

## **BATH AND NORTH EAST SOMERSET COUNCIL**

### **LICENSING SUB-COMMITTEE**

Thursday, 25th October, 2018, 10.00 am

**Councillors:** Les Kew (Chair), Rob Appleyard and Deirdre Horstmann

**Officers in attendance:** Carrie-Ann Evans (Deputy Team Leader (Barrister)), Ian Nash (Public Protection Officer (Licensing)) and Lauren Latta (Public Protection Technical Officer)

#### **17 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer advised the meeting of the procedure.

#### **18 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There were none.

#### **19 DECLARATIONS OF INTEREST**

There were none.

#### **20 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR**

There was none.

#### **21 MINUTES: 24 SEPTEMBER 2018 AND 11 OCTOBER 2018**

The minutes of the meetings of the 24<sup>th</sup> September 2018 and the 11<sup>th</sup> October 2018 were approved as a correct record and signed by the Chair.

#### **22 STREET TRADING PROCEDURE**

The Chair drew attention to the procedure to be followed for the next item of business.

#### **23 APPLICATION FOR A STREET TRADING PITCH (28), GRAND PARADE, BATH**

Applicant: Thomas Dollar and Rebecca Paisley trading as “Bernard’s”

Objectors: Mrs A Robins, Dr W Mistral, Mrs J Mistral, Mr M Rutherford

The parties confirmed that they understood the procedure to be followed for the hearing.

The Public Protection Officer presented the report.

Ms Paisley and Mr Dollar stated the applicant’s case. Ms Paisley said that the application was to sell food and beverages from 06:00. She did not think that their van would cause obstruction, because the pavement is fairly wide at that point. They were aware that there were a lot of tourists in that part of the city and wished their

business to be considered an asset. She submitted that pitch 28 was separated by the road from the residential area. Any kind of hot food business gives rise to aromas, but the van would be in a fully open location and smells would be dispersed. Chips would not be sold. Objectors had expressed concern about noise, but cooking would be by gas, and there would be no electric generator. Trading would cease at 16:00, so late-night revellers would not be congregating around the van. All packaging and cups would be recyclable. Food provided would include bacon and other sandwiches, filled rolls, cakes, soup, coffee, hot chocolate and water. There would be vegetarian and vegan options.

In reply to questions from Members, Ms Paisley and Mr Dollar stated:

- There would be a waste water container, and slops left in cups would be emptied into it and removed from the site.
- They would be prepared to amend their starting hour from 06:00. They would like to begin early enough to serve people going to work, and would accept 08:00 as the start time.
- It would take about 30 minutes to set up before the start of trading and about the same time to pack up at the end of the day.
- The van does not have an extractor for cooking smells. This would not be very helpful as an extractor would have to have an outlet to the street any way. The van has two vents. There are already restaurants and other premises selling hot food and producing smells in the vicinity. They thought it unlikely that smells emanating from their van would be detectable in the residential properties on the other side of the road.

Mrs Robins stated the case for the objectors. She said that objectors were concerned about the health and safety implications of this application. There are frequent traffic jams on the road in the morning, and buses are picking up and setting down passengers throughout the day. Passing drivers might be tempted to stop their cars in order to buy from the van, adding to congestion. The pavement near the pitch was only 14 feet wide, so that people would have to pass it in single file. There was also a danger of customers of Bernard's stepping out into the road. There were two trees and a large Council waste receptacle nearby. People lingered to admire the view and take photos. The smell from onions cooking could be very penetrating and could cause nuisance. She submitted that the application was in conflict with the Council's street trading policy, as within 100-200 metres of the van there would be other premises selling food and drinks, so Bernard's would not be complementary to them. She expressed concern about gulls being attracted, undermining the Council's efforts to reduce nuisance from gulls. She suggested that the proposed time for the start of trading of 06.00 was far too early, and that if the application were to be granted, it should be with a start time of 08:00.

The Parties were invited to sum up.

Mrs Robins said that trading from the van would impact on the ability of pedestrians to move up and down the pavement. However, the main objective of the objectors

was to protect the character of Grand Parade. She felt that the application would have an unfair impact on residents.

Ms Paisley said that the applicant had originally applied for pitch 29, which they had been granted, but had later been told that that pitch was no longer available after they had paid the fee for it. They had then applied for pitch 28 and had been surprised when objections from the public had been received. Mr Thomas said that the footprint of the van was very small, and that he could not see how it would cause obstruction.

Following an adjournment the Sub-Committee **RESOLVED** to grant the application with modifications, as detailed below.

### Decision and reasons

Members have had to determine an application for a Street Trading Consent at existing pitch 28 Grand Parade. This application is made by Bernard's who propose to sell bacon rolls, filled baps, teas, coffees and cold drinks from a smart and small trailer every day from 6am to 4pm. In determining the application members have taken into account the Local Government (Miscellaneous Provisions) Act 1982, the Council's Policy on Street Trading and the Human Rights Act 1998.

### The Applicant

Ms Paisley on behalf of her business Bernard's, indicated having considered the representations that they consider some of them to be reasonable. For example, they do not wish to cause any early morning disturbance and would be willing to start later than the 6am originally proposed. In addressing concerns raised by objectors Ms Paisley indicated that she does not think the trailer would cause an obstruction and said she would discourage her customers from feeding gulls. She explained that bins would be provided for litter and that they would encourage recycling. In relation to food smells she noted that any food trading in the city would cause some kind of aroma but she does not perceive an issue in this area. In terms of the business offering she said it would be good English takeaway food including vegan and vegetarian options and they want to be a friendly business and an asset for the area. Ms Paisley indicated that they would not be using a generator so that there would be no noise running from that.

In questions from members the applicants confirmed that they would be willing to amend their start time to start trading at 8am with set up from 7am.

### The Interested Parties

A written objection to the application was submitted on behalf of the Empire Owner's Committee which represents the 43 apartments in the Empire. In broad terms, the objection related to impact on or from architectural beauty; crowded pavements; litter and smell; gulls and health and safety. Specific concerns were raised related to the proposed operating hours and impact on residents of the proposed early start at 6am and the smell emanating from the hot food.

Mrs Robins on behalf of the Empire Owner's Committee and as representative speaker of the objectors amplified the written representations by making oral

submissions to the Committee. She indicated that in their view the application is in conflict with much of the Street Trading Policy. She referred to the early start time proposed which she said was insensitive to the needs of residents and may attract passing cars and referred to the anticipated noise associated with those vehicles stopping and starting. She asked that trading not start before 8am with delivery of the trailer no more than 15 minutes prior to that. Mrs Robins expressed concerns about how and when the trailer would be removed. In relation to the policy expectation that the proposal would complement premises-based trading, Mrs Robins referred to a nearby pitch at Bog Island and the Guildhall Market and submitted that the proposal would not complement these. Mrs Robins queried how healthy bacon was and the smells that would emanate from the food preparation. Mrs Robins expressed the view that the proposal would result in 2/3 of pedestrian space on the pavement being lost and raised concerns about safety and members of the public stepping out into the road. When questioned by members however, she accepted that there had not been any issues of this nature from a stall that had occupied this pitch.

In summary, Mrs Robins indicated that the days and hours of trading should not be allowed. She cited concerns regarding the safety and general inconvenience as well as the perceived impact of the colour and presence of this trailer on the setting of the World Heritage Site which she said would be a harmful intrusion on the views that people experience both residents and visitors.

6 other interested parties made written representations and raised concerns related to the aesthetics of a hot food stall in this important historical and architectural site; the food smells and litter; the potential for crowding around the stall; the risk of attracting gulls and other birds; the potential to disturb residents early in the morning with operating hours which they submitted, do not mirror premises' trading hours in the vicinity.

### Consultees

There had been no representations from consultees such as Environmental Services, Development Control or Highways Services.

### Members

Members were careful to only take into account matters of relevance and to disregard matters which were irrelevant. Members were mindful of the fact that they had to determine the application in accordance with the current legislative framework and with regard to the policy and noted that the principle of a pitch in this location had already been established.

Members noted that there had been no objection to the application from the Highways Team or Environmental Services.

In reaching a decision Members took account of all the relevant oral and written representations and balanced the competing interests of the applicant and the interested parties.

Whilst they weighed in the balance the objections raised by the Empire Owners Committee and 6 other interested parties they found, in the exercise of their

discretion, that the proposed use of the pitch would provide vibrancy and interest to the local environment and that they had the scope within the Policy to consider the goods to be sold on a pitch by pitch basis and that street trading is an opportunity for small businesses to establish themselves and grow.

Members noted that there would be standard conditions to prevent obstruction of the street and danger to persons using it, as well as a number of conditions related to the prevention of nuisance or other annoyance, amongst other conditions.

Accordingly, Members saw fit to grant the street trading consent subject to the standard and specific conditions with one specific condition amended as follows:

- Trading times to be amended from 06:00 to 16:00 to 07:00 to 16:00

Members considered this amendment to be appropriate and proportionate in the exercise of their discretion.

Authority delegated to the Public Protection Officer to grant the consent subject to the Standard Conditions and with the additional specific conditions (as amended) such as are reasonable and necessary.

The meeting ended at 11.25 am

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**