

WAVERLEY BOROUGH COUNCIL

LICENSING COMMITTEE

25TH JULY 2022

Title:

Application for Street Trading Consent – Vaporetto Ltd, Portsmouth Road, Milford.

Portfolio Holder: Cllr. Andy MacLeod, Portfolio Holder for Enforcement Operations and Brightwells

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 Vaporetto Ltd for a consent to trade at Portsmouth 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'. In May 2022 James Boyd, of Vaporetto Ltd, applied for street trading consent to trade at Portsmouth Road Milford (outside Tesco). Following consultation there have been some objections to the application. Licensing Committee is required to determine the application in line with the Council's Street Trading Policy 2021.

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 In May 2022, James Boyd of Vaporetto Ltd applied for street trading consent to trade at Portsmouth Road, Milford on the following days/times; Thursdays 3.30pm-9pm and Saturdays 12-9pm. (The original application, which does not include this location is included as Annexe D). They wish to sell pizza, garlic bread and soft drinks. A location map of the proposed site is attached as Annexe E.
- 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 27th May 2022, 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 advised they would place a notice of the application on a lamp post by the proposed 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.

The deadline for consultation responses was 24th June 2022, 28 days or more after the start of the consultation period as required by the Council's Street Trading Policy.

- 4.10 There have been six objections to the application, received from Witley Parish Council, a Waverley Borough Councillor and four local residents. No comments in support of the application have been received. Please see Annexe F for a copy of the responses (redacted as appropriate).
- 4.11 Representations raise concerns about the following matters;
- Public Nuisance; potential nuisance caused by smoke and odour and potential littering in the area.
 - Public Safety; road safety and pedestrian safety concerns
 - Needs of the area; that there is already sufficient local provision of food retailers/restaurants in the vicinity.
- 4.12 Although this is a new application for this location, Vaporetto Ltd have operated in Waverley Borough Council's area over the last few years, with Street Trading Consents for locations in the Borough. Vaporetto have previously traded in Cherry Tree Road, Milford prior to requiring a street trading consent for this location. An application to continue to trade at this location was refused at licensing sub committee on 1st June 2021 following 18 objections being received in relation to the application. However, a successful application was made for trading in Milford Heath Road, no complaints have been received about the trader at the Milford Heath Road trading location.
- 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. Vaporetto Ltd currently hold a 5 Food Hygiene Rating with their local authority, East Hampshire District Council. 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'). The premises is not applying to open after 23.00 hours.
- 4.14 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 grant or renewal 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.

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 £376 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 Vaporetto Ltd

Annexe E – Location map of proposed site

Annexe F – Consultation Responses

Background Papers

Street Trading Policy 2021

CONTACT OFFICER:

Name: Richard Homewood / Jeanette Guy

Position: Head of Environmental and Regulatory Services / Environmental Health
Manager (Environmental Protection)

Telephone: 01483 523411 / 01483 523005

Email: richard.homewood@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.

INFORMATIVE

21. Informative - The Consent holder is encouraged to use sustainable packaging and adopt an environmental friendly approach throughout the operation of the business to minimise the impact on the environment.

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 Vaporetto Ltd



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		Renewal	Tick
If a renewal application please provide the number on the current consent				
The type of consent being applied for (please tick)	Sole Trader	Ltd company	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		Date of Birth	
2.	Trading as	Vaporetto Ltd		
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. Bell Rd, Haslemere 2. Portsmouth Rd, Hindhead		

		3. Hale Rd, Farnham 4. Borough Rd, Godalming
* 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. If a sole trader please also give accurate dimensions of each vehicle (in metres)	Peugeot Boxer & Renault Master
10.	Registration no. or identification mark	SB13 MLE YN19 BFO
11.	Full details of articles to be sold. Also include size of any receptacles to be used, e.g. baskets, kiosk, tables, etc.	Selection of 10 pizzas and garlic bread as well as soft drinks.
12.	Proposed times of trading (please include frequency, times of day, days per week, months of the year)	1. Bell Rd (Tues & Thursday, 16.00 – 20.00) 2. Portsmouth Rd (Wednesday, 16 – 20.30) (Sunday, 12 – 20.30) 3. Hale Rd (Friday, Saturday & Sunday, 12 – 21.00) 4. Borough Rd (Wednesday & Friday, 16.00 – 21.00)
13.	Insurance Company and Policy No.	
14.	If a food business please provide the name of the local authority you are registered with	East Hampshire District council. 5 star at last food safety and hygiene inspection

I enclose:

1. A passport style photograph of myself (sole traders only)
2. Photographs showing the sides, back and front of each vehicle (sole traders only). If you are an existing trader please provide a photo of the vehicle(s) in the trading location.
3. 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.

4. 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).
5. 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.
6. An event management plan(s) (special/community events only) detailing how the event(s) will be run safely and without causing nuisance to the area. Please note:

The Government has published its [plan for living with COVID](#)

COVID is still present in the community. As the organiser of an event(s) you must take all reasonable steps to protect the safety of those working or attending the event. As such you are required to include COVID in your risk assessment under general Health & Safety requirements. HSE Guidance is available on how to assess COVID related risks and there is also a [risk assessment template](#).

You should continue to follow the guidance to keep yourself and others safe. [Working safely during coronavirus \(COVID-19\) - Guidance - GOV.UK \(www.gov.uk\)](#)

If you require any COVID advice, please do not hesitate to get in contact with Environmental Health on 01483 623393 or send an email to Environmentalhealth@waverley.gov.uk

7. 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.

Signed

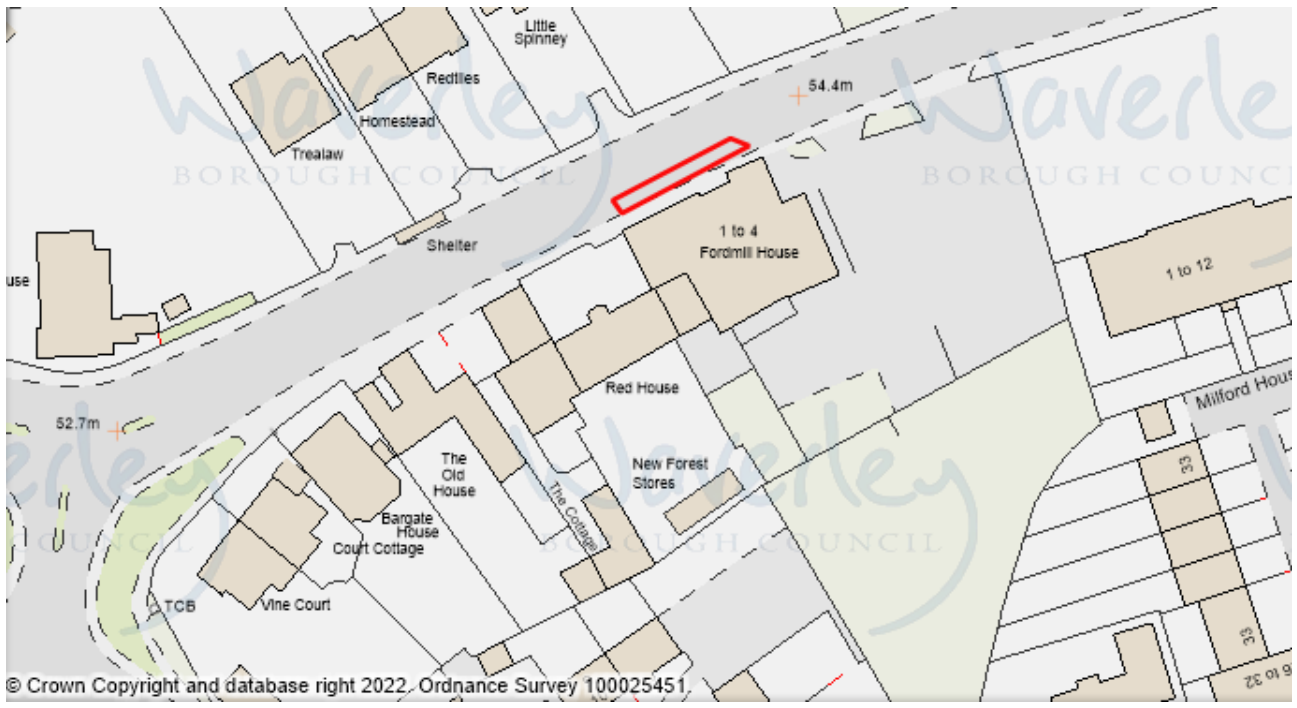
Print Name.....

Notes:

Fees are reviewed annually. They are published on the Council's website, or please contact Environmental Health. Making a deliberately false statement in connection with any application is an offence punishable on summary conviction by fine of up to £400.

February 2022

Location Map of Proposed Site



Consultation Responses

Response 1- Received 27th May 2022

Respondent: Waverley Borough Councillor.

Response Type: Objection

Received via: email

Good Morning Elizabeth,

I see my colleague [REDACTED] has already written to you about this location and I too will be objecting for a number of reasons and would welcome the opportunity to speak to the Licencing Committee or whoever when they consider this application.

For Information of those copied in, the reasons I see for refusal would be as follows:

1. The road outside Tesco Express is used for extra parking by people visiting the store.
2. From historical knowledge, we know that the chimney stack on this particular vehicle emits some fairly unpleasant smells and it would be under the windows of the apartments above the Tesco Express and in very close proximity to the neighbouring houses.
3. This operator already has a place on Milford Heath Road which has not - to my knowledge - caused any issues with the residents so two in one village I believe is not necessary for them to carry on their trade.
4. A large vehicle of this kind permanently parked for a number of hours on this section of road could cause disruption to the free flowing traffic to the mini roundabout.

Please let me know how I can make my comments known to the Committee and on line if there is an appropriate way to do that.

Best Wishes

Maxine

Cllr. Maxine Gale

Ward Councillor for Milford

Response 2- Received 3rd June 2022

Respondent: Member of the Public/Local Resident.

Response Type: Objection

Received via: email

Dear Sir/Madam,

I'm writing to state my objection to a vaporetto pizza oven being permitted to park outside Tesco's in Milford.

Trading in this location would be dangerous and a serious inconvenience to residents in the immediate vicinity.

Response 3- Received 6th June 2022

Respondent: Member of the Public/Local Resident.

Response Type: Objection

Received via: email

It has been brought to my attention that there is an application for a permit to have a Pizza Van Parked outside Tesco Express on Portsmouth Road, Milford. As you are aware this is a notoriously busy stretch of road with the entrance to the Refectory, Milford House, the Bus Stop and the Entrance to Tesco. This area leads up to the roundabout linking Portsmouth Road, Church Road and Station Lane and is always heavily congested. I also feel it is detrimental to Tesco, The Refectory, Eliza's, Squires and surrounding food outlets to have a Pizza Van parked in this location which would detract footfall from these establishments.

I urge Waverley to consider this application very carefully in view of the dangerous location.

Kindest regards

Response 4- Received 7th June 2022

Respondent: Member of the Public/Local Resident.

Response Type: Objection

Received via: email

I was disturbed to learn at second hand that a Pizza Van operator is seeking permission/licence to locate a Pizza Van outside Tesco Express on Portsmouth Road in Milford. I dont know if a precise location is proposed but without any other evidence have to assume it is to be on the south side of the road on the 50 m stretch between between the Tesco parking entrance and the Milford Halal Butchers and Grocers.

There is a considerable amount of "fly" parking on this section of road and users are already aware that exiting the Tesco car park can become a high risk event when large fly-parked vans and lorries obscure the sight-line to traffic exiting the Milford round-about onto the Portsmouth road heading to Godalming. The existing shambles will be worsened if a Pizza Van is permitted to operate there.

The section of road becomes particularly dangerous at night time, especially in wet weather. Pedestrians and cyclists heading for the pizza outlet will exacerbate the hazards in the area and will themselves also be at risk.

Yours Sincerely,

Response 5- Received 7th June 2022

Respondent: Member of the Public/Local Resident.

Response Type: Objection

Received via: email

We see that a planning application has been submitted for a pizza van to be parked outside Tesco Milford two evenings a week.

We live in [REDACTED]. The traffic has increased three fold since we moved here sixteen years ago.

Tesco is very busy the whole of it's opening hours. As well as being on a bus route delivery vehicles park outside and many selfish car drivers park in the road rather than go in the carpark. Quite often there are queues of vehicles queuing outside [REDACTED] as cars in Tesco carpark are trying to get out.

Many people locally including us complain to Tesco about the amount of litter left outside by selfish customers , usually youngsters, bottles, cans, sandwich wrappers etc. The bins supplied by Tesco not used..

We are sure a pizza van will encourage more cars,litter and plus cooking smells. This is a conservation area and street vendors should not be allowed particularly in the evening as it will increase traffic, litter and noise.

We request that Waverley carefully consider this application very carefully,

Sincerely,

Response 6- Received 10th June 2022

Respondent: Parish Council.

Response Type: Objection

Received via: email

Dear Environmental Health

The Parish Council object to the Street Trading Consent for Vaporetto (Milford) on the following grounds:

1. Chimney emissions of smoke and smells for the residents of the flats above Tescos.
2. Traffic hazard to cars accessing and leaving Tescos car park which is already dangerous as the road is very busy.
3. Pedestrian safety will be compromised on the narrow pavement as there is not space for queuing customers and pedestrians to pass.
4. Noise and nuisance to local residents late at night from people congregating in the evening.
5. Little room for a dustbin to collect associated waste.

The above reasons contravene conditions 5 and 6 of the WBC Steet Trading Policy 2021:

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 sit.

Kind regards

Witley Parish Council