

**GATESHEAD COUNCIL  
REGULATORY COMMITTEE**

**SUMMARY OF DECISION**

**Name of Licensee:** Ms Rosalyn Myers  
**Address:** 77 Burnopfield Road Rowlands Gill Gateshead NE39 1QQ  
**For Determination :** Application for Street Trading Consent  
**Date of Hearings:** 9 August 2016 & 6 September 2016

**Reason for hearing**

Ms Myers first appeared before the Council's Regulatory Committee on 9 August 2016 to consider whether to grant her a Street Trading Consent under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 in respect of a proposed site located at Sterling Lane Car Park in Rowlands Gill.

Objections to the grant of the Street Trading Consent had been received from Councillor Caffrey and from the Director of Public Health, as set out in the Licensing Officer's report dated 1 August 2016.

In accordance with Part 6 of Gateshead Council's Street trading and Markets Policy & Guidance issued December 2015, the Licensing Manager had duly considered Ms Myers's application and the objections received from Councillor Caffrey and the Director of Public Health, and was not satisfied that the Street Trading Consent should be granted.

As such, the Licensing Manager notified Ms Myers of the intention to refuse the application, together with a copy of the Senior Licensing Officer's report setting out the grounds for concern as above.

Ms Myers then requested that the application be referred to the Council's Regulatory Committee.

A hearing took place on 9 August 2016, but was adjourned in order that Members could conduct a site visit prior to making their decision. The site visit took place on 19 August 2016, and the adjourned hearing took place on 6 September 2016.

## **The Committee decided as follows :**

Not to grant the requested consent.

### **Reasons for decision**

Prior to the initial hearing, the Committee read the Licensing Officer's report referred to above.

At that hearing Ms Myers confirmed that she had received the report prior to the hearing, that she had read and understood it, and that the information contained was accurate and complete in respect of matters relevant to the Committee's determination, save that –

- The menus set out on pages 32 – 35 are no longer intended to be used and are replaced in the application by the menu attached to this summary of decision; and
- The meals shown in the photographs on pages 29 – 31 of the report are no longer intended to be served from the catering van.

The Committee heard representations from Ms Myers (who was accompanied by Ms Chilvers), and from Paul Gray who is Public Health Programme Lead Officer for Gateshead Council, as set out below.

The Committee considered the following provisions of the Council's Street Trading & Markets Policy and Guidance –

- The Council will only permit street trading and markets if the following objectives are promoted:
  - *Preserving or enhancing the character of the area*  
An applicant should be sensitive to the character of the area in which they propose to trade. This may include the number of existing outlets (whether fixed or mobile) selling similar articles in the vicinity. It may also include consideration as to whether the area is appropriate for the proposed activities, in particular with regard to conservation areas and 'feature areas'.
  - *Promoting health and wellbeing*  
An applicant should ensure that the health and wellbeing of residents and visitors is considered including the healthiness of the products sold and community interaction arising.
  - *Promoting economic prosperity*  
An applicant should ensure that vitality and vibrant activity is created or enhanced within Gateshead by improving and/or diversifying the shopping offer and experience within Gateshead, contributing to a competitive economy, and enhancing the independent retail offer including the provision of quality products.
  - *Animating streets and spaces*  
An applicant should ensure that in appropriate locations that their offer can help animate streets and spaces, encourage footfall, dwell time, and spend in an area.

- *Promotion of Public Safety*  
An applicant should ensure that public safety is not threatened by their business activities and be able to demonstrate that their business does not present a danger to members of the public, including customers. Particular regard will be given to road safety, the potential for disorder and to avoiding the possibility of creating an obstruction, fire risk, unsafe practices or anti-social behaviour.
- *Prevention of Public Nuisance*  
An applicant should ensure that their activities do not result in a danger or nuisance, particularly to residents and businesses near their site. 'Nuisance' can include littering, noise, smells, etc.
- *Promoting compliance with relevant legislation*  
An applicant should be aware of all relevant legislation (Health & Safety, Food Hygiene, Highways/Road Traffic Act) and should ensure and be able to demonstrate that their business complies with all legal requirements that affect their activities.
- The suitability of goods to be sold will be determined on a case by case basis. The Council will be mindful of and take account of all relevant matters, including local shopping needs, diversity, balance and conflict with nearby commercial shops and street trading
- Along with the street trading and markets objectives, the following questions (which may involve a site assessment) will be assessed:
  - *Highway safety*  
Is the siting of the street trading likely to have an adverse effect on road safety, either as a result of the siting itself or from customers arriving, attending and/or leaving the site?
  - *Parking*  
Is there adequate parking available to staff and customers?
  - *Obstruction*  
Will the siting cause an obstruction to pedestrians or road users?
  - *Sight lines*  
Will the siting interfere with the line of sight of pedestrians or road users?
  - *Loss of amenity*  
Will there be a significant loss of amenity in the vicinity from the new siting?
  - *Lighting*  
If it is proposed that the activities will take place at night, is the siting adequately lit?
  - *Relevant Restrictions*  
Are there any relevant restrictions that would prevent the Consent being exercised at certain times or on certain dates, e.g. parking or waiting restrictions, or conflicting market rights?

- *Cart/barrow*  
Is the cart, barrow, etc adequate for street trading activities, having regard to the siting, and the nature of the vehicle?
- *Other*  
There may be other issues relevant to the individual site.
- Where all the considerations above have been satisfied, consent may be given.
- Where the applicant has proposed dispensation and/or variance from the standard conditions but the Licensing Manager is not satisfied that the Consent may be granted with any or all of those dispensation(s) and/or variation(s) then the Licensing Manager may grant the Consent subject instead to the standard conditions.
- If however the Licensing Manager is not satisfied that the Consent may be granted, then the Licensing Manager will send the applicant a notice of intention to refuse their application, together with a copy of the Senior Licensing Officer's report setting out the grounds for concern.
- If the Applicant wishes to appeal the decision of the Licensing Manager to refuse the application s/he can have the matter considered by the Council's Regulatory Committee. However, the applicant cannot trade during the appeal period. The Regulatory Committee will consider a report from the Licensing Manager setting out his/her reasons for refusing the application and the Committee will also invite the applicant and objector(s) to provide further evidence. After considering the evidence the Regulatory Committee may:
  - Uphold the Licensing Manager's decision (i.e. refuse the application)
  - Adjourn the hearing if it deems further enquiries are necessary in order to make a fully informed decision; or
  - Grant the application and, if appropriate, add or vary the conditions to be attached to the Consent.
- In deciding whether or not to grant the application the Regulatory Committee will only have regard to such factors as are relevant to ensuring the street trading and markets objectives are not compromised. The Regulatory Committee therefore cannot have regard to the impact that their decision may have on the applicant's livelihood.
- The Regulatory Committee may decide to impose conditions as sought by the applicant/Consent Holder or any other conditions they see fit. Any conditions imposed will be proportionate to the circumstances they are intended to address and will ensure that they are:
  - Relevant to the applicant/Consent Holder and the (proposed) street trading activity

- Fairly and reasonably related to the scale and type of (proposed) street trading activity; and
- Reasonable in all other respects.
- Conditions will not be imposed if:
  - Complying with the condition(s) would mean it is impossible to comply with any statutory requirements.
  - They do not relate to the activity of street trading.
  - They unduly interfere with the applicant/Consent Holder's right to lawfully run their business as they see fit.
- Duplication with other statutory or regulatory regimes will be avoided as far as possible. Each case will be assessed on its own individual merits.

The Committee had due regard to the following matters:

### Legislation

The Committee had regard to the relevant provisions of the Local Government (Miscellaneous Provisions) Act 1982, as follows –

#### “Section 7

- (1) An application for a street trading consent or the renewal of such a consent shall be made in writing to the district council.
- (2) Subject to sub-paragraph (3) below, the council may grant a consent if they think fit.
- (3) A street trading consent shall not be granted—
  - (a) to a person under the age of 17 years; or
  - (b) for any trading in a highway to which a control order under section 7 of the Local Government (Miscellaneous Provisions) Act 1976 is in force, other than trading to which the control order does not apply.
- (4) When granting or renewing a street trading consent the council may attach such conditions to it as they consider reasonably necessary.
- (5) Without prejudice to the generality of sub-paragraph (4) above, the conditions that may be attached to a street trading consent by virtue of that sub-paragraph include conditions to prevent—
  - (a) obstruction of the street or danger to persons using it; or

- (b) nuisance or annoyance (whether to persons using the street or otherwise).
- (6) ...
- (7) Subject to sub-paragraph (8) below, the holder of a street trading consent shall not trade in a consent street from a van or other vehicle or from a stall, barrow or cart.
- (8) The council may include in a street trading consent permission for its holder to trade in a consent street—
  - (a) from a stationary van, cart, barrow or other vehicle; or
  - (b) from a portable stall.
- (9) If they include such a permission, they may make the consent subject to conditions—
  - (a) as to where the holder of the street trading consent may trade by virtue of the permission; and
  - (b) as to the times between which or periods for which he may so trade.
- (10) A street trading consent may be granted for any period not exceeding 12 months but may be revoked at any time.
- (11) ...”

The Committee also had regard to the Applicant’s right to a fair hearing pursuant to the Human Rights Act 1998.

#### Individual circumstances

The Committee had regard to the information contained in the Licensing Officer’s Report dated 1 August 2016.

Ms Myers advised that separate to the process for obtaining a Street trading Consent, she has obtained agreement from the Council for use the land that she proposes to locate the catering van on, and for the provision of waste services. Ms Myers confirmed that she understood that the Council’s agreement in this respect is separate to the process of obtaining a Street Trading Consent, and the decisions in respect of each of those authorisations are made on distinct criteria.

Ms Myers said that she has spoken to a number of people who may potentially frequent her catering van if Street trading Consent is granted, and that she believes the location to be appropriate due to the lack of other available refreshment in the immediate vicinity, particularly given that the car park is located close to the Derwent Walk which is well used by walkers and cyclists who may not wish to deviate from their route in order to go into the centre of the village.

Ms Myers emphasised that she is cognisant of the rural location of the proposed site, and that she has decorated the catering van in order to ensure its appearance is befitting of the location.

Mr Gray confirmed that the Director of Public Health had objected to Ms Myers's application on the basis that it appeared from the information initially provided gave concern as to the nature of the proposed trading, which were raised with Ms Myers who subsequently provided inconsistent and incomplete information as the nature of her proposed activity changed. Mr Gray said that a meeting took place on 4 August 2016 to seek clarity as to what Ms Myers intended to sell and how she intended to promote the health and wellbeing objective. Mr Gray said that Ms Myers had agreed to price her food appropriately to avoid over-consumption, and as such would no longer provide the 'small' and 'monster' breakfast options set out in the initial menu.

Mr Gray said that following the discussions on 4 August 2016 the Director of Public Health came to the view that Ms Myers had considered how she could enable customers to make healthy choices, and the nutritional quality of the food she intends to serve, which would be targeted at people with healthy lifestyles. On that basis, Mr Gray advised that the Director of Public Health would be prepared to lift her objection subject to the understanding that if Ms Myers were minded to change her menu in such a way as to reduce the nutritional quality of the food, encourage over-consumption or reduce healthy choices, this would result in a review of the consent if granted.

The Licensing Officer confirmed that the issues raised by Councillor Caffrey regarding the suitability of the proposed location in terms of preserving or enhancing the character of the area remained a concern for the Committee's deliberation.

Ms Myers stated that the Council had agreed to provide an additional bin in the car park, and to carry out daily waste collections; and that she would collect any rubbish from the car park each evening and bag it up and place it next to the Council bin for collection.

Ms Myers stated that in the summer she may wish to place a small table and chairs next to the catering van for customer use. Mr Bradley, who is the Assistant Manager of Compliance and Monitoring in the Council's Development, Public Protection and Transport Strategy Service within the Communities & Environment Strategic Group, advised that this would be unlikely to require formal approval by the Council as the proposed land is not adopted highway.

Ms Myers advised that she would move the catering van every evening, and that it is presently being kept on a friend's drive but would in the future be kept at her son's nearby lock up.

Ms Myers stated that the time when the car park is usually at its busiest is when there are events at the nearby Gibside National Trust property.

The Members of the Committee determined to adjourn their decision to enable a site visit to take place, in order that they may gain a fuller appreciation of the nature of the proposed site and the potential impact that the proposed trading may have.

The Members of the Committee then made a visit to the site of the proposed street trading on 19 August 2016.

Ms Myers was in attendance and had positioned the proposed catering van on the verge where she intended to trade from, in order that Members could assess the site as it would be if consent was granted.

It was confirmed to Ms Myers that only those Members who were in attendance at the Committee hearing on 9 August 2016 and also at the site visit will take part in the decision making, as those Members have had opportunity to take account of all relevant information.

Gavin Milne who is the Council's Technical Supervisor for Waste Services, Grounds Maintenance and Fleet Management was in attendance to answer questions regarding the car park and waste management arrangements.

John Bradley, Rebecca Sparrow, Helen Conway and Tim Briton were also in attendance continuing on from the Committee hearing on 9 August 2016.

Ms Myers advised that she has obtained a number of signatures on a petition in support of the proposed street trading activity. Whilst Members were on site, a passing cyclist also stated that they were in support of the proposed trading.

Mr Milne advised that the Council has considered whether it would be appropriate to relocate a bin to the car park area if the proposed trading were approved; however there has been no agreement to provide additional bins at the Council's expense or to provide waste collection services in respect of the catering van, which would be a commercial service and would therefore require a contract with the Council or another service provider.

The Members of the Committee viewed the proposed site from the car park itself, and from Stirling Road and the Derwent Walk.

The Members also viewed the nearby premises that also offer refreshments, i.e. the sandwich shop, café, supermarket and chip shop on Station Road, and the park shop in Derwent Park.

The adjourned hearing then recommenced on 6 September 2016, when Ms Chilvers was in attendance to represent Ms Myers however Ms Myers was not herself in attendance.

It was reconfirmed that only those Members who had been in attendance at both hearings and at the site visit would take part in the determination; and all other Members of the Committee then left the room while the matter was determined.

Ms Chilvers provided a petition and invited the Members to take it into consideration as showing support for the proposed street trading. Members were advised that the petition comprised of six pages, four of which were headed –

‘Catering Trailer (Sterling Road Car Park) – We the undersigned are concerned citizens who urge our leaders to act now to allow Momas Kitchen catering trailer to trade from above car park’

Members were advised that those pages contained a total of 35 signatures dated between 13 and 22 August 2016, from individuals at 28 different addresses.



Members were advised that the petition document does not provide any detail on the nature of the proposed street trading, for instance the times when it would be open or the type of catering that would be provided from it; and that it was apparent that this information had either not been provided to or fully understood by at least one of the signatories who added the comment, "Could do with a cold ice cream"; however the Applicant has not sought permission to sell ice creams.

Members were advised that the other two pages of the petition had no heading, so it was unclear from the face of the documents what the intention of the signatories was.

Members were advised that in the circumstances, whilst weight could potentially be given to the 35 signatures, no weight should be attached to the signatures on the other two pages.

It was confirmed that the Director of Public Health's objection had been withdrawn so the question of whether the proposed street trading would adequately promote the objective of promoting health and wellbeing was no longer a consideration.

As such, the Committee considered whether the proposed street trading would adequately promote the preservation or enhancement of the character of the area.

The Committee determined that the car park is in a distinctly rural setting, being adjacent to and serving users of the Derwent Walk which is a footpath / cycleway/ bridle path following the track bed of the former Derwent Valley Railway. The Derwent Walk is notable for its lack of commercial activity, which the Committee considered to be part of the area's distinctive character. The Committee determined that granting this consent would adversely affect rather than enhance the rural and non-commercial character of the area.

The Committee also noted the availability of catering of a similar nature in the nearby village, and considered that granting the application could have a detrimental effect on the objective of animating the street scene, by reducing the footfall, dwell time, and spend in the village from walkers, cyclists, etc who currently deviate from the Derwent Walk into the village.

The Committee noted that their decision would be the same regardless of whether weight was attached to the petition produced by the Applicant, and in the circumstances did not find it necessary or appropriate to attach weight to it.

### **No right of appeal**

There is no statutory right of appeal under the provisions of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.

Gary Callum  
Licensing Officer  
Development, Public Protection & Transport Strategy  
8 September 2016