

Committee: Licensing

Date: 12 October 2016

Wards: All

Subject: The designation of parts of the highway for the purposes of Street Trading

Lead officer: Paul Foster, Head of Regulatory Services.

Lead member: Councillor Nick Draper, Cabinet Member for Leisure and Culture

Contact officer: Barry Croft, Licensing Manager, Regulatory Services Partnership

Recommendations:

A. That the Committee designates all proposed areas.

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

1.1. This report relates to requests for the designation of licence streets and summarises comments received through a consultation process with interested parties.

2 DETAILS

2.1. The Licensing Team has received applications from traders interested in utilising the highway for the purposes of street trading.

2.2. This report concerns applications for 3 new licence street designations.

- 1) An area of 4.26m x 1.6m outside The Ivy Restaurant 75 High Street Wimbledon Village. 8am – 11pm Monday – Sunday inclusive.
- 2) An area of 3.05m x 0.8m outside Traders Antiques 17a High Street Wimbledon SW19 5DX. 11am – 5pm Thursday – Saturday inclusive.
- 3) An area of 6.6m x 1.8m opposite the Hand in Hand 6 Crooked Billet Wimbledon SW19 4RQ 10am – 11pm Monday – Sunday inclusive.

2.3. Plans and photographs of the proposed areas are included in Appendix B.

2.4. Street Trading is regulated by the London Local Authorities Act 1990 as amended.

2.5. All street trading is administered and regulated by the Council using this legislative framework. The London Local Authorities Act 1990 permits a street trading licence to be granted for “not less than six months and not more than three years”. There are two types of street trading licence granted in the Borough. A permanent licence that is valid for 1 year and a temporary licence valid from 1 day to 6 months to facilitate market trading and temporary events. It is unlawful to trade on the street without a valid street trading licence.

2.6. A one year Street Trading Licence can only be granted for areas designated as licence streets.

- 2.7. Merton licences specific locations (pitches) within a street rather than the street as a whole. The designation of specific locations on the street as opposed to the entire street gives greater control to the Council in regulating street trading and its impact on the environment. Street trading licences are renewable annually.
- 2.8. Comprehensive regulations and standard conditions are in place to facilitate regulation and enforcement of street trading in the Borough and provide a framework for all aspects of trade. These regulations are included for information as Appendix C.
- 2.9. Street trading licence fees for the year 2016-2017 are shown in Appendix E.

3 ALTERNATIVE OPTIONS

- 3.1 All designations shall be refused.
- 3.2 Designation areas can be reduced in size from application.
- 3.3 Temporary licences can be issued where there are specific concerns requiring further assessment.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. The consultation process and consultees are defined by the London Local Authorities Act 1990.
- 4.2. Notices were placed in the Local Guardian newspaper advising the public of the consultations and requesting comments. Copies of the notices is included in Appendix A.
- 4.3. Notices were attached to street furniture in the immediate vicinity of the proposed areas.
- 4.4. Electronic copies of the notices were also sent to ward councillors, residents associations and interested parties as part of a Licensing group notification email.
- 4.5. As part of the consultation process comments were invited from both external and internal agencies such as, LBM Traffic & Highways, LBM Planning and the Police.
- 4.6. **Ward Councillors Representations:** None
- 4.7. **Future Merton - Traffic and Highways:**
- 1) The Ivy - If a minimum 2 metres is maintained between any part of the designated area and the street furniture on the corner of High Street and Church Road, we would have no objection to the designation taking place. We would ask that there is strict management of the area to prevent overspill onto the footway.
- 2) Traders Antiques – We have concerns with the width of the footway as there is a bus stop directly outside. Consideration is given to the size of the proposed display if the designation is granted, being in keeping and physically smaller in size than other trading sites in the vicinity. We permit use of the footway but would ask it projects out no more than 0.8m and is adjacent to the window section of the shop and not the door area. Again strict management of the area will be necessary.

3) Hand in Hand – The secondary site proposed for the seating area is preferred to the original submitted. We do however have concerns regarding the placement of the seating in close proximity to the carriageway. We would request the erection of suitable barriers between the users of the space, the carriageway and the main pedestrian footway. There are several bollards in place in this area which should be used to denote the area available for seating. We would also ask there is careful management of the site with immediate steps to revoke any licence should there be failings on the part of the licence holder to maintain public safety.

4.8. **The Licensing Team comments –**

1) The Ivy 76 High Street Wimbledon. We feel there is sufficient space on the highway outside the property to allow the placement of the tables and chairs without causing undue inconvenience to the public and is in keeping with the licences in the area. The operator has been using the space under a Temporary licence for several months, with no complaints received. We have also received a management plan for the area (Appendix B 1.4). We note the concerns of our Highways colleagues and any breaches of the area can be dealt with under the licence conditions.

As there are no reasonable grounds for refusal, the officer recommendation is for the designation of this area to allow the issuing of a new street trading licence.

2) Trader Antiques – The pavement in front of the premises is consistent in size with other designated sites in the area aside from the presence of the bus stop. There is the possibility of causing inconvenience to pedestrians at peak times but it is felt the relatively small area would not unduly affect the users of the footway or bus stop. There are older and more established premises in close proximity which do benefit from designations in similar circumstances. As such a designation at this location would be in keeping with the area. The concerns of our highways colleagues are noted and complaints could be looked at under the licensing system.

3) The Hand in Hand - Following initial discussions with LBM Highways (4.7) and the Street Trading Officer, the applicant agreed to apply for the secondary area (**Appendix B 3.2**) for the seating. It was felt this location was better suited to a tables and chairs licence, would not inconvenience pedestrians and provide a clearer safer area for use by patrons.

The operators have been using the space under a temporary licence for several months and we have received no complaints regarding its usage. The area is busier at the end of the school day due to the presence of Kings College but we do not believe the designation will impact upon this significantly as it is on the opposite side of the road and there is no heavy use of the footway.

Use of the area would be monitored under the terms of a street trading licence. Therefore it is our recommendation to grant the designation.

5 **FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

- 5.1. The cost of placing notices in the local Guardian is accounted for in the licence application procedures in place.
- 5.2. Regulatory and enforcement costs will be met from within the street trading budget.
- 5.3. The collection of licence fees will assist the Councils ability to fund the necessary budget requirements for the provision of the service.

6 LEGAL AND STATUTORY IMPLICATIONS

- 6.1. Part III of the London Local Authorities Act 1990 (as amended), hereinafter in these implications referred to as the “Act”, regulates trading on the street and provides a statutory consultation framework.
- 6.2. Unless provided for in the Act, Section 23 states that it is unlawful for a person to engage in street trading in any licence street within a borough unless the person is authorised to do so by a street trading or a temporary licence.
- 6.3. Under section 21 of the Act, a street trading licence means a licence granted for no less than 6 months and no more than 3 years. Regulations made by the London Borough of Merton pursuant to section 27(3) of the Act prescribe that these types of licences are only granted for a year. Temporary licences are defined as licences granted for a single day or such period as may be specified in the licence not exceeding 6 months.
- 6.4. It would also be unlawful for street trading to take place if the street or part of the street that is being licensed for these purposes have not first been designated by resolution as a “licence street” pursuant to section 24 of the Act.
- 6.5. Section 24(4) to (8) of the Act prescribes the consultation process which has to be carried out before a resolution can be passed to designate a licence street and this process has been carried out by the Council. This includes the advertisement in a local newspaper, service of notice on the local Highway Authority, and receipt of the necessary consent from the local Highway Authority.
- 6.6. The officer recommendation in this report is for the Committee to grant all three designations. The Committee should decide to grant or refuse the designations after considering the officer recommendations, representations that have been made and all relevant facts before them.
- 6.7. The Committee would be expected to consider some of the following issues:
 - highway safety,
 - highways obstruction,
 - street furniture or bus stop safety,
 - volume of traffic,
 - access for emergency services,
 - over use of area,
 - risk of danger to pedestrians and other road users with the presence of a trading unit/stall,

- detriment or annoyance to residents from the proposed street trading.

- 6.8. Each application must be considered on its own merits and be reasonable. In making a balanced and reasonable decision, it should be considered whether an 'unsightly' pitch or a site with an issue involving enough 'space', is sufficient reason to refuse a designating resolution. A decision could reasonably be made to address those issues through the conditions of the licence e.g. the trading days and times permitted.
- 6.9. The Council is legally obliged to consider all applications and to only refuse on the grounds set out in the London Local Authorities Act 1990 (as amended).
- 6.10. It should be noted that many representations received during the consultation phase relate to the type of trading and not the designation of a licence street to which Committee is concerned.
- 6.11. Under Section 24 (9) of the Act, after the Borough Council have considered those representations, they may if they think fit, pass such a resolution relating to the street.
- 6.12. Under section 24(3) of the Act, if a Borough Council passes a designating resolution, the designating of the street takes effect on the day specified in the resolution. This date must not be before the expiration of the period of one month beginning with the day on which the resolution is passed.
- 6.13. Under section 24(10) of the Act, the Borough Council has to publish a notice of the passing of such a resolution in a local newspaper circulating in their area on two consecutive weeks. Under section 24(11) of the Act, the first publication shall not be later than 28 days before the day specified in the resolution for the coming into force of the designation.
- 6.14. The issuing of the street trading licence and associated conditions are to be taken by officers under delegated powers. The designation of licence streets has followed this process since the Act was enacted, with some sites previously designated under the Highways Act 1980.

7 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 7.1. It is important that the Council carefully considers all the representations made during the consultation process.

8 CRIME AND DISORDER IMPLICATIONS

- 8.1. Enforcement and advisory visits will be made regularly to the premises to ensure compliance with licence terms and conditions. The police are consulted on all applications for designations.

9 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 9.1. Failure to discharge its duties under the Act and make proper regulations to control street trading could damage the Council's reputation and expose it to the risk of judicial review.

10 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Appendix A – Public Consultation Notice
- Appendix B - Plans and photographs of proposed areas
- Appendix C – Street Trading Regulations
- Appendix D – London Local Authorities Act 1990 Section 24 – Designation of Licence Streets
- Appendix E – Street Trading Licence Fees
- Appendix F – Representations
- Appendix G – The Ivy Supporting Documents

11 BACKGROUND PAPERS

11.1. None.