

# Minutes

## Licensing Committee

18th November 2015



Present:

Councillors	Present	Councillors	Present
Mrs J Allen	Yes	H Johnson	Yes
M Banthorpe (Chairman)	Yes	Mrs J Money	Yes
J Baugh	Yes	Mrs J Pell	Yes
S Canning	Yes	R van Dulken	Yes
J Elliott	Apologies	Mrs L Walters	Yes
J Goodman	Yes	Mrs S Wilson	Yes
A Hensman	Yes		

### 16 DECLARATIONS OF INTEREST

**INFORMATION:** There were no interests declared.

### 17 MINUTES

**DECISION:** That the Minutes of the meeting of the Licensing Committee held on 9th September 2015 be approved as a correct record and signed by the Chairman.

### 18 QUESTION TIME

**INFORMATION:** There were no questions asked or statements made during Question Time.

It was agreed that people attending the meeting for the consideration of Item 5 - Application for a Street Trading Consent – Witham Railway Station, Albert Road, Witham be invited to speak whilst the Item was being considered. Details of the people who spoke at the meeting are contained in the Appendix to these Minutes.

Principally, these Minutes record decisions taken only and, where appropriate, the reasons for the decisions.

### 19 APPLICATION FOR A STREET TRADING CONSENT – WITHAM RAILWAY STATION, ALBERT ROAD, WITHAM

**INFORMATION:** Consideration was given to an application made by Mr Suryakant Rao for a Street Trading Consent to sell newspapers, tobacco,

confectionery, soft drinks, pre-packed sandwiches and hot Indian dahl from a 'business permit location', outside Witham Railway Station, Albert Road, Witham. Mr Rao wished to trade on Mondays, Tuesdays, Wednesdays, Thursdays, Fridays, Saturdays and Sundays between the hours of 4.30am and 7.00pm.

Following consultation, three objections had been received from local traders who sold similar commodities in the vicinity. A further objection had been received from Braintree District Council's Asset Management Service in respect of a Council-owned property which was held on lease by one of the objectors. The main objection related to the sale of similar commodities. In accordance with the Council's Street Trading Policy, where representations are received, the application must be referred to the Licensing Committee for determination.

It was reported that comments received from Essex County Council Highways regarding the application, which had been forwarded to the applicant and to Members of the Licensing Committee had subsequently been withdrawn and that they must be disregarded. It was reported also that Essex County Council Highways had issued a 'business permit' to Mr Rao to locate his vehicle at Witham Railway Station. However, this permit was valid only if a Street Trading Consent had also been issued by Braintree District Council.

Mr Rao was represented at the meeting by his son, who presented the application and answered questions put to him by Councillors. Mr Rao's legal representative was also in attendance, but he did not give his name or speak. Mr Mark Murphy, the proprietor of Get It Fresh, Braintree Road, Witham who had objected to the application attended the meeting also and spoke.

Members of the Committee were advised that, in accordance with Braintree District Council's Street Trading and Collections Policy, Street Trading Consents were issued for a period of up to one year. Existing traders who wished to continue to trade were requested to submit an application for a Consent at least one month before the expiry of their current Consent.

It was reported that the previous Street Trading Consent for the site had expired on 9th September 2015 and that Mr Rao had submitted an application for a new Consent one day before the expiry date. The application was substantially different to previous applications as it proposed longer trading hours. In accordance with the Council's policy, it had not been possible to process the application as a renewal of a Consent and the application had been deemed invalid on 10th September 2015 based on the applicant not submitting sufficient information. The Council had subsequently received another application for a Consent from Mr Rao on 29th September 2015 which had been validated on 30th September 2015.

Members were advised that the Street Trading Consent application submitted by Mr Rao in 2014 had been determined by the Licensing Committee on 10th September 2014. The Committee had granted the application for the sale of newspapers, tobacco, confectionery, soft drinks, cut flowers and hot Indian dal from the site on Mondays, Tuesdays, Wednesdays, Thursdays, Fridays,

Saturdays and Sundays between the hours of 4.30am and 4.00pm, subject to the Council's Street Trading and Collections Policy and the standard conditions relating to street trading, and subject to the sale of all other hot beverages, including tea and coffee, being excluded from the Consent. The decision had been made on the basis that the only hot beverage to be sold would be hot Indian dal and that all other hot beverages, including tea and coffee, were specifically excluded from the Consent in accordance with the submission made by the applicant's representative.

Members of the Committee were advised that over the past two years the Council had received complaints that Mr Rao had breached the terms of his Consent by selling hot drinks in the form of tea and coffee and by trading beyond the hours stipulated. Council Officers had observed sales of hot drinks and a letter had been sent to the Consent holder and interested parties in January 2015 warning that the sale of tea and coffee was not permitted by the Consent. The letter had stated that test purchases would be conducted to gather evidence for any potential prosecution and/or enforcement action that the Council may take. Subsequently, the Council had conducted test purchases on 27th January 2015, 24th June 2015 and 21st July 2015 when tea or coffee had been purchased successfully. These test purchases had been followed by either verbal, or written warnings to the Consent holder. Mr Mark Murphy of Get It Fresh stated at the meeting that Mr Rao had been selling tea and coffee without consent and that cups from Mr Rao's van had been left at the Get It Fresh premises containing tea and coffee dregs. Mr Rao Junior stated at the meeting that, during the last three months, the only time that tea and coffee had been sold from the van was at the time of the test purchases.

Officers had also observed the applicant trading in the centre of the Railway Station's pick-up/drop off point, half on double yellow lines and half on the business permit location. This had led to an emergency ambulance attending an incident at the station having to be parked in the road. This was evidenced in a photograph attached as an Appendix to the Agenda report.

Mr Rao had been informed in writing by the Council that his Consent had expired on 9th September 2015, that he no longer held a Street Trading Consent for the location at Witham Railway Station, and that continued trading at that location could result in enforcement action being taken. Council Officers had subsequently undertaken several site visits at which trading from Mr Rao's vehicle had been observed and test purchases made. Officers had also witnessed the applicant depositing commercial waste generated from the proposed Street Trading Consent site and an investigation was being made into a possible unauthorised deposit of commercial waste.

Members of the Committee were advised of the specific sections of the Council's Street Trading and Collections Policy which were relevant to the application. It was stated also that there was no right of appeal against a refusal to issue a Consent, but that an applicant had the option to seek a

Judicial Review of the decision. If an application was refused, the application fee would be refunded to the applicant.

**DECISION:** That the application submitted by Mr Rao for a Street Trading Consent to sell newspapers, tobacco, confectionery, soft drinks, pre-packed sandwiches and hot Indian dahl from a 'business permit location', outside Witham Railway Station, Albert Road, Witham on Mondays, Tuesdays, Wednesdays, Thursdays, Fridays, Saturdays and Sundays between the hours of 4.30am and 7.00pm be refused on the basis that it does not comply with Braintree District Council's Street Trading and Collections Policy on the following grounds:-

- The imposition of conditions will not be adequate to control potential problems.
- The grant of the application is likely to give rise to nuisance. For example Braintree District Council Officers have witnessed the applicant depositing commercial waste generated from the proposed Street Trading Consent site and an investigation is being made into a possible unauthorised deposit of commercial waste.
- It has not been proved whether there is sufficient space in the street, based on the existing double yellow line road markings, for the applicant to engage in the trading in which he desires without causing undue interference, or inconvenience to persons using the street.
- The granting of the Consent for the sale of goods or services would conflict with those provided by nearby shops and concessions granted to other traders.
- The applicant has failed, by evidence provided by several people including test purchases made by Braintree District Council Officers, to comply with the conditions attached to a previous Consent.

## 20 **LICENSING ACT 2003 – STATEMENT OF LICENSING POLICY**

**INFORMATION:** Consideration was given to a report on the proposed review of the Council's Statement of Licensing Policy in accordance with the Licensing Act 2003.

The Council had last reviewed the Statement of Licensing Act Policy in 2010 and the revised Policy had taken effect on 7th January 2011. The Council was required to publish its policy at least every five years and to keep it under review.

It was reported that since the last review, there had been a number of significant changes to the Licensing Act 2003 and the Guidance issued under Section 182 of the Act. Whilst the changes to legislation would be reflected in

technical changes to the Policy, the Council did not propose to introduce any new initiatives, or special policies at this time.

The draft Statement of Licensing Policy had been subject to public consultation for a period of 12 weeks during which time one response had been received, from Councillor Richard van Dulken. This was attached at Appendix 2 to the report. It was noted that it would not be possible to make the changes suggested in Councillor van Dulken's representation other than the typographical amendments suggested.

**DECISION:** That the draft Braintree District Council Statement of Licensing Policy be approved and **Recommended to Full Council** for adoption.

## 21 **HACKNEY CARRIAGE VEHICLES - SURVEY**

**INFORMATION:** In order to meet its obligations under Section 16 of the Transport Act 1985 and to defend the current policy of restricting the number of Hackney Carriage Vehicle licences, the Council was required to undertake a survey to ascertain whether there were sufficient licensed Hackney Carriage Vehicles in the District. Arrangements were currently being made for this survey to take place and the outcome would be reported to a future meeting of the Committee for consideration.

**DECISION:** That the commissioning of a survey to ascertain whether there are sufficient licensed Hackney Carriage Vehicles in the District be noted.

The meeting closed at 8.19pm.

Councillor M Banthorpe  
(Chairman)

APPENDIX  
LICENSING COMMITTEE  
18TH NOVEMBER 2015

Details of People Who Spoke at the Meeting

- 1 Speakers Relating to Item 5 - Application for a Street Trading Consent –  
Witham Railway Station, Albert Road, Witham
  - (i) Mr Rao (Jnr), c/o 8 Glebefield Road, Hatfield Peverel (for Applicant)
  - (ii) Mr Mark Murphy, Get It Fresh, Braintree Road, Witham (Objector)