

**16 November 2015**

## **Licensing and Appeals Committee**

### **Application for the Grant of a Street Trading Licence - Local Government (Miscellaneous Provisions) Act 1982**

**Report of:** Ashley Culverwell – Head of Borough Health, Safety & Localism

**Wards Affected:** All

**This report is:** Public

#### **1. Executive Summary**

- 1.1 Members are requested to determine an application for the grant of a Street Trading licence in respect of an E-Cigarette and Vaping supplies stall to permit it to trade at the Essex Farmers Market in the High Street Brentwood, weekly on both Friday and Saturday.

#### **2. Recommendation**

##### **2.1 The following options are open to Members;**

- a) To grant the application subject to standard conditions**
- b) To grant the application subject to standard conditions and any additional conditions as determined appropriate in the individual circumstances of the application**
- c) To refuse the application.**

#### **3. Introduction and Background**

- 3.1 Brentwood Borough Council has adopted schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 to designate Brentwood High Street from Wilsons Corner to its junction with Kings Road and Weald Road as a 'licence' Street for the purpose of Street Trading. This means that no trading may take place otherwise than in accordance with an authorisation from the Council.
- 3.2 This application has been submitted by Mr Matthew Connolly. Originally a licence was granted under delegated authority and Mr Connolly traded for a total of 4 trading days until concern was raised that the content of the stall may fall outside of the Council's current Street Trading and Market Policy (the Policy). A copy of the policy is attached at **Appendix A**. Mr Connolly immediately ceased trading pending determination of his application.

#### **4. The Application**

- 4.1 The original application was received on 23 October 2014 from the owner of an existing Company based in Brentwood, namely Matthew Connolly, trading as E-cig Shopper. There has been a delay in bringing the matter to committee partly due to the initial grant as highlighted in paragraph 3.2 and partly due to some personal issues.
- 4.2 Notwithstanding the right of an individual to make an application at anytime for consideration of that application on its individual merits, any decision in respect of this application would apply to any future dates that may be applied for. It is the intention of Mr Connolly that he would trade from the Essex Farmers Market on a weekly basis. Therefore, if granted, any future application would also be granted under delegated powers.
- 4.3 The Essex Farmers Market has received the appropriate planning permission for the siting of stalls between 39 and 51 High Street Brentwood at a distance of at least 2.5 metres from all shop fronts and a minimum of 2 metres from the carriageway.

#### **5. Reasons for Recommendation**

- 5.1 If granted, this applicant will be responsible for ensuring that he complies with the provisions as laid out in both 4.3 of this report, those as detailed in the Policy and any requirements of the independent Market provider, namely Essex Farmers Markets.
- 5.2 At paragraph 3.4 of the Street and Market Trading Policy it states: *"...it shall be the duty of the Council to grant an application for a Street Trading Licence or the renewal of such a Licence unless they consider that the application ought to be refused on one or more of the grounds specified the policy.*
- 5.3 Whilst delegated authority exists for this application to be determined by the Head of Borough Health, Safety & Localism there are some matters that are best considered formally to ensure that all relevant facts may be appropriately considered and a formalised decision is recorded.
- 5.4 The matters for consideration in paragraph 3.5 are laid out in paragraphs 5.2 and 5.4(b) of the market policy:

*5.2:- Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 states that Council's may refuse an application on the following grounds:-  
That there are already enough traders trading in the street from shops or otherwise in the goods in which the applicant desires to trade. (It is currently believed e-cigarettes are currently being sold in 'Boots' Pharmacy and 'Superdrug' in Brentwood High Street).*

5.4(b):- *'Products promoting the use of drugs or tobacco related products'. This condition was included as a public health measure from recognition of the harmful effects caused from smoking cigarettes.*

- 5.5 Whilst there is a duty for each application to be considered on its own merits and for policy to be diverted from if considered appropriate in the individual circumstances of the application, paragraph 5.4 of the Street and Market Trading Policy states:

*The Council is likely to refuse such items in the current climate as legitimised by the Local Government (Miscellaneous Provisions) Act 1982.*

- 5.6 One of the reasons for the establishment of a Farmers market was to increase the footfall to the High Street area, which it was considered would attract custom to existing shops and businesses but not to take trade away from the existing shops. **One of the key considerations in determination of this application therefore is whether e-cigarettes and associated products are far enough removed from the description of drugs and tobacco so as to fall outside of the policy, or, if they are considered to be drug or tobacco related, whether in the individual circumstances of this application there is reason to permit their sale as a diversion from the policy.**
- 5.7 Given that the effects of E-Cigarettes and opinion on them varies, an attempt has been made to try to provide a balanced report which has been taken from the Public Health England website. This is attached in summary form at **Appendix B**.

## **6. Consultation**

- 6.1 Full consultations on the Farmers Market took place prior to permission being granted for it. The management of the Market comply fully with the terms and conditions of their agreement and the Street and Market Trading Policy. No further consultation is therefore required in respect of this application, which remains to be determined purely on the basis of the policy restrictions.
- 6.2 The stall has previously traded albeit for a short term with no complaints received. This area is a growing area as it is becoming a safer alternative to smoking.
- 6.3 On this basis there are no representations, although the applicants have been asked to attend in order that they may answer questions and state their case for consideration.

## **7. Conclusion**

- 7.1 The key matters for consideration of this application are that the policy suggests that an additional application for the purpose sought, namely e-cigarettes, would normally be likely to be refused due to existing traders trading similar items. However, the policy is a guide as to how matters should normally be considered and may be diverted from should members be convinced that the individual facts merit such action.
- 7.2 Members are asked to consider the individual merits of the application with regard to the policy and any testimony from the applicants. Due to the hearings requirements and the right of the applicant to have the application determined on merit and without bias no recommendations can be made. The available options in respect of this application are highlighted in paragraph 2 of this report.
- 7.3 There is a right of appeal in relation to determination in respect of this application to the Magistrates Court.

### **Report writer details:**

**Keith Alexander** – Licensing Officer

**Email:** keith.alexander@brentwood.gov.uk

**Tel:** 01277 312642