

**REGULATORY AND APPEALS  
COMMITTEE  
15 SEPTEMBER 2008**

**REPORT OF CORPORATE DIRECTOR FOR COMMUNITY AND CULTURE**

**STREET TRADING – BRIDLESMITH GATE**

**1. SUMMARY**

- 1.1 This report refers to a street trading consent on Bridlesmith Gate that was granted at a meeting of this Committee on 25 February 2008. Due to a number of complaints received regarding the pitch, Officers gave notice to terminate the consent with effect from 13 August. The Consent Holder has submitted an appeal against termination of the consent and this report enables Members to consider the appeal.

**2. RECOMMENDATIONS**

- 2.1 IT IS RECOMMENDED that Members consider the appeal against the termination of Stephen and Simon Fisher's street trading consent for pitch 3 on Bridlesmith Gate.

**3. BACKGROUND**

- 3.1 At the Regulatory Committee meeting on 20 March 2006 (minute 35 refers) a new set of powers were delegated to Officers to deal with street trading matters. Amongst the delegated authorities it was:

“RESOLVED

- (2) that, subject to resolution (3) below, the Director of Corporate Services be granted delegated authority as follows:-
- (i) to create street trading positions following consultation with the Nottinghamshire Police Authority, Nottinghamshire and City of Nottingham Fire and Rescue Authority, Highway Network Management (City Development), the Access Officer (Corporate Services) and City Centre Management;
- (ii) to grant street trading consents under the Local Government (Miscellaneous Provisions) Act 1982 (in the case of food stalls following consultation with the Corporate Director of City Development) and determine the conditions to which they shall be subject;
- (iii) to renew and revoke consents in (i) and (ii) above, subject to revocation, other than for breach of consent conditions, not being of immediate effect and being subject to the non-statutory appeal process outlined in the report considered by the Regulatory Committee on 20 March 2006;
- (iv) to set of street trading consent fees;
- (3) that reports be submitted for consideration by this Committee should the officers consider that the application may be contentious;

3.2 In the report considered on 20 March 2006 the following paragraph referred to the non-statutory appeal process:-

“Traders may appeal to Committee against a decision to terminate a consent where there has been no breach of the consent conditions. In such circumstances it is proposed that the consent holder would be served with a notice of revocation stating that the consent is revoked with effect from a specified date (to be at least 14 days from the date of service of the notice) unless the consent holder notifies the Director of Corporate Services in writing within 7 days of service that he wishes to make representations to the Regulatory Committee about the proposed revocation.”

3.3 The above powers, delegated to the Director of Corporate Services, have passed with the service responsibility to the Corporate Director for Community and Culture.

#### **4. PITCH 3, BRIDLESMITH GATE**

##### Application for Street Trading Consent to sell fruit and vegetable juice drinks

4.1 Stephen and Simon Fisher applied for a street trading pitch to sell fruit and vegetable juice drinks either from Bridlesmith Gate or High Street, Nottingham. Over recent years there have been no new catering units introduced to street trading, however the application was for something different to the current street trading offer. Officers were aware that the application may be contentious so it was decided to carry out a consultation on the application. There were no pitches available on High Street so the consultation took place with respect to pitch 3 on Bridlesmith Gate. Previous licence holders on the pitch have sold artwork, perfumes and cosmetics but it had been vacant since April 2006.

4.2 Internal consultations were initially sent to City Centre Management (April 2007), together with a photograph of the trailer being proposed by the applicant. The response (Appendix A) indicated that there were no objections in principle, however they had reservations about the style and design of the unit being acceptable for the area.

4.3 Consultations were then sent to Highways, Food Safety and Streetscene. Highways indicated that there was no problem with the application and Food Safety reminded that the applicant needed to register with them at least 28 days before opening the business. No response was received from Streetscene.

4.4 Consultation letters (Appendix B) were then handed to four businesses adjacent to the pitch asking for their written comments on the application. The four businesses were Café Rouge, Diesel, Kurt Geiger and Soletrader. However, no comments were received.

4.5 The application was reported (Appendix C) to Regulatory and Appeals Committee meeting on 25<sup>th</sup> February 2008 (minute 20 refers) and it was:

“RESOLVED that the grant of a street trading consent for the sale of fruit juices and smoothies for the daytime street trading position on Bridlesmith Gate be approved.”

- 4.6 At Committee stage, Members requested that the trailer be painted in a colour scheme in keeping with the area. With this in mind the applicant submitted a number of designs and visuals featuring the stone colour of the buildings in the area (Appendix D). Following consultation with City Centre Management the colour scheme was agreed and Stephen Fisher was informed on 22 May 2008.
- 4.7 The consent holders, Stephen and Simon Fisher, commenced trading from the street trading pitch on 17<sup>th</sup> June 2008. The Council had committed to providing a mains electricity connection to the pitch but it was not ready by the 17<sup>th</sup> June so the Fisher's hired a generator on a temporary basis. However, the generator supplied was very noisy and, combined with problems with their equipment, they ceased trading immediately. On Saturday, 21<sup>st</sup> June the consent holders returned to the pitch with a much quieter generator and they have continued to trade since then.

#### Complaints received since Street Trading Consent granted

- 4.8 A number of complaints have been received since Messrs. Fisher commenced trading. The full text of the written complaints is attached in the appendices.
- 4.9 The first letter of complaint (Appendix E) was from Fisher Hargreaves Proctor who are the Letting Agents who act on behalf of the majority of the property owners and asset managers with an interest in Bridlesmith Gate. In their letter they state that a number of retailers on Bridlesmith Gate are considering disposing of their shops and they are concerned that the street trading unit will have a detrimental impact on Nottingham's number one fashion street. They state that the unit blocks the vision lines to Soletrader and Diesel which will have a negative impact on their trade.
- 4.10 The second letter of complaint (Appendix F) was from Kurt Geiger Limited's head office in London. They are concerned about the lack of wider consultation on the application stating that it did not outline the full implications of the size, location and impact of the Juice Bar and the effect the Juice Bar has had on the ambience and tone of Bridlesmith Gate.
- 4.11 The third letter of complaint (Appendix G) was from Aberdeen Property Investors UK who are the Asset Managers of Bridlesmith House, 34/44 Bridlesmith Gate, working on behalf of their clients Nottinghamshire County Council Pension Fund. The property, situated to the rear of the Juice Bar, comprises of retail units at street level with office suites above. They state that they had not been consulted on the application and that they would have taken the opportunity to object strongly. They state that the Juice Bar has a serious detrimental effect on the three retail properties, blocking visibility to the shops and making it more difficult for pedestrians to access the properties. The complainants feel this could have a clear financial implication at rent review.
- 4.12 The fourth emailed complaint (Appendix H) was from Page Personnel who operate from the fourth floor of Bridlesmith House. They complained that the Juice Bar's generator was too noisy and asked for it to be moved to a more open street.
- 4.13 In summary, the main complaints relate to the following:-
- a) the noise from the generator used to power the Juice Bar,
  - b) inadequate consultation,

- c) blocking of vision lines to shops and entrances at street level making it more difficult for pedestrians to access the shops,
- d) the financial impact for property owners at rent review, and
- e) the suitability of siting a 'caravan' on Bridlesmith Gate, affecting the quality of the built environment and retail offer.

#### Analysis of Complaints received

- 4.14 The issue of the generator and the noise it produces can be resolved. The Council had already committed to installing a mains supply for the street trader to connect to. However, due to the strength of feeling about the pitch and the uncertainty about its future this work has been suspended until the outcome of the appeal is known.
- 4.15 The street trading pitch is a well established pitch and no consultation is required before allocating an existing pitch. However, having decided that the allocation may be contentious it was decided to consult with the normal consultees and no objections were received. It was also decided to consult with four premises at street level nearest to the pitch. Clearly this consultation was not adequate. The consultation letter did not include sufficient details of the trailer to be used by the applicant for the consultees to come to an informed decision. It is also clear that the consultation letters did not get through to the relevant Head Offices or Landlords, neither did they reach properties above street level. From the complaints received it is clear that objections would have been raised against the application.
- 4.16 The main pedestrian flow along Bridlesmith Gate passes in front of the street trading pitch. However, Bridlesmith House is set back from the pitch by about 10 feet. Pedestrian access to the shops is only compromised where someone would want to walk at 90 degrees to the street in front of the pitch. However, vision lines toward Bridlesmith House are affected as people walk past the street trader. Previous street traders in this area have used stalls which would be less of a visual distraction than a trailer. Any blockage of the shops' windows will affect the rental values of the properties.
- 4.17 Currently, rental values on Bridlesmith Gate are in the region of £275 to £300 per square foot per annum, equivalent to annual rents in excess of £150,000 for an average sized retail unit. Due to the nature of the street trading legislation the street trader pays about £63/sq. ft./annum in consent fees, totalling £3028 p.a.
- 4.18 Bridlesmith Gate is noted for its premium fashion offer (paragraph 3.1.4) as identified in the Nottingham Retail Sector Strategic Plan and it is identified as one of Nottingham's competitive strengths for the concentration of high value/aspirational retailing (paragraph 4.1). The complaints make reference to this when they question the suitability of 'the caravan' and how it detracts from the premium retail offer on Bridlesmith Gate and does not fit with the overall ambience and tone of Bridlesmith Gate.

#### Potential Alternative Street Trading Pitches

- 4.19 Before deciding whether to terminate the street trading consent an analysis was undertaken of other vacant street trading pitches in the City that may be suitable to

accommodate Stephen and Simon Fisher's Juice bar. There were three pitches that were large enough to accommodate the Fisher's Juice Bar:-

**4.20 WHEELER GATE – PITCH 31**

This pitch is located outside Café Nero who also sell fruit juices; being advertised as "Fruit busters", and it was considered that it would not be appropriate to site a juice bar so close to a shop in direct competition.

**4.21 LISTER GATE – PITCH 19**

This pitch is in front of H&M's window and is close to a cash machine. It was felt that the Juice Bar would have a much greater impact on adjacent display windows than it would on Bridlesmith Gate and the proximity to the cash machine could be perceived as a threat to users' security.

**4.22 CLINTON STREET EAST – VARIOUS PITCHES**

There are a number of street traders on Clinton Street East and the Juice Bar would suit this location well. Electricity is already supplied to a number of traders on this street and it would be relatively easy to extend the existing supply. However, in discussion with Stephen and Simon Fisher they feel that this location would not be competitive for them.

Appeal against Notice of Revocation

4.23 After consideration of the complaints and as an alternative street trading pitch could not be agreed upon, the Markets and Fairs Manager decided to revoke the street trading consent issued to Stephen and Simon Fisher (Appendix I) with effect from 13<sup>th</sup> August 2008. However, in accordance with Committee's decision to offer a non-statutory appeals process, Stephen and Simon Fisher were informed they could appeal against the decision.

4.24 On 1<sup>st</sup> August 2008 Stephen and Simon Fisher indicated in writing (Appendix J) that they did wish to appeal against the decision to cease their trading consent on Bridlesmith Gate. In response the Markets and Fairs Manager confirmed that they would be able to continue to trade from the pitch until the outcome of their appeal is known (Appendix K). They were also informed that this meeting would be arranged to hear their appeal. The appellants have been invited to attend this meeting to present their appeal.

**5. FINANCIAL IMPLICATIONS**

5.1 This is an established position that has been vacant for some time; the income from letting it is £3,028 per annum.

**6. LEGAL IMPLICATIONS**

6.1 Under Paragraph 7(10) to Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 a street trading consent granted under this Schedule may be revoked at any time by the Council, and there is no statutory right of appeal against this decision.

- 6.2 However, as referred to above, by Minute 35 of Regulatory Committee of 20 March 2006 the Council resolved that where a street trading consent is revoked, the revocation will not be of immediate effect if it was revoked other than for breach of consent conditions. It was also resolved that such a revocation will be subject to the non-statutory appeal process outlined in the report considered by the Regulatory Committee on 20 March 2006. The Council must therefore follow this non statutory appeal process when considering the appeal against revocation, and principles of natural justice must be adhered to in the appeal process and at the Committee Hearing.
- 6.3 Under Paragraph 9(5) of the Local Government (Miscellaneous Provisions) Act 1982, where a consent is revoked, the Council is under a duty to remit the whole or part, as the Council consider appropriate, of any fee paid for the consent.

## **7. OBSERVATIONS OF OTHER OFFICERS**

- 7.1 The original application was considered by City Centre Management in April/May 2007, and concerns were expressed about the suitability of the unit in terms of style and design and its appropriateness to the streetscape. Despite an early expression of these concerns no further review of the unit was undertaken by the applicant. When the unit appeared on 16<sup>th</sup> June 2008, it was met with extreme opposition from both local retail businesses and agents representing retail and property interests in the area. Opposition to the unit has reflected and upheld the earlier concerns raised by City Centre Management in May 2007.
- 7.2 With reference to alternative positions referred to in the report, Clinton Street East would offer an alternative and appropriate location for this unit that would not conflict with either the quality of adjacent retail offer or visually restrict shop windows and the general streetscape. Wheeler Gate and Lister Gate pitches would not be considered as appropriate locations.

## **8. EQUALITY AND DIVERSITY IMPLICATIONS**

- 8.1 None.

## **9. RISK MANAGEMENT ISSUES**

- 9.1 None.

## **10. CRIME AND DISORDER ACT IMPLICATIONS**

- 10.1 None.

## **11. VALUE FOR MONEY**

- 11.1 None.

## **12. List of background papers other than published works or those disclosing confidential or exempt information**

- 12.1 None.

**13. Published documents referred to in compiling this report**

- 13.1 “Strength In Numbers” Nottingham Retail Sector Strategic Plan 2007-2012
- 13.2 Minutes of Regulatory Committee held on 20 March 2006
- 13.3 Minutes of Regulatory and Appeals Committee held on 25 February 2008.

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3<sup>rd</sup> September 2008