

Minute of Meeting of Licensing Committee

19th February, 2014

Application for the Variation of a Mobile Street Trading Licence

The Committee considered the undernoted report:

“1 Relevant Background Information

- 1.1 The Committee is reminded that, at the meeting on 18th September 2013, it considered an application by Mr Kevin McShane to vary his Mobile Street Trading Licensed route to include the additional area of the Falls.
- 1.2 The Committee, after hearing from the applicant and the objectors, agreed that they were minded to refuse the application submitted by Mr McShane for the variation of his Mobile Street Trading Licence, on the grounds that there are sufficient traders within the Falls area offering the goods in which he wishes to trade.
- 1.3 A copy of the minutes of the meeting on 18th September 2013 has been forwarded to Members.
- 1.4 Members are also reminded that, at your meeting of 11th December, 2013 you considered the written appeal by Mr Kevin McShane.
- 1.5 The Committee agreed to defer consideration of the matter to enable officers to obtain further information in relation to the issues which had been raised within the letter.
- 1.6 To enable the Council to regulate Licensed Mobile Street Traders, the traders apply for an area or areas of Belfast to trade in. Officers have used Electoral Wards and/or commonly referred to areas, such as housing estates, to try and define the area the trader is permitted to trade in.
- 1.7 On occasions this has been problematic; a trader may trade in an area covering two or more Electoral Wards. While on paper this may look as if they have a large area the trader will most likely only trade in a small area of those Wards. For example, when somebody refers to the Falls area it can encompass more than just the main Falls Road, which runs from Divis Street into Andersonstown and its immediate environs. Areas that can be included in the Falls area are Beechmount, Clonard and Falls Park Wards.
- 1.8 This application relates to the Falls area of Grosvenor Road, Springfield Road and Donegall Road which would include the Clonard Electoral Ward.

2 Key Issues

- 2.1 The Committee on a number of occasions have asked for advice when determining Mobile Street Trading Licences. In particular, Members have asked ‘what is the right number of traders for a particular area?’ To date this has been almost impossible to answer.**
- 2.2 Legal advice has been that the Council can apply criteria over and above what the Street Trading (NI) Act 2001 states, provided it is in keeping with the intention of the legislation. However, the Council cannot refuse an application on the basis that it would be detrimental to existing traders. Economic considerations of this type are not contained within the Street Trading (NI) Act 2001 and would undoubtedly be contrary to the European Services Directive and also to subsisting primary competition legislation, namely the Competition Act 1998.**
- 2.3 In order to determine this application the focus must be on whether the services already provided within the area are sufficient, not whether the granting of a further licence or licences would reduce the revenue stream of the existing licence holders or businesses within the area.**
- 2.4 To assist Committee in its deliberation, research was carried out in relation to each of the Electoral Wards and areas and the age groups of the usual residents. This data was taken from Northern Ireland Neighbourhood Information Service and the Northern Ireland Statistics and Research Agency using the Northern Ireland Census March 2011. An assumption was also made that the likely target age group for those buying from an ice cream van would be in the 0-16 year’s age groupings.**
- 2.5 The data produced a figure which would be the estimated size of target population for ice cream sales for the respective Wards and areas.**
- 2.6 This data was then divided by the number of ice cream vans licensed in the particular area to produce an individual trader’s estimated size of target population for ice cream sales. Each licensed trader was then given a figure to represent their total estimated size of target population for ice cream sales for all of their routes.**
- 2.7 These figures have been calculated for the traders Mr William O’Halloran, Mr Robert Morelli Jnr, Mr Robert Morelli Snr and Mr Angelo Morelli who all have made representation regarding Mr Kevin McShane’s application, along with a calculation for Mr McShane.**
- 2.8 The Census figures for the Falls area including Clonard bounded by Grosvenor Road, Springfield Road and Donegall Road which relates to this application shows a total resident population of 10,159 persons of which there are 2,184 persons aged 0-16 years.**

- 2.9 This gives the already licensed traders an estimated size of target population for ice cream sales of 546 persons (25%) each. If another trader is licensed this will result in the share becoming 436 persons (20%) for each trader.
- 2.10 Details showing the total estimated size of target population for ice cream sales for each trader across all of their routes has been circulated to Members. The figures in column A shows the estimated size of target population at the moment and column B shows their projected share if the variation of the Falls is included in Mr McShane's Licence.
- 2.11 In trying to address the issues in the letter of appeal, guidance is provided below to each point raised.
- 2.12 Point 1 – *The Falls Road is an area with a large population which is currently serviced by four licensed traders.*
- 2.13 Comment – this application relates to an area with a total resident population of 10,159 persons of which there are 2,184 persons aged 0-16 years. The already licensed traders then have an estimated target population for ice cream sales of 546 persons each. If another trader is licensed this will result in their share becoming 436 persons for each trader.
- 2.14 The lowest estimated target population for ice cream sales of all areas in Belfast is in Andersonstown, where there are 5 ice cream vans with an estimated target population of 151 persons.
- 2.15 Technically the highest estimated target population for ice cream sales is in the Legoniel Ward; with only one trader where there are 1493 persons aged 0-16 years. However the geographical size and population of the Ward does not give a true reflection of trading ability, as the area of trade is predominately the area bounded by Ballysillan, Cliftonville and Glencairn areas.
- 2.16 The Legoniel Ward population figure includes areas such as Wolf and Squires Hill and it is unlikely the trader trades as far out as these areas. As such the super output areas of Legoniel 2 and 3 was used which represents a truer trading area, there are 570 persons aged 0-16 years within this area.
- 2.17 Other areas with high target populations for ice cream sales are predominately in South and East Belfast.
- 2.18 The average target population for ice cream sales across all traders and routes in Belfast is 211 persons aged 0-16 years. The Falls area an estimated target population is higher than the average.
- 2.19 Point 2 - *Mr Morelli senior obtained the licence in August 2013 to trade in the public parks of West Belfast and therefore it would be difficult for him to provide an adequate service to the Falls area together with these public parks.*

- 2.20 Robert Morelli Snr has a tender with the Council's Parks and Leisure Department for 5 Parks out of a possible 12 Parks, the Parks are:
- Cavehill Adventurous Playground;
 - Dunville Park;
 - Falls Park;
 - Musgrave Park;
 - Waterworks Park.
- 2.21 The tender does not require Mr Morelli to personally trade; it allows him to employ another person to assist him.
- 2.22 Point 3 – *Given the size of the area and the population covered there is no evidence upon which the committee could properly conclude that four traders was a sufficient number for the Falls Road.*
- 2.23 Comment – see comment at Point 1 above.
- 2.24 Point 4 – The Committee failed to have adequate regard for the prohibition under European Law of anti-competition regulations and the need to ensure that no one business obtains dominance in a given market.
- 2.25 Comment – Committee had regard to legal advice that the Council can apply criteria over and above what the Street Trading Act states, provided it is in keeping with the intention of the legislation. However, the Council cannot restrict the number of traders on the basis that it would be detrimental to existing traders.
- 2.26 Committee considered that some of the objections received related to the grant of a further licence having a detrimental financial effect on existing businesses and following legal advice did not take into account those objections which referred to a detrimental financial effect on existing traders.
- 2.27 Point 5 – *The restricted number of licences that have been issued fails to meet the demand of the public for goods and services and this could lead to the proliferation of illegal ice cream vans.*
- 2.28 Comment – There was no evidence produced by Mr McShane or his solicitor to substantiate this allegation. There is no evidence of illegal ice cream vans operating in this area. The last complaint we had received regarding any illegal ice cream van operating in West or North Belfast was in July 2011, it was operating in the Glen Road area, the complainant was Mr McShane. The van was never found.
- 2.29 There are no statistics or other evidence, so far as officers are aware, which demonstrates that this area consumes more ice cream than any other area.

- 2.30 In determining this application, the Committee's focus was on whether the services already provided within the area were sufficient. There was no evidence submitted by the applicant to suggest that there was a need for an additional trader to service a demand not being met.
- 2.31 *Point 6 – Mr McShane has been a licensed trader for the past five years and his intention, if granted the variation on his licence, would be to employ more staff to cover the additional area. In the current economic climate the creation of any employment in area of deprivation such as west Belfast should be encouraged by the Council rather than discouraged.*
- 2.32 Comment – A variation to Mr McShane's licence may or may not create new employment. However, that has to be balanced against the other considerations/issues raised above; the objections and any other information which Members deem relevant.

3 Resource Implications

Financial

- 3.1 If the Committee grants a variation of licence, the Street Trading Licence fee remains the same. The applicant was charged an administration fee of £50.

Human Resources

- 3.2 None.

Asset and Other Implications

- 3.3 None.

4 Equality and Good Relations Considerations

- 4.1 There are no equality or good relations issues.

5 Recommendation

- 5.1 The Committee is requested to:

1. affirm its decision of 18th September 2013 and refuse Mr McShane's application, or
2. amend its decision of 18th September 2013."

The Head of Building Control outlined the work which had been undertaken by Council officers to assist the Committee in considering the application, including the issues which had been raised by the applicant within his letter of appeal. He pointed out that Mr. McShane's Mobile Street Trading Licence was due to expire in November, 2015, and he suggested that the Committee might wish, if it was now minded to grant the variation on the basis of the aforementioned information, to review at that time any issues which had arisen.

After discussion, it was

Moved by Councillor Ó Donnghaile,
Seconded by Councillor Attwood and

Resolved – That the Committee agrees, in its capacity as Licensing Authority, to rescind its decision of 18th September to refuse the application which had been submitted by Mr. McShane and, accordingly, agrees to grant the variation, with the arrangement being reviewed upon the expiry of the Licence.