

# Regulatory Sub-Committee Report



milton keynes council

## New Street Trading Consent Application - Shenley Kebabs, Roebuck Way, Knowlhill

Report author

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Exempt / confidential / not  
for publication

**No**

### 1. Purpose

- 1.1. To determine a new street trading consent application for Shenley Kebabs on Roebuck Way, Knowlhill, Milton Keynes. If granted, the application would permit street trading from the location in Roebuck Way between the hours of 5pm and 8pm seven days a week. As a new application, our conditions only allow an initial trading period of 3 hours per day. The application is attached at **Annex A** and the trading location is attached at **Annex B**.
- 1.2. Whilst this is a new application, the applicant has formerly held street trading consent for this location since 2006 with permission to trade between 4pm and 12.30am the following morning seven days a week.
- 1.3. The applicant currently holds a Premises Licence to permit the sale of hot food (Late Night Refreshment) between the hours of 11pm and 12.30am. This is required under the Licensing Act 2003. Despite this authorisation, without street trading consent, the trader may not, in effect, use the premises licence.

### 2. Recommendation

- 2.1. To refuse the application. The Licensing Team has received many representations against the application from a range of people and organisations. The applicant has a history of non-compliance with conditions, possible street trading without consent and failure to pay renewal fees on several occasions. The previous renewal application was determined at committee and came with a 'last chance warning' decision. Officers have spent considerable resources attempting to bring the applicant into compliance, but an uphill task with little expectation of achieving compliance autonomously.

### 3. Actions and Options

3.1. The Sub-Committee has three options:

- (a) to grant the application for 12 months or less;
- (b) to grant the application with conditions; or
- (c) to refuse the application outright.

There is no appeal process against Sub-Committee decisions on Street Trading.

### 4. Issues and Choices

4.1. All street trading applications must go through a public consultation process. A notice is erected in the street trading location and a consultation document is sent to several groups as listed in section 18 of the Street Trading policy (extracted end of the report).

4.2. The applicant provided all the necessary information required for street trading application including DBS for himself, suitable public liability insurance, plan of location, photos of the trading vehicle and paid the fee. It should be noted that one of his employees does not currently hold a DBS. One would need to be provided for him to trade alongside the applicant.

4.3. Where no representations are made within the 28 days the decision will be made without referral to committee under the delegated powers.

When an application receives representations, and they cannot be resolved, then the application must be determined by Regulatory Sub-Committee.

4.4. The Licensing Team has received representations from the following organisations:

- (a) Councillor Gilbert (Ward Member) **(Annex C(i))**
- (b) Councillor Marlow (Ward Member) **(Annex C(ii))**
- (c) Councillor Nolan (Ward Member) **(Annex C(iii))**
- (d) Loughton and Great Holm Parish Council **(Annex C(iv))**
- (e) Local business (Madison) **(Annex C(v))**
- (f) Thames Valley Police **(Annex D)**
- (g) MKC Licensing **(Annex E)**
- (h) MKC Highways **(Annex F)**

This is an unusually high number of representations.

- 4.5. A decision on whether an application should be granted should consider sections 5-10 of the Milton Keynes Council Street Trading Policy (extracted end of the report): Public Safety; Commercial need; Prevent of Crime and Disorder; Prevention of Public Nuisance; Sustainability and product type and the suitability of trading unit.

Concerns raised include - littering from customers and the trader, urination in the bushes by both customers and traders. Road safety concerns. The applicant's attitude and sometimes aggressive nature towards officers and other people. Breach of conditions and potential illegal trading. There are also ancillary matters referenced such as fixing cars at the side of the road and possible abandoned cars left in area.

- 4.6. The representations reference several concerns in respect of section 5-10 of the Street Trading Policy and can be read in **Annexes C to F**. The Sub-Committee will want to question those making the representations further during the hearing to expand on their concerns. Furthermore, the applicant will have the opportunity to provide any mitigating circumstances.

- 4.7. Section 11 of the MKC Street Trading Policy (extract end of the report) references the suitability of the applicant as an individual. A clean DBS has been provided by the applicant, though not for his employee who has been observed by officers operating at the unit which is breach of conditions.

Reviewing the Council records, the applicant has failed to pay the application fee almost consistently over the past seven years, with only one exception, October 2019. Consequently, he has regularly operated without a consent in place for a period of time. Officers have been required to chase the payment of the fee on each occasion and been generous in allowing time to make the required payments.

The reason for this application being a new application rather than a renewal is because the decision was taken to lapse the street trading consent following non-payment of the renewal fee due 1 April 2020.

Members will note the representation by the Licensing Officer and the number of potential offences and breach of conditions committed by the applicant. Whilst the applicant is often found complying with conditions and does trade as permitted for periods of time, there does appear to be disproportionate amount of complaints and potential offences associated with this trader, when compared to the majority of other traders in Milton Keynes.

- 4.8. Members will note with particular concern that two separate Council Officers have been subjected to inappropriate and intimidatory behaviour by the applicant. Officers will not visit the applicant alone. No other street trader in Milton Keynes requires this arrangement.

- 4.9. Members may recall the previous decision of a Regulatory Sub-Committee that the trader was in October 2019 granted a six-month renewal following objection to the application and that the decision notice clearly stated: “This was the last chance for the applicant”. The decision notice is included at **Annex G** and related consent at **Annex H**.

The six-month consent decision is not typical, and a comparison to other street trading consents across the borough cannot be readily recalled by Licensing Officers.

- 4.10. The representation by the Licensing Officer provides a history of complaints levelled at the trader. It also notes the occasions where visits have been made and the reported concerns about litter were not apparent (see **Annex E**).

- 4.11. It is fair to say the applicant has had some difficulty in understanding what he is permitted to do, and the outbreak of Covid-19 made the enforcement of street trading in this instance difficult from end March 2020 onwards. Correspondence with the trader is often difficult and whereas face to face meetings in the past were a preferred way to contact the applicant, this became very difficult to achieve during lock down restrictions. A prosecution file was on the verge of being created but halted as the trader stopped trading illegally in May 2020.

However, it is no defence not to understand the street trading requirements, and the applicant has been trading for long enough in Milton Keynes to be aware of what he can and can't do. Officers have spent a considerable amount of time in correspondence with the applicant to obtain fees, explain rules, inspect and monitor compliance.

- 4.12. At the October 2019 sub-committee there were concerns raised about the serving hatch facing the road, litter and an employee that did not have a DBS. It would appear the matter relating to the position of the serving hatch was resolved, litter problems had not been observed by officers, although have been referenced by other parties. The employee of applicant who is known to be working in the vehicle has still not got a DBS, or if he has, it has not been submitted to officers.

- 4.13 The applicant has a second Street Trading Consent and Premises Licence to operate at the Xscape CMK car park, Monday to Sunday 10.30pm to 4.30am. At the time of writing, the applicant wasn't using this consent, due to the effectual closure of the night-time economy in CMK during Covid-19. This situation may change with the reopening of late-night entertainment venues in the immediate future.

## 5.0 Implications

### 5.1 Policy

The Council has adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 - Street Trading, that allows adopted highway to be designated as 'Prohibited' or 'Consent' for street trading purposes. Roebuck Way is designated as a 'consent' street and this means trading on this street or within 60 metres of its centre line is only permitted if a valid consent is held by the trader. Adopted highway is highway that is maintainable at public expense.

Milton Keynes Council has an Enforcement Policy that endorses a proportionate approach.

MKC has a Street Trading Policy that came into effect on the 1 April 2017.

A decision to revoke the application will require the Council to return the application fee to the applicant.

### 5.2 Resources and Risk

Part of the fee structure for street trading is to ensure compliance with street trading conditions.

### 5.3 Legal

There is no appeal against the decision to refuse or grant a street trading consent, as it is a consent and not a licence, but a trader may reapply for this street, but only after a year has passed from date of refusal.

Background Papers: Milton Keynes Council Street Trading Policy 2019 - 2022

## **Extract of MKC Street Trading Policy:**

### **5. PUBLIC SAFETY**

- 5.1 The proposed location of street trading activity should not present a significant risk to the public in terms of highway safety or/and obstruction. This would include consideration of factors such as: - interference with sight lines for road users and access to pedestrian crossings. Applications in respect of sites that have previously been the subject of a refusal due to the unsuitability of the location are unlikely to be accepted.

### **6. COMMERCIAL NEED**

- 6.1 Any new application will include consideration of the number and type of existing traders and businesses in the vicinity. Consent is unlikely to be granted within 250 metres of an existing street trader.

### **7. PREVENTION OF CRIME AND DISORDER**

- 7.1 The proposed activity should not present a risk to public order. This is likely to be an issue in respect of applicants wishing to trade during later hours. This is because in some circumstances a trading location can act as a focus point of anti-social behaviour.

### **8. PREVENTION OF PUBLIC NUISANCE**

- 8.1 Consideration will be given to those measures to be taken by a trader to reduce and control the risk of nuisance from noise, litter, vermin, fumes, odours and the disposal of associated waste.

### **9. SUSTAINABILITY AND PRODUCT TYPE**

- 9.1 A trader should set out measures to reduce the environmental impact of their proposed activity as part of their application. Typically this could include the use of recyclable products and energy efficient processes.
- 9.2 Consideration will also be given to the type of products sold and the suitability of the products at the location concerned. It should be noted that applications which propose to sell articles of firearms, replica firearms, tobacco or animals will not be accepted.

### **10. SUITABILITY OF TRADING UNIT**

- 10.1 The vehicle, trailer or stall to be used will be of a good quality design / build and should not be of an appearance to the detriment of the quality of the street scene. The unit may be inspected by an authorised officer of Milton Keynes Council prior to any consent being issued. The unit shall comply with any legal requirement relating to the trading activity proposed and in particular with the following legislation and any subsequent revisions thereof:

## **11. SUITABILITY OF APPLICANT**

11.1 When determining an application for the grant or renewal of a street trading consent the council will consider relevant information relating to the suitability of the applicant to hold such a permission including:

- (a) whether the applicant has any relevant unspent convictions:  
A Basic Disclosure from the Disclosure and Barring Service (DBS check) shall be submitted with each application (see 16.2 e). The certificate must not be older than three months at the time of its submission. Any unspent convictions or proven criminal behaviour shall be taken into account in assessing the suitability of the applicant, such as dishonesty, violence, sexual and indecency related offences, drugs, theft and deception (attached as Appendix C).
- (b) refusal or neglect in paying fees due to the council for a street trading consent.
- (c) previous failures of the applicant, without reasonable excuse, in respect of a previous street trading consent.

## **18 WHO WILL THE COUNCIL CONSULT?**

18.1 Before any new consent is granted the council will normally consult with the following agencies or persons in respect of new applications. A period of 28 days will be allowed for comments to be received:

- (a) Thames Valley Police
- (b) Highways (Milton Keynes Council)
- (c) Relevant Parish/Town Councils
- (d) Environmental Health (Milton Keynes Council)
- (e) Milton Keynes Council Ward Councillors
- (f) Trading Standards (Milton Keynes Council)
- (g) Estates (Milton Keynes Council)
- (h) Public Health (Milton Keynes Council)
- (i) Any schools within the local area of the trading location

## List of Annexes

- Annex A** Application
- Annex B** Plan of Trading Location
- Annex C(i)** Representation from Ward Councillor Gilbert
- Annex C(ii)** Representation from Ward Councillor Marlow
- Annex C(iii)** Representation from Ward Councillor Nolan
- Annex C(iv)** Representation from Loughton and Great Holm Parish Council
- Annex C(v)** Representation from Madison
- Annex D** Representation from Thames Valley Police
- Annex E** Representation from the Licensing Team
- Annex F** Representation from the Highways Team
- Annex G** Decision Notice from the Regulatory Sub-Committee held on 21.10.19
- Annex H** Related Consent