

Licensing (General) Sub-Committee

Thursday, 17th December, 2009
at 10.00 am

PLEASE NOTE TIME OF MEETING

Conference Room 3 - Civic Centre

This meeting is open to the public

Members

Councillor Mrs Blatchford
Councillor Cunio
Councillor Fitzgerald
Councillor Galton
Councillor Norris
Councillor Parnell (Chair)
Councillor Willacy

Contacts

Democratic Support Officer
Sue Lawrence
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Assistant Solicitor to the Council
Richard Ivory
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PUBLIC INFORMATION

Terms of Reference

The Sub-Committee deals with licenses, permits and forms of consent (other than those for which the Council is responsible under the Licensing Act 2003), including

- Hackney carriage and private hire drivers, vehicles and operators
- Public music and dancing
- Amusements with prizes
- Street trading
- Sex establishments

Relevant Representations

Those who have made relevant representations may address the meeting about the matter in which they have an interest with the consent of the Chair.

•Southampton City Council's Six Priorities

- Providing good value, high quality services
- Getting the City working
- Investing in education and training
- Keeping people safe
- Keeping the City clean and green
- Looking after people

Smoking policy –

The Council operates a no-smoking policy in all civic buildings.

Mobile Telephones – please turn off your mobile telephone whilst in the meeting.

Fire Procedure – in the event of a fire or other emergency a continuous alarm will sound and you will be advised by Council officers what action to take.

Access – access is available for disabled people. Please contact the Democratic Support Officer who will help to make any necessary arrangements.

Dates of Meetings: Municipal Year 2009/10

2009	2010
6 MAY	13 JANUARY
3 JUNE	10 FEBRUARY
1 JULY	10 MARCH
29 JULY	7 APRIL
2 SEPTEMBER	
30 SEPTEMBER	
28 OCTOBER	
THURSDAY 26 NOV	
17 DECEMBER	

CONDUCT OF MEETING

Terms of Reference

The terms of reference of the Audit Committee are contained in Article 8 and Part 3 (Schedule 2) of the Council's Constitution.

Business to be discussed

Only those items listed on the attached agenda may be considered at this meeting.

Rules of Procedure

The meeting is governed by the Council Procedure Rules as set out in Part 4 of the Constitution.

Quorum

The minimum number of appointed Members required to be in attendance to hold the meeting is 3.

Disclosure of Interests

Members are required to disclose, in accordance with the Members' Code of Conduct, **both** the existence **and** nature of any "personal" or "prejudicial" interests they may have in relation to matters for consideration on this Agenda.

Personal Interests

A Member must regard himself or herself as having a personal interest in any matter

- (i) if the matter relates to an interest in the Member's register of interests; or
- (ii) if a decision upon a matter might reasonably be regarded as affecting to a greater extent than other Council Tax payers, ratepayers and inhabitants of the District, the wellbeing or financial position of himself or herself, a relative or a friend or:-
 - (a) any employment or business carried on by such person;
 - (b) any person who employs or has appointed such a person, any firm in which such a person is a partner, or any company of which such a person is a director;
 - (c) any corporate body in which such a person has a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
 - (d) any body listed in Article 14(a) to (e) in which such a person holds a position of general control or management.

A Member must disclose a personal interest.

Continued/.....

Prejudicial Interests

Having identified a personal interest, a Member must consider whether a member of the public with knowledge of the relevant facts would reasonably think that the interest was so significant and particular that it could prejudice that Member's judgement of the public interest. If that is the case, the interest must be regarded as "prejudicial" and the Member must disclose the interest and withdraw from the meeting room during discussion on the item.

It should be noted that a prejudicial interest may apply to part or the whole of an item.

Where there are a series of inter-related financial or resource matters, with a limited resource available, under consideration a prejudicial interest in one matter relating to that resource may lead to a member being excluded from considering the other matters relating to that same limited resource.

There are some limited exceptions.

Note: Members are encouraged to seek advice from the Monitoring Officer or his staff in Democratic Services if they have any problems or concerns in relation to the above.

Principles of Decision Making

All decisions of the Council will be made in accordance with the following principles:-

- proportionality (i.e. the action must be proportionate to the desired outcome);
- due consultation and the taking of professional advice from officers;
- respect for human rights;
- a presumption in favour of openness, accountability and transparency;
- setting out what options have been considered;
- setting out reasons for the decision; and
- clarity of aims and desired outcomes.

In exercising discretion, the decision maker must:

- understand the law that regulates the decision making power and gives effect to it. The decision-maker must direct itself properly in law;
- take into account all relevant matters (those matters which the law requires the authority as a matter of legal obligation to take into account);
- leave out of account irrelevant considerations;
- act for a proper purpose, exercising its powers for the public good;
- not reach a decision which no authority acting reasonably could reach, (also known as the "rationality" or "taking leave of your senses" principle);
- comply with the rule that local government finance is to be conducted on an annual basis. Save to the extent authorised by Parliament, 'live now, pay later' and forward funding are unlawful; and
- act with procedural propriety in accordance with the rules of fairness.

AGENDA

Agendas and papers are now available via Southampton Online at
www.southampton.gov.uk/council/meeting-papers

1 APOLOGIES AND CHANGES IN MEMBERSHIP (IF ANY)

To note any changes in the membership of the Sub-Committee made in accordance with Council Procedure rule 4.3.

2 DISCLOSURE OF PERSONAL AND PREJUDICIAL INTERESTS

In accordance with the Local Government Act, 2000, and the Council's Code of Conduct adopted on 16th May, 2007, Members to disclose any personal or prejudicial interests in any matter included on the agenda for this meeting.

NOTE: Members are reminded that, where applicable, they must complete the appropriate form recording details of any such interests and hand it to the Cabinet Administrator prior to the commencement of this meeting.

3 STATEMENT FROM THE CHAIR

4 EXCLUSION OF THE PRESS AND PUBLIC

Chair to move that in accordance with the Council's Constitution, specifically the Access to Information Procedure Rules contained within the Constitution, the press and public be excluded from the meeting in respect of items 7 to 8 based on Categories 1 and 2 of paragraph 10.4 of the Access to Information Procedure Rules.

The information contained therein is potentially exempt as it relates to individual personal details and information held under the Data Protection Act 1998. Having applied the public interest test it is not appropriate to disclose this information as the individuals' legal expectation of privacy outweighs the public interest in the exempt information.

5 MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING) (Pages 1 - 2)

To approve and sign as a correct record the Minutes of the meetings held on 26th November 2009 and to deal with any matters arising, attached.

6 APPLICATION FOR VARIATION OF STREET TRADING CONSENT - ABOVE BAR PEDESTRIAN PRECINCT - MR. M. AND MRS. P. TRAVERS (Pages 3 - 10)

To consider a report of the Solicitor to the Council concerning an application for a variation of the terms of a street trading consent, attached.

7 HACKNEY CARRIAGE DRIVER (Pages 11 - 20)

Confidential report of the Solicitor to the Council seeking consideration on whether an individual was a fit and proper person to be a Hackney Carriage Driver, attached.

8 PRIVATE HIRE DRIVER (Pages 21 - 34)

Confidential report of the Solicitor to the Council seeking consideration on whether an individual was a fit and proper person to be a Private Hire Driver, attached.

Wednesday, 9 December 2009

SOLICITOR TO THE COUNCIL

LICENSING (GENERAL) SUB – COMMITTEE

MINUTES OF THE MEETING HELD ON WEDNESDAY, 26TH NOVEMBER 2009

Present: Councillors Baillie, Mrs Blatchford, Cunio, Drake, Norris, Parnell and Willacy

Apologies: Councillors Galton and Fitzgerald

11. APOLOGIES/ CHANGES IN MEMBERSHIP

The Panel noted that Councillor Drake was in attendance as a nominated substitute for Councillor Galton and Councillor Baillie was in attendance as a nominated substitute for Councillor Fitzgerald in accordance with Council Procedure Rule 4.3.

12. MINUTES OF THE PREVIOUS MEETINGS (INCLUDING MATTERS ARISING)

RESOLVED that the Minutes of the meetings held on 26th August 2009 be signed as a correct record. (Copy of the minutes circulated with the agenda and appended to the signed minutes).

13. EXCLUSION OF THE PRESS AND PUBLIC

RESOLVED that in accordance with the Council's Constitution, specifically the Access to Information Rules, the press and public be excluded from the meeting in respect of the consideration of the following item on grounds based on Categories 1 and 2 of paragraph 10.4 of the Council's Access to Information Procedure Rules because failing to do so would constitute a breach of the Data Protection Act 1998 as well as a breach of a common law duty of confidentiality.

14. PRIVATE HIRE DRIVER

The Sub-Committee considered the confidential report of the Solicitor to the Council seeking consideration on whether an individual was a fit and proper person to be a Private Hire Driver. (Copy of report circulated with agenda and appended to signed minutes).

Part of the evidence presented to the Sub-Committee was in the form of photographic and accompanying soundtrack obtained from the digital security camera fitted to the vehicle. The Sub-Committee noted that this was the first occasion that such evidence had been presented.

The Sub-Committee also noted that no appeal had been received from the driver since the immediate suspension of the Private Hire Driver's licence on 27th October, 2009 and that under the regulations the driver remained unable to drive pending the outcome of the appeal even under circumstances where an appeal had been lodged.

In addition the Sub-Committee noted that the driver and his Solicitor had been invited to attend the Sub-Committee's meeting but were not in attendance.

RESOLVED that the Private Hire Driver's licence be revoked.

REASON FOR THE DECISION

Having regard to the Home Office Guidelines the Sub-Committee was satisfied that the applicant was not a fit and proper person to hold a Private Hire Driver's licence.

The Sub-Committee were seriously concerned at the driver's extremely offensive behaviour, abusive language and actions towards three elderly and infirm residents of the City and considered that such behaviour towards the public should not be tolerated.

The serious nature of the driver's recorded behaviour, together with the written evidence presented, were considered valid reasons for the Sub-Committee's decision.

Agenda Item 6

DECISION-MAKER:	LICENSING (GENERAL) SUB-COMMITTEE		
SUBJECT:	APPLICATION FOR VARIATION OF STREET TRADING CONSENT – ABOVE BAR PEDESTRIAN PRECINCT – MR. M. AND MRS. P. TRAVERS		
DATE OF DECISION:	17 DECEMBER 2009		
REPORT OF:	SOLICITOR TO THE COUNCIL		
AUTHOR:	Name:	JOHN WHITE	Tel: 023 8083 2749
	E-mail:	john.white@southampton.gov.uk	

STATEMENT OF CONFIDENTIALITY

Not applicable.

SUMMARY

The Sub-Committee is requested to consider and determine an application from Mr. M. and Mrs. P. Travers for the variation of a street trading consent.

RECOMMENDATIONS:

- (i) The Sub-Committee is recommended to consider and determine the application for variation of the terms of the existing street trading consent.

REASONS FOR REPORT RECOMMENDATIONS

1. The determination of applications for street trading consents is not delegated to officers, with the exception of renewals of existing consents. It is therefore for the Sub-Committee to consider the application and any objections to it before deciding whether or not to vary the conditions of the existing consent.

CONSULTATION

2. Copies of the application for variation of street trading consent have been sent to the Police, City Centre Manager, Highways, Environmental Health and Planning.
3. No objections to this application have been received.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

4. None.

DETAIL

BACKGROUND & APPLICATION DETAILS

5. A total of two street trading consents have been granted in respect of the Above Bar Pedestrian Precinct.
6. The Planning and Transportation (Roads and Transport) Sub-Committee first granted Mrs. P. Travers a street trading consent on 13th July 1984 (Minute 1799 of 1984). This consent was first granted in both these applicants' names on renewal in 2000 and has been renewed annually since.

7. The current consent is subject to various conditions, including a condition that only flowers and foliage are sold. A full list of conditions can be seen on the previous consent issued on 3rd December 2008, which is attached to this report as Appendix 1.
8. On 12th November 2009, Mr. M. Travers and his mother Mrs. P. Travers, made application for the renewal of a street trading consent on the same terms and conditions that it had previously been issued. This application was granted by the Licensing Manager under the current scheme of delegation.
9. At the same time as applying to renew the street trading consent, the applicants made an application to vary the street trading consent issued. The applicants wish to extend the size of the site so that it will not exceed 21 ft in length and 8 ft 6 inches in depth.
10. At present, the size of the site is 10ft 6 inches in length and 8ft 6 inches in depth. This is permitted to be extended so that it does not exceed 21ft in length and 8ft 6 inches in depth, but only on Fridays and Saturdays, on the seven days preceding and following Christmas Day, and on the seven days preceding the 14th February (St. Valentine's Day), Mothering Sunday and Easter day.
11. The applicants have also indicated that they wish to trade between the hours of from 9 am and 8 pm, seven days a week.
12. At present, the applicants are only permitted to trade between 9 am and 6 pm, Monday to Wednesday and on Friday and Saturday; between 9 am and 8 pm on Thursday; and between 11 am and 5 pm on Sunday.
13. The applicants have been invited to attend the Sub-Committee's meeting.

FINANCIAL/RESOURCE IMPLICATIONS

Capital

14. There are no financial implications.

Revenue

15. Not applicable.

Property

16. Not applicable.

Other

17. The work involved for the licensing team in bringing this variation to the committee is contained within existing budgets.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

18. Schedule 4 of The Local Government (Miscellaneous Provisions) Act 1982 sets out the City Council's power to consider and determine an application for variation of a street trading consent.

19. The Local Government (Miscellaneous Provisions) Act 1982 provides that the City Council may impose such conditions as it considers reasonably necessary on the grant of a street trading consent, but in particular may impose conditions to prevent:
 - obstruction of the street or danger to persons using it; or
 - nuisance or annoyance (whether to persons using the street or otherwise).
20. In a street trading consent the City Council may include permission for its holder to trade from a stationary van, cart, barrow, or other vehicle, or from a portable stall, and if such consent is given, the consent may be subject to conditions as to where and at what times the holder of the consent may trade.
21. The City Council may grant consent for a period not exceeding twelve months, but may revoke it at any time. There is no formal right of appeal against the Sub-Committee's decision to refuse to grant consent or impose conditions, except by means of an application to the High Court for judicial review of the decision.
22. In considering this application, the Sub-Committee is obliged to consider it in accordance with the rules of natural justice. The practical effect of this is that the Sub-Committee make its decision based on the evidence presented to it at the meeting and give an opportunity to both the applicants and any objectors to give their points of view.

Other Legal Implications:

THE LEGISLATION - CRIME AND DISORDER ACT 1998

23. Section 17 of the Crime and Disorder Act 1998 places the Council under a duty to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

THE LEGISLATION - HUMAN RIGHTS ACT 1998

24. The Act requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the Council to act in a way that is incompatible (or fail to act in a way that is compatible) with the rights protected by the Act. Any action undertaken by the Council that could have an effect upon another person's Human Rights must be taken having regard to the principle of proportionality - the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the Council which affects another's rights must be no more onerous than is necessary in a democratic society. The matter set out in this report must be considered in light of the above obligations.

POLICY FRAMEWORK IMPLICATIONS

25. The decision to determine the application in the manner set out in this report is not contrary to the Council's policy framework.

SUPPORTING DOCUMENTATION

Appendices

1.	Copy of previous street trading consent issued to applicants.
2.	Application for variation of a street trading consent.

Documents In Members' Rooms

1.	None.
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Background Documents

Title of Background Paper(s)

Relevant Paragraph of the
Access to Information
Procedure Rules / Schedule
12A allowing document to be
Exempt/Confidential (if
applicable)

1.	Application for variation of a street trading consent.	
2.	Responses from Officers, Police.	

Background documents available for inspection at: Licensing Office, Southbrook Rise

FORWARD PLAN No: N/A **KEY DECISION?** NO

WARDS/COMMUNITIES AFFECTED:	N/A
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COPY

STREET TRADING CONSENT

SOUTHAMPTON CITY COUNCIL by virtue of the powers contained in Section 3 and Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982,

HEREBY GRANTS to **MARK TRAVERS**
AND to: **PHOEBE TRAVERS**

CONSENT to trade in the **Above Bar Pedestrian Precinct**, in the City of Southampton, being a consent street for the purposes of the above Act, until the **22nd day of November 2009**

SUBJECT to the following conditions: -

- (a) Only flowers and foliage shall be sold in the consent street;
- (b) Trading shall only take place in that part of the Precinct to the east of 49 Above Bar outlined in red on the plan annexed hereto;
- (c) The site used for trading shall be left in a clean and tidy condition and all receptacles used for trading shall be removed each evening when trading ceases;
- (d) No nuisance, annoyance, obstruction of free passage for pedestrians or danger shall be caused to any person using the street;
- (e) Neither the consent holders, their employees or agents shall cause nuisance or interfere with any other person trading in the Precinct with the Council's consent;
- (f) No van or other vehicle, stall, barrow or cart shall be used for trading;
- (g) The size of the site used in pursuance of this consent shall not exceed 10 feet 6 inches in length, 8 feet 6 inches in depth, and all goods and receptacles shall be contained within the site. The site shall not be covered by anything whatsoever except by a canvas canopy, of a style and colour approved by the Licensing Officer, which shall not exceed 10 feet 6 inches in length and 8 feet 6 inches in depth, shall not be less than 7 feet high (or such other height as the law demands) at its lowest point, nor more than 9 feet high at its highest point. The site shall be arranged so that its longest edge, and that of any canopy, runs north/south.
- (h) On Fridays and Saturdays, on the seven days preceding and following Christmas Day, and on the seven days preceding the 14th February (St. Valentine's Day), Mothering Sunday and Easter Day, the size of the site used in pursuance of this consent shall not exceed 21 feet in length and 8 feet 6 inches in depth, and all goods and receptacles shall be contained within the site. The site shall not be covered by anything whatsoever except two canvas canopies, or a style and colour approved by the Licensing Officer, which shall each not exceed 10 feet 6 inches in length and 8 feet 6 inches in depth, shall not be less than 7 feet high (or such other height as the law demands) at their lower points, nor more than 9 feet high at their highest points. The site shall be arranged so that its longest edge, and that of any canopy, runs north/south.
- (i) Details of the full name and addresses of every person employed by the consent holders in connection with the trading permit by this consent shall be submitted in writing to the Council's Licensing Officer before any such person is so employed in the consent street.
- (j) The provisions of Schedule 4 to the above Act shall be complied with so far as they relate to street trading consents.

Failure to comply with these conditions is an offence for which you may be prosecuted. The street trading consent is granted for a period of twelve months but may be revoked at any time.

Receipt is acknowledged of the fee of £156.00 for this consent.

Dated this 3rd December 2008

Mr. M. Travers,
42 The Crescent,
Netley,
Southampton.
SO31 5BH

Solicitor to the Council
for and on behalf of
Southampton City
Council

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS)
ACT 1982



APPLICATION FOR STREET TRADING CONSENT

Title: Mr. First Names: MARK + PHEBE Surname: TRAVERS
Home Address:

Post Code:

Home 'phone n

Trading style or title (if any): 2 CANVAS CANOPY'S STALL (FLORISTRY)

Preferred trading location: (please attach a plan showing the exact location):

SOUTHAMPTON ABOVE BAR PRECINT JUST NORTH OF WEST QUAY ENTRANCE

Types of articles to be sold: FLOWERS AND FOLIAGE (FRESH + ARTIFICIAL)

Do you intend to trade from a: Stall YES

Please describe your intended trading

method: TO SET UP A TWO CANVAS CANOPY'S OVER A STALL AND MAKE BUNCHES OF FLOWERS + FOLIAGE TO SELL (FRESH + ARTIFICIAL)

Dimensions of Stall / Barrow / Cart / Van / Other Vehicle (include everything which forms part of the proposed trading activity)

Length: 21 FT AND 10 FT 6 inch metres PLEASE SEE ATTACHED NOTE.
Height: 7 - 9 FT metres
Width: 8'6 inch metres

If it is proposed to trade from a vehicle, please give:

- the registration number: N/A
 - the make:
 - the model:
- of the vehicle

Continued overleaf

ON FRIDAYS AND SATURDAYS, ON THE SEVEN DAYS PRECEDING AND FOLLOWING CHRISTMAS DAY, AND ON THE SEVEN DAYS PRECEDING THE 14TH FEBRUARY (ST. VALENTINE'S DAY) MOTHERING SUNDAY AND EASTER DAY. THE SIZE OF THE SITE USED IN PURSUANCE OF THIS CONSENT SHALL NOT EXCEED 21 FEET IN LENGTH AND 8 FEET 6 INCHES IN DEPTH, AND ALL GOODS AND RECEPTACLES. SHALL BE CONTAINED WITHIN THE SITE.

Days, dates and time when trading is proposed:

Mondays:	<input checked="" type="checkbox"/>	Times:	from	9 AM	to	8 PM
Tuesdays:	<input checked="" type="checkbox"/>	Times:	from	9 AM	to	8 PM
Wednesdays:	<input checked="" type="checkbox"/>	Times:	from	9 AM	to	8 PM
Thursdays:	<input checked="" type="checkbox"/>	Times:	from	9 AM	to	8 PM
Fridays:	<input checked="" type="checkbox"/>	Times:	from	9 AM	to	8 PM
Saturdays:	<input checked="" type="checkbox"/>	Times:	from	9 AM	to	8 PM
Sundays:	<input checked="" type="checkbox"/>	Times:	from	9 AM	to	8 PM

If trading is proposed to be at additional times on particular days or the application is irregular or for a particular period, please give details:

I hereby make application to Southampton City Council for grant of a consent to trade in the street(s) and other places as mentioned above and enclose the appropriate fee and agree to comply with any conditions imposed by the Council.

Signed:

Dated: 10-11-2009

NOTES: STREET TRADING CONSENT APPLICATIONS

Fees: Street Trading Consents (all grant or renewal - except Guildhall Square) per annum

<i>Hot food traders (vehicles)</i>	£1,245.00
<i>Hot food traders (stand or stall)</i>	£934.00
<i>Fruit and Vegetable traders (stand or stall)</i>	£686.00
<i>Flower traders (stand or stall)</i>	£156.00

Guildhall Square Street Trading Consents (maximum of seven days per consent)

<i>All traders (subject to meeting criteria set by the Council)</i>	£30.00
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All cheques and Postal orders should be made payable to Southampton City Council.

When completed this form should be sent (together with the fee) to:-

By post:

Licensing Team
Southampton City Council
PO Box 1344
Southampton
SO15 1WQ

Personal callers:

Licensing Team
Southampton City Council
Southbrook Rise
4-8 Millbrook Road East
Southampton
SO15 1YG

In certain circumstances it may be necessary for your application to be considered by the Council's Licensing Sub-Committee. If this is the case in relation to your application you will be notified and invited to attend the meeting.

If you have any difficulty in completing this form, please telephone 023 8083 3245 or e-mail licensing@southampton.gov.uk.

Please note that no guarantee can be given that any consent will be granted. The making of an application does not imply any right to trade in any place.

1411-1001-007-2003-0001 10/11/2009
KAREN

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By virtue of paragraph(s) 1, 2 of Part 1 of Schedule 12A of the Local Government Act 1972.

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