

WAVERLEY BOROUGH COUNCIL

LICENSING COMMITTEE

1ST JUNE 2021

Title:

Application for Street Trading Consent – Milford Heath Road, Milford

Portfolio Holder: Cllr. Nick Palmer Portfolio Holder for Operational and Enforcement Services

Head of Service: Richard Homewood, Head of Environmental & Regulatory Services

Key decision: No

Access: Public

1. Purpose and summary

1.1 To determine an application for a licence to trade in a designated consent street.

2. Recommendation

2.1 The Licensing Committee reviews consultation feedback and determines the application of James Boyd of Vaporetto (a mobile food business offering pizza, drinks and ice cream) for a consent to trade at Milford Heath Road, Milford.

3. Reason for the recommendation

3.1 Under the Local Government Miscellaneous Provisions Act 1982, a street trading consent is required by any person wishing to sell goods on streets designated as a 'consent street'. On the 23rd April 2021 James Boyd of Vaporetto applied for street trading consent to trade at Milford Heath Road, Milford, six other locations were also applied for. Following consultation there have been some objections to the application for the Milford Heath Road location. Licensing Committee is required to determine the application in line with the Council's Street Trading Policy 2021.

Two other locations applied for have also received objections and are the subject of separate committee reports.

4. Background

4.1 The Act governing street trading within the Waverley area is the Local Government (Miscellaneous Provisions) Act 1982, Schedule 4. Further detail on

the legislation is provided in Annexe A. Streets can be designated prohibited streets or consent streets.

A 'Prohibited' street means a street in which street trading is prohibited

A 'Consent' street means a street in which street trading is prohibited unless the Council has given consent. This means that anyone who wishes to trade on a consent street (which includes a road, footway or other area to which the public have access without payment) must hold a street trading consent.

- 4.2 The current [Street Trading Policy](#) came into force on 5 April 2021, along with the Council's resolution to make all streets in Waverley consent streets other than designated [prohibited streets](#). There are some circumstances in which street trading consent will not be required, as detailed in the Policy and on the Council's website, [Will I need street trading consent – Frequently asked Questions](#).
- 4.3 The aim of the Policy is to prevent obstruction of streets, ensure public safety, recognise the importance of the local economy and community events, and prevent nuisance or annoyance to people within the area.
- 4.4 The Policy requires local stakeholders and the public to be consulted on an application, with a normal 28 day consultation period.
- 4.5 Paragraph 2.3 and 2.5 of the Policy details that in considering any application for the grant or renewal of a street trading consent the following issues will be taken into account before determination:

Public order

Whether the street trading activity or activities represent, or are likely to represent, a substantial risk to public order

Public nuisance

Whether the street trading activity or activities represent, or are likely to represent, a substantial risk of nuisance to the public from noise or misbehaviour. Particular regard to this will be had in respect of consents in predominantly residential areas and due regard will be had to the character of the neighbourhood.

Public safety

Whether the location of the street trading activity or activities represent, or are likely to represent, a substantial risk to the public from the point of view of obstruction, fire hazards, unhygienic conditions, danger that may occur when a trader is accessing the site, and overcrowding of the site/area. Overcrowding includes the capacity of the street trading area having regard to the potential maximum attendance on the site by the public, and the consequent risk of over congestion impacting adjacent roads to the site.

Needs of the area

The sufficiency of other trading outlets to serve the needs of an area will always be considered. A new consent is unlikely to be granted where it is considered that adequate like provision already exists. For special events falling under Schedule

2 of this policy (Community and similar events) the needs test may be exempted where appropriate.

- 4.6 Officers determine applications for street trading consent where there has been no relevant objections. If any relevant objections arise applications are referred to the Licensing Committee for determination as detailed in paragraph 2.1 of the Policy. A relevant objection is one made by a person, business or body that is likely to be directly affected by a successful application. In addition, the objection must not be vexatious or frivolous and should concern itself only with matters likely to be affected by a successful application. Note the Council is under no duty to grant consent to trade on a street that has been designated as a Consent Street. There is no right of appeal against the refusal of consent, or the application of conditions attached to a Consent, contained in the 1982 Act.
- 4.7 Street trading consents are normally issued for a set date or dates, or a period of one year, for specific locations and times when street trading can take place. All consents issued carry the Standard Consent Conditions detailed in the Street Trading Policy in order to promote public safety and avoid obstructions, nuisance and annoyance etc., and are shown in Annexe B. Other conditions may be attached to a Consent and will be relevant to the category of Consent issued and the nature of the local environment. The pool of typical conditions that can be added is detailed in the Street Trading Policy and are shown in Annexe C. A Consent may also attract conditions in addition to or instead of those found in the pool of conditions according to their individual merits.
- 4.8 On the 23rd April 2021 James Boyd of Vaporetto applied for street trading consent to trade in Milford Heath Road, Milford at the following times (application included as Annexe D also);

Wednesdays and Fridays 12.00-21.00 hours to sell pizza, drinks and ice cream.

A location map of the proposed site is attached as Annexe E. This is a proposed trading location for this business, the application is made as an alternative to the current trading location of Cherry Tree Road, Milford which has received a number objections to the application. The location requires consent for the business to trade here under the Council's updated Street Trading Policy 2021.

- 4.9 When an application for a street trading consent is received, the following stakeholders are consulted: the police, the fire authority, the highways authority, local ward councillors, local Chambers of Commerce, local Town/Parish Council, Portfolio Holder for Operational and Enforcement Services, and the Licensing Committee Chairman and Vice Chairman. They were emailed on the 23rd April 2021, along with The Head of Environmental and Regulatory Services, Environmental Health Manager (Environmental Protection) and Environmental Health Manager (Food and Safety) about the application. Additionally:
- At the start of the consultation period the applicant placed a notice of the application on a lamp post close to the trading location, advising people to contact Environmental Health if they had any concerns about the application.

- The public were also notified of the application via the Council's social media platforms on 12th May 2021.

The deadline for consultation responses was the 21st May 2021, 28 days after the start of the consultation period.

- 4.10 There have been 2 objections received to this application. These objections have been received from a Waverley Borough Council, Milford ward, Councillor and Witley Parish Council. Please see Annexe F for a copy of the responses (redacted as appropriate).
- 4.11 Representations raise concerns about Public Order, Public Safety and Public nuisance. A summary of the comments made are relating to;
- Potential fire risk due to overhanging trees
 - Littering
 - Potential Anti-Social Behaviour
- 4.12 Both respondents have suggested that a trial period consent could be a possible way forward, to ascertain if any problems arise in the local area due to the trader being located here. This would require the trader to apply to renew the consent before the end of the trial period, including submitting a full application with the required fee, and have another 28 day consultation in line with the Council's Street Trading Policy.
- 4.13 In addition to a street trading consent, mobile food businesses are required to have a minimum FSA Food Hygiene Rating Score of level 3 or above. Currently the business holds a 5 rating with East Hampshire District Council.
- 4.14 The Committee will be aware that operation of a stall between the hours of 23:00 and 05:00 hours to sell hot food and drink also requires a Premises licence under the Licensing Act 2003 ('late night refreshment'). Currently the trader does not trade during these times.
- 4.15 The Licensing Committee needs to consider feedback from the consultation and determine the application having regard to the matters that can be considered for the granting of a street trading consent as detailed in paragraph 4.5 above. There are three options for consideration:
- Option 1 – Grant a street trading consent as applied for
 - Option 2 – Grant a street trading consent but with conditions relating to hours or trading or goods allowed to be sold etc.
 - Option 3 – Refuse the application for a street trading consent.

Whichever option is determined by the committee will take immediate effect.

5. Relationship to the Corporate Strategy and Service Plan

- 5.1 Effective control of street trading will contribute to the strategic priorities of

supporting a strong local economy and improving the health and wellbeing of our residents and communities.

6. Implications of decision

6.1 Resource (Finance, procurement, staffing, IT)

If any consent is refused, under our policy, a full refund of the application fee for each refused location would need to be issued, this is currently £365 per location.

6.2 Risk management

The Street Trading consent area allows street traders with a consent, to trade, supplying goods and/or food on a regulated site approved by the Committee. This offers safeguards to the public who can recognise legitimate traders. It should help prevent the sale of illegal or unsafe goods or food. It also helps to prevent illegal obstruction of the highway. If street trading is not regulated it is likely to give rise to complaints about the adverse impact of street trading in some locations, potentially placing additional demands on the service.

6.3 Legal

6.3.1 Details of the process and legal procedures are set out within the body of the report in line with arrangements under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.

6.3.2 The Committee may grant an application (in part or full), apply any reasonable conditions, time restrictions, restrictions on the type of goods sold etc. The Council may also refuse the application.

6.3.3 The grounds for refusal are considered in Paragraph 7 of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.

6.4 Equality, diversity and inclusion

There are no direct equality, diversity or inclusion implications in this report. Equality impact assessments are carried out when necessary across the Council to ensure service delivery meets the requirements of the Public Sector Equality Duty under the Equality Act 2010.

6.5 Climate emergency declaration

Where consents are granted conditions can be added to a consent to prevent an impact on noise, odour and air pollution. Effective control of street trading activities will assist in mitigating their impact on the local environment and the community.

7. Consultation and engagement

7.1 Consultation undertaken is detailed within the body of the report.

8. Other options considered

8.1 Not applicable

9. Governance journey

9.1 Licensing Committee

Annexes:

Annexe A – Street Trading Legislation
Annexe B – Standard Consent Conditions
Annexe C - Pool of Conditions
Annexe D – Application by James Boyd of Vaporetto
Annexe E – Location map of proposed site
Annexe F – Consultation Responses

Background Papers

Street Trading Policy 2021

CONTACT OFFICER:

Name: Elizabeth Bance / Jeanette Guy
Position: Senior Environmental Health Officer / Environmental Health Manager
(Environmental Protection)
Telephone: 01483 523572/ 01483 523005
Email: elizabeth.bance@waverley.gov.uk / jeanette.guy@waverley.gov.uk

Agreed and signed off by:

Legal Services:

Head of Finance: date

Strategic Director: date

Portfolio Holder: date

Street Trading Legislation

The Act governing street trading within the Waverley area is the Local Government (Miscellaneous Provisions) Act 1982 (LG(MP)A 1982)

Street trading is defined as 'Selling or exposing or offering for sale of any articles (including a living thing) in a street' – para 1(1) of Schedule 4 of the Act. Street has an extended definition to include any road footway beach or other area to which the public have access without payment and a service area.

Certain activities are specifically excluded from the definition of street trading – by virtue of para 1(2) of Schedule 4, some of which are:

- Trading by a pedlar under a pedlar's certificate
- Trading by some news vendors
- Trading on a street adjoining a shop and as part of the business of the shop
- Trading at a petrol filling station

Paragraph 2 of Schedule 4 LG (MP)A 1982 states that a district council may by resolution designate any street in their district as—

- (a) a prohibited street; which means a street in which street trading is prohibited.
- (b) a licence street; which means a street in which street trading is prohibited without a licence granted by the district council.
- (c) a consent street; means a street in which street trading is prohibited without the consent of the district council.

Standard Consent Conditions

(to be used on all Consents issued)

1. 'Consent Street' means a street in which street trading is prohibited without a Consent from Waverley Borough Council
2. 'Prohibited Street' means a street in which street trading is prohibited at all times
3. 'Street' includes any road, footway, lay-by or other open area to which the public have access without payment
4. 'Street Trading' means (generally) the selling, or exposing or offering for sale, any article in a street
5. The trader shall not cause any obstruction of the street or any danger to any persons or vehicles using the street
6. The trader shall not cause any nuisance or annoyance to any other person, whether that person is using the street or otherwise, or to the occupier of any building in proximity to the consent site
7. Mobile food traders shall have a minimum FSA Food Hygiene Rating Score of level 3 or above.
8. The council may at any time vary the conditions of a street trading consent or revoke the consent at any time
9. Public liability insurance providing cover to a minimum amount of 5 million pounds must be in place for the consent site and a certificate of this must be produced on request of an officer of Waverley Borough Council. The person applying for street trading consent is responsible for providing this insurance, and applies to individual applicants (Schedule 1 event), or the organiser (Schedule 2 event).
10. An individual trader shall conspicuously display the council issued Consent at all times whilst trading; for special events, the Consent will be displayed in at least two conspicuous places – typically these shall be attached to the first and last stalls
11. The Consent holder must provide facilities for use by him/herself and customers to collect any waste, refuse or litter. The refuse storage must be of a substantial construction, waterproof and animal-proof. All must be removed from the trading location at the end of each day's trading and properly disposed of, or if the amount of waste and refuse warrants it, when the container is full – whichever is the sooner.
12. The Consent holder shall ensure that all adjacent areas (except the carriageway if open for vehicular use) to a distance of 10 metres be kept free of litter and refuse at all times whilst on site.

13. Authorised vehicles must be roadworthy, have current relevant documentation and internal and external appearance of vehicles &/or stalls shall be maintained in a clean, neat and tidy condition.
14. Any stall or vehicle used for street trading must be immediately removable at all times in the event of an emergency, or at any other time, be removed at the request of any officers of the emergency services or officer of the Council.
15. The name and address of the operator and other address at which the stall or authorised vehicle is normally kept or garaged must be conspicuously and legibly displayed upon it in a place where the public may readily view it.
16. No stall or vehicle shall remain situated for longer than one hour after the authorised trading time(s).
17. No Consent holder shall trade at his / her authorised location on dates when road closure directives are in place for special events otherwise than with the permission of the organisation applying for same.
18. The Consent is non-transferable.
19. Where a structure or vehicle is not removed at the end of trading, no additional permanent or semi-permanent additions or paving shall be erected or constructed adjacent to the structure or vehicle.
20. Failure to comply with any conditions attached to the Consent may result in the revocation of such consent.

Pool of Conditions

Conditions applicable to special Events / Markets, etc.

The Consent holder shall keep records of each stallholder present, to include the stall's site, name (and company name), address, vehicle registration and contact telephone number. This must be produced on the request of an officer from the Council

Other Conditions

There shall be no available means of attracting attention for the purposes of trading or any stands or signs away from the consent site

The consent holder must not permit the sale of offensive weapons including imitation firearms, firearms, airguns, swords and crossbows

The consent holder must not sell a knife to anyone under 18.

The Consent does not imply or give any other permission, consent, licence or authorisation to trade in any other products other than those granted on application or renewal

The trader shall not exhibit on the site any advertising signs, posters or such like except as may be approved by the Council

No animal shall be present on any stall or vehicle save assistance dogs in accordance with the Equality Act 2010

The trader is not permitted to hold any auction or like sale

The trader shall reimburse the Council's costs in repairing all damaged caused by the trader's occupation and use of the consent site

There shall be no discharge of wastewater or other liquid waste onto the consent site or surrounding areas

No form of amplified music shall be permitted

Application by James Boyd of Vaporetto



If you find the text in this form difficult to read we can supply it in a format better suited to your needs

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

APPLICATION FOR STREET TRADING CONSENT

To: Head of Environmental Health and Community Safety, Waverley Borough Council,
The Burys, Godalming, Surrey, GU7 1HR

I hereby make application under the provisions of section 3 and schedule 4 of the above Act for consent to sell or offer or expose for sale the articles stated below, in the open air within the area of Waverley Borough Council.

This application is for (please tick)	New Application	Yes	Renewal	
If a renewal application please provide the number on the current consent				
The type of consent being applied for (please tick)	Sole Trader	Yes	Special/Community Events	
If special/community events please state the number of stalls/traders to be present				

I submit the following particulars for consideration:

1.	Applicant Full name	James Boyd	Date of Birth	
2.	Trading as	Vaporetto		
3.	Home Address (inc. postcode) (for sole traders)			
4.	Address of organiser (if a community/special event)			
5.	Daytime telephone number			
6.	E-mail			
7.	Address where articles are stored (if applicable)			
8.	Proposed trading location/address*	1. Frensham Village Green, The Street, Frensham, GU10 3DT		

		2. Lower hale, Farnham, GU9 9RP 3. Borough Rd, Farncombe, GU7 2AB 4. Bell Rd, Haslemere, GU27 3DG 5. Portsmouth Rd, Hindhead, GU26 6AL 6. Cherry tree Rd, Milford 7. Milford Heath Rd, Milford
* For special/community event applications please provide the details of all of the traders separately as part of your application.		
9.	Type of vehicle(s) to be used	Renault master – [REDACTED] Peugeot Boxer – [REDACTED]
10.	Registration no. or identification mark	
11.	Full details of articles to be sold. Also include size of any receptacles to be used, e.g. baskets, kiosk, tables, etc.	We sell a range of pizzas, drinks, ice creams.
12.	Proposed times of trading (please include frequency, times of day, days per week, months of the year)	1. Sunday (12 – 20.30) 2. Friday and Saturday (12 – 21.00) 3. Monday (15 – 20.30) 4. Tuesday & Thursday (15 – 20.30) 5. Wednesday & Sunday (12 – 21.00) 6. Wednesday & Friday (12 – 21.00) 7. Wednesday & Friday (12 – 21.00)
13.	Insurance Company and Policy No.	[REDACTED]
14.	If a food business please provide the name of the local authority you are registered with	East Hampshire District Council

I enclose:

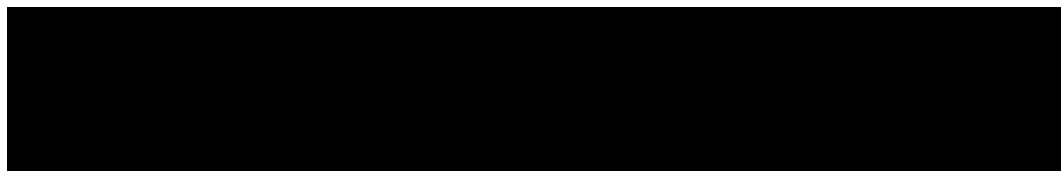
1. A passport style photograph of myself (sole traders only)
2. A plan/map image showing all locations that I have applied to trade in, which shows sufficient details to identify the location of the proposed site.
3. A copy of valid public liability insurance for trading/the event providing cover to a minimum amount of 5 million pounds. The person applying for street trading consent

is responsible for providing this insurance, individual applicants (sole traders), or the organiser (special/community events).

4. If a food trader(s)- a copy of correspondence showing that I am/they are registered with a local authority as a food business and/or have achieved a minimum FSA food hygiene rating score of level 3 or above.
5. Information on measures that will be put place to make sure trading is undertaken in a COVID-secure manner (sole traders only), or
An event management plan(s) detailing how the event(s) will be run safely and without causing nuisance to the area, as well as a completed COVID19 checklist(s) for the event(s) (special/community events only).
6. Confirmation that if trading from privately owned land that the land owner has given permission for me to trade/the event to go ahead there.

I confirm that:

- I will pay the required fee within 48hours of submitting this application. I am aware that failure to provide the required fee will result in my application not being processed.
- I am aware that the required fee is payable per trading site.
- I will display a notice at the proposed trading location(s) notifying local residents and businesses of my intention to trade there if a consent is granted. I will provide a photo of this being displayed at the location within 48hrs of submitting this application to environmentalhealth@waverley.gov.uk. (not required for itinerant street traders such as ice cream vans who do not trade from any specific locations)
- I am aware that if valid objections are received to my application, the application will need to be considered and determined by Waverley Borough Council's Licensing Sub-Committee. This may delay a street trading consent being granted.

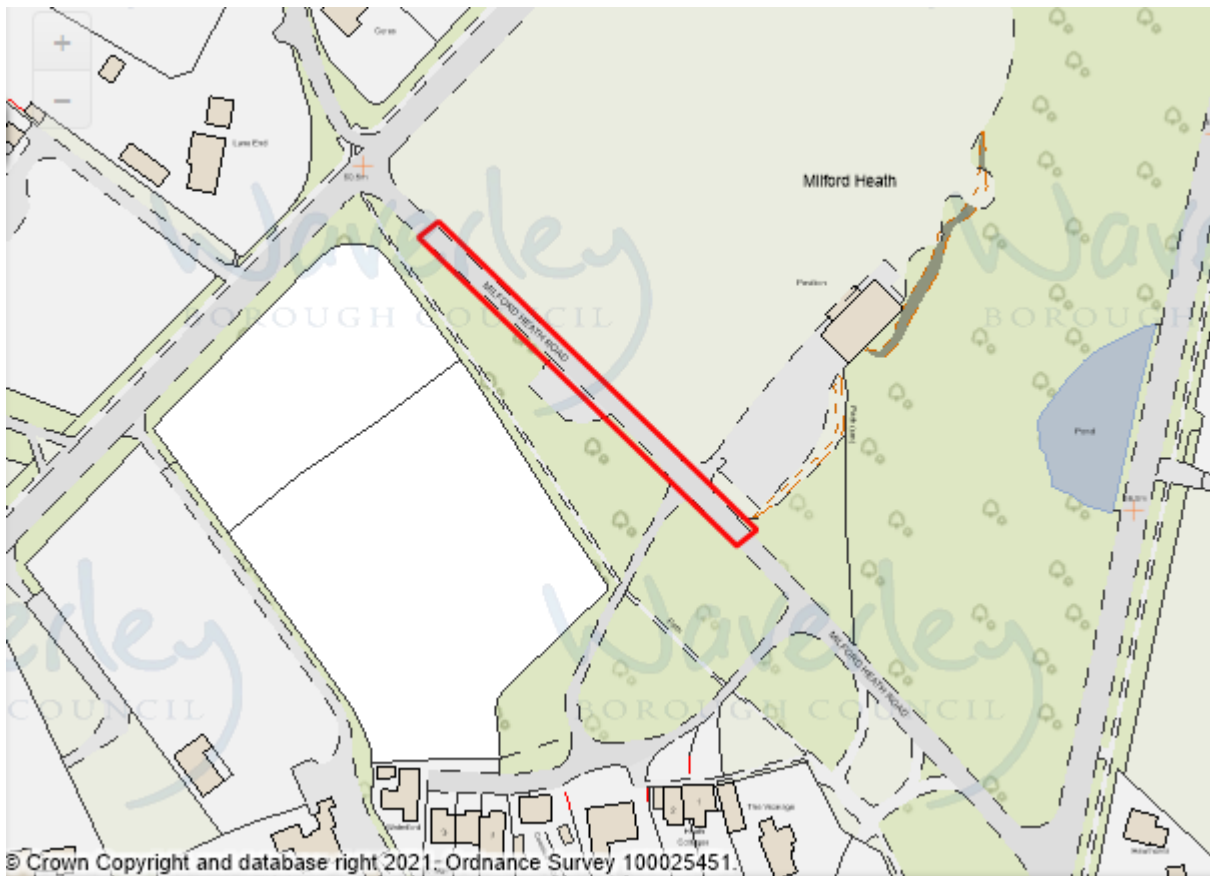


Notes:

Fees are reviewed annually and may be found on the Council's website or by contacting the Environmental Health Service.

Making a deliberately false statement in connection with any application is an offence punishable on summary conviction by fine of up to £400.

Location Map of Proposed Site



Consultation Responses

Please note these responses were received in relation to both applications made for Milford, any comments relating to the other site in Milford (Cherry Tree Road) have been removed.

**Response 1- Received 19th May 2021
Respondent: Witley Parish Council.**

**Response Type: Objection
Received via: email**

Milford Heath Road, Milford

Witley Parish Council has a number of concerns in relation to this location:

- Public safety: the lay by on Milford Heath Road is owned by the Parish Council. For reasons associated with fire risks (to trees) we would not agree to the applicant being located there, other than on the public highway.
- Potential risks to public order/public nuisance: unfortunately the area around Burton Pavilion does suffer from instances of criminal damage and anti-social behaviour. There is concern that by agreeing to place a street trader in the immediate vicinity could exacerbate the situation.
- Public hygiene: there is concern (based on the comment above) that not all customers would vacate the area immediately having purchased food. This could result in an increase in litter in the area, that would fall to Parish Council to deal with. If the application was granted but only on a trial basis we would request that the applicant supplies his own litter bins and be responsible for ensuring the area is cleared of litter on completion of daily trading.

Response 2- Received 19th May 2021
Respondent: Milford Ward Councillor, Maxine Gale.

Response Type: Objection
Received via: email

Vaporetto have also applied for a licence on Milford Heath Road and I have some reservations about this location.

If a licence were granted to trade on Milford Heath Road I think there would need to be conditions, if that is at all possible.

For instance the van must not operate anywhere where tree cover could be damaged by chimney, the van must not park in the Burton Pavilion Car Park or the small Lay-By as these are owned by Witley Parish Council and can be in constant use, the van must be sited on the highway and not on any grass areas. the vendor must supply their own bins and pick up all litter in the area before leaving the site at night, this would need to include clearing the football and cricket pitches if their customers have been sitting there eating. If the licence could be temporary I think it would be helpful as the location could be re-assessed after a couple of months, I am thinking that we experience vandalism and ASB around Milford Heath area and if this increased due to the vendor being there it could be necessary to move him on.