20 and on the north side of the A20)

EXTERNAL EMAIL: Exercise caution unless you recognize the sender and know the content is safe.

FAO Lorraine Neal

Dear Lorraine

I've been alerted to the above application by Lenham Parish Council.

This is just a reminder that Maidstone Borough Council is required under S85 of the Countryside and Rights of Way Act

'In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty'.

One way to demonstrate compliance is to assess proposals under the Kent Downs AONB Management Plan – which has been adopted by Maidstone Borough Council as its Plan for the Management of the Kent Downs AONB.

It is the view of the AONB Unit that 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 hope this is of assistance to you. I would be happy to discuss further if this would be helpful.

Katie Miller MRTPI
Planning Manager

Kent Downs Area of Outstanding Natural Beauty Unit

From: Lisa Westcott <clerk@lenhamparishcouncil.org.uk>
Sent: 09 June 2023 12:47
To: Lorraine Neale <LorraineNeale@maidstone.gov.uk>
Cc: 'Cllr.Walmsley' <alastair@lenhamparishcouncil.org.uk>; john@lenhamparishcouncil.org.uk
Subject: RE: Street Trading Application - Frankie Osborne - New Shelve Farm, Lenham

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Lorraine,

Following receipt of further information in your email below, Lenham Parish Council voted to uphold their objection to the street trading licence application at Old Shelve farm at the full council meeting on Wednesday night. The main concerns raised are regarding road safety issues and impact on the AONB. We agree with the AONB Unit comment that an area of hardstanding and mobile food van in this location will neither conserve or enhance the area. We note that KCC Highways have not responded, KCC Cllr. Shellina Prendergast is reviewing this, but local knowledge of this area from councillors is that the A20 in this location is a very fast stretch of road often used for overtaking. Forstal Road is also a very busy junction entering the A20 opposite Rayners Hill where the food van is proposed.

The parish council believe that the change of use of this field will require planning permission which we feel is unlikely to be granted.

In terms of local resident consultation, the closest residents on Rayners Hill, who will be impacted the greatest by this operation, have confirmed that they were not consulted. Can you please clarify how many local residents were consulted?

Kind regards,

Lisa

Lisa Westcott
Clerk to Lenham Parish Council

LICENSING SUB COMMITTEE**ORDER OF PROCEEDINGS**

- a) The Chairman will introduce those present and ensure that everyone understands the procedure to be followed.
- b) The Head of Housing and Community Services or relevant Officer will briefly describe the application.
- c) The Applicant will then present his case.
- d) The Objector(s) may then ask the Applicant questions.
- e) Members will then ask the Applicant any questions.
- f) The Objector(s) will then be given the opportunity to present his/her case.
- g) The Applicant may then ask the Objector(s) any questions.
- h) Members will then ask the Objector(s) any questions.
- i) Members may then ask any further questions of clarification from any party.
- j) Both parties will then be asked to sum up, the Objector(s) first followed by the Applicant.
- k) Members will then ask the Head of Housing and Community Services or relevant Officer if there are any further matters to be raised before the matter is considered.
- l) The Sub Committee will then decide the appeal and may ask the Applicant, the Objector(s), the Head of Housing and Community Services or relevant Officer and any other parties to leave, the Committee Clerk will be the only person apart from Members to be allowed to remain. Any representative of Legal Services (if present) may be requested to remain by the Chairman.
- m) After consideration all parties will be invited to return and the Chairman will announce the decision.