

WAVERLEY BOROUGH COUNCIL

LICENSING COMMITTEE

DATE 24TH APRIL 2023 10AM

Title:

Application for Street Trading Consent – MILFORD & WITLEY LTD, Church Road, Milford, Godalming, GU8 5JA.

Portfolio Holder: Cllr. Andy MacLeod Portfolio Holder for Operational and Enforcement Services

Head of Service: Richard Homewood, Executive Head of 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 Milford and Witley Ltd for a consent to trade at Church Road, Milford, GU8 5JA.

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 3rd February 2023 Milford and Witley Ltd applied for street trading consent to trade in Church Street, Milford. This is a renewal application for an existing street trading consent. Following consultation there has been an objection to the application. The 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 have 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 3rd February 2023 Milford and Witley Ltd applied for street trading consent to trade at Church Road, Milford on the following days/times (application included as Annexe D);

- Monday to Sunday, 5pm-11pm

They wish to sell burgers, kebabs, chips and other similar takeaway food. 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 6th February 2023, 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:

- A notice advising on the application was placed on a lamp post by the proposed trading location by the applicant, 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 the 6th March 2023, 28 days after the start of the consultation period.

4.10 In response to the consultation, one objection from Surrey County Council Highways was received and three responses of 'no objection' from one of

Waverley Borough Council's Councillors for the area, Witley Parish Council and Surrey Fire and Rescue service. No other responses were received. Please see Annexe F for a copy of the responses (redacted as appropriate).

- 4.11 The representation from Surrey Highways is on public safety grounds. This representation raises concerns about the busy A road the kebab van is located next to, the bend in the road and roundabout near the kebab van's trading location and the use of the footpath by the trader. The Highways Officer raised the concern of potential damage to the footway, and any utility apparatus beneath it, due to the footpath construction not being suitable to take the weight of a vehicle.
- 4.12 Clarification has been sought from Surrey Highways in relation to the parking designation of this location. Currently there are no parking restrictions, but restrictions could be considered for the future. Parking should not be taking place on the footpath however; but this is a matter enforced by Surrey Police for "obstruction of the highway".
- 4.13 The proposed trading location has been used by the applicant for some time, since approximately 2019. Prior to trading at the Church Road location, the business traded in Milford Heath Road and the business has been registered with Waverley Borough Council as a food business since April 2014. During this time the following complaints/concerns have been raised with the Environmental Health department of Waverley Borough Council, no complaints have been received since they were issued their first street trading consent in 2022.

Date	Complaint/concern	Outcome
16 th November 2021	Concern raised with WBC by Police about the food van attracting ASB to the area	Advice given about Street trading policy and business given advice on how to apply for consent.
24 th December 2019	Concern about chewing gum around and in the vicinity of the kebab van	Visits conducted to the area and no direct link to the kebab van seen. Operator spoken to also.
17 th April 2014	Concern raised about a new burger/kebab van trading opposite the pavilion in Milford Heath Road and is not licensed to trade here	Advice given that this area did not fall under the street trading requirements in place at this time.

- 4.13 In addition to a street trading consent the street trading policy requires mobile food businesses to have a minimum FSA Food Hygiene Rating Score of level 3 or above. 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 trader is not seeking to trade past 11pm. The food

business has received a 5 food hygiene rating score from Waverley Borough Council, awarded on 17th November 2021.

- 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 Milford and Witley Ltd
Annexe E – Location map of proposed site
Annexe F – Consultation Responses

Background Papers

Street Trading Policy 2021

CONTACT OFFICER:

Name: Jeanette Guy / Holly Appleton
Position: Environmental Health Manager (Environmental Protection) / Senior
Environmental Health Officer
Telephone: 01483 523005 / 01483 523393
Email: jeanette.guy@waverley.gov.uk / holly.appleton@waverley.gov.uk

Agreed and signed off by:

Legal Services: date

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

1. 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.

The issuing of a street trading consent does not confer a right to use any street, highway or land. Applicants should satisfy themselves that all other necessary permissions for the activity of street trading (e.g. Landowner's permission, planning permission, Highways Authority consent) are in place where applicable.

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 Milford & Witley 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	<input type="checkbox"/>	Renewal	<input checked="" type="checkbox"/>
If a renewal application please provide the number on the current consent				
The type of consent being applied for (please tick)	Sole Trader	<input checked="" type="checkbox"/>	Special/Community Events	<input type="checkbox"/>
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	MEHMET AKF DENLİE	Date of Birth	[REDACTED]
2.	Trading as	MILFORD AND WITLEY LTD		
3.	Home Address (inc. postcode) (for sole traders)	[REDACTED]		
4.	Address of organiser (if a community/special event)	[REDACTED]		
5.	Daytime telephone number	[REDACTED]		
6.	E-mail	[REDACTED]		
7.	Address where articles are stored (if applicable)	[REDACTED]		
8.	Proposed trading location/address*	CHURCH ROAD 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. If a sole trader please also give accurate dimensions of each vehicle (in metres)	BURGER AND KEBAB VAN 2,2 X 6,4 METRES
10.	Registration no. or identification mark	PY 15 GTV
11.	Full details of articles to be sold. Also include size of any receptacles to be used, e.g. baskets, kiosk, tables, etc.	BURGERS, KEBABS, CHIPS DRINKS ETC.
12.	Proposed times of trading (please include frequency, times of day, days per week, months of the year)	MONDAY to SUNDAY 17:00 HOURS to 23:00 HOURS
13.	Insurance Company and Policy No.	
14.	If a food business please provide the name of the local authority you are registered with	WAVERLEY BOROUGH COUNCIL

Location Map of Proposed Site



Consultation Responses

Response 1- Received 6th February 2023

Respondent: Waverley Borough Council Local Councillor

Response Type: No Objection

Received via: email

Dear Elizabeth,

If this is the current operator, I have no problem with a renewal.

Kind Regards

Maxine

Cllr. Maxine Gale

Response 2- Received 7th February 2023
Respondent: Surrey County Council Highway

Response Type: Objection
Received [via](#): email

Hi Elizabeth,

Unfortunately, I cannot support this site for trading.

I appreciate that the unit has operated here for many years, however, this was never consulted on with Highways and it was always approved under the old system.

The reasons why I cannot support this site are:

The site is a very busy A [road](#) and the location is close to a bend. There are high volumes of traffic using the road each day. That site is close to a bend and a very busy roundabout.

We do not permit vehicles to park on footways **unless** they have been specifically converted for that use. This means that typically a footway is not constructed to take the weight of a vehicle in terms of strength and depth of materials. There is a high risk of damage to the footway and any utility apparatus that may be buried beneath the surface. For any new vehicle access for a private drive that is created on the network the access must be converted to carriageway standard construction to take the weight of a vehicle. If we did not do this the access would soon fall into disrepair causing a maintenance liability. The other issue is that it is an offence to drive on a footway [and also](#) to access a footway using a vehicle over a full height kerb unless a specially constructed access point with lowered kerbs has been created. This area has no vehicles [access](#) and the footway construction is standard which means it has not been properly strengthened to take the weight of one or more vehicles.

I appreciate that the trader is not going to like this decision however, this is the reason why the new system was created so that these types of inappropriate sites can be [stopped](#) and more suitable locations should then be found.



Kind regards

Highways Operations & Infrastructure
Surrey Highways & Transport

Response 3- Received 9th February 2023
Respondent: Surrey Fire and Rescue Service

Response Type: No Objection, General Comments
Received via: email

Correspondence from Surrey Fire & Rescue Service ref: CHURCH ROAD, MILFORD, GODALMING, GU8 5JA - WV014679

Dear Sir or Madam

In response to the above consultation your ref: STREET TRADING LICENCE

The Regulatory Reform (Fire Safety) Order 2005
Licensing Act 2003/Housing Act 2004

I can confirm that I have received a copy of an application for a Premises Licence/ HMO Licence/ Club Premises Licence/Variation of Licence/Minor Variation of Licence/Review of Licence/Transfer of Licence or Provisional Statement in respect of the above premises.

I would notify you that the Fire Authority has no objection to the application. However, the Regulatory Reform (Fire Safety) Order 2005 requires the responsible person to make a suitable and sufficient assessment of the risks from fire, to which relevant persons are exposed, and to remedy any findings of the assessment. The risk assessment should be conducted by a suitably competent person. Licensed Premises are required under the above legislation to document the Fire Safety arrangements and any significant findings resulting from the required risk assessment.

Fire risk assessments are an organised view of the activities of your premises regarding anything which could cause harm to persons. It allows you to consider whether you have taken adequate precautions or should do more to avoid harm. The fire risk assessment should give details of the following:-

- a. The Means of escape.
- b. Lighting and emergency lighting.
- c. Means of giving warning in case of fire or other emergency.
- d. Signs and instruction notices.
- e. Fire-fighting equipment.

Fire risk assessments in licensable premises should pay attention to the following:

- f. Permitted occupancy levels & adequate arrangements to ensure they are not exceeded. Guidance on how this can be done can be found in The Building Regulations 2010 as amended Fire Safety Approved Document B (current edition) and British Standard 9999:2008 Code of Practice for fire safety in the design, management and use of buildings and the relevant Department for Communities and Local Government guidance document. These can be found at the Government Services and Information website at: <https://www.gov.uk/workplace-fire-safety-your-responsibilities/fire-safety-advice-documents>
- g. Fire performance details of furnishings, curtains, fabrics and decorations etc.
- h. Staff training, drills and methods of their recording.
- i. Evidence of testing and maintenance of fire alarms, emergency lighting, fire-fighting equipment and general electrical systems.
- j. Arrangements for calling the fire service and access for emergency vehicles.

- k. The dimensions of the building boundary and any external walls and opening's.
- l. The access and egress points from the premises including escape routes.
- m. Identified areas for each licensable activity.
- n. Fixed structures including furniture & fittings, which may impact on the ability of persons to use the escape routes.
- o. Location and type of fire safety measures and fire-fighting equipment.
- p. The location of any raised stage, floor areas, steps, stairs, elevators or lifts.
- q. The location of any kitchens or areas of hot food preparation.

The applicant should be advised that current fire safety legislation requires an employer or other responsible person to carry out a regular review of their fire risk assessment and as a result of changes to the workplace, revise the fire safety arrangements to reduce any increased risk.

If you are looking to employ a fire safety specialist, it can be difficult to judge the competence of companies and persons who advertise their services as fire risk assessors. The fact that a person or company is operating in the fire sector or that someone has previous fire service experience, does not mean that they are a fire safety specialist.

There are a small number of fire risk assessor registration schemes in operation for persons and companies that carry out fire risk assessments:

- The Institution of Fire Engineers (www.ife.org.uk)
- Warrington Fire (www.warringtoncertification.com)
- The Institute of Fire Safety Managers (www.ifsm.org.uk)
- Fire Industry Association (www.fia.uk.com)
-

Surrey Fire and Rescue Service may audit the premises in the future as part of its risk based inspection programme. A full copy of the enforcement policy can be found on our website at: <https://www.gov.uk/workplace-fire-safety-your-responsibilities/fire-safety-advice-documents>.

Should you require any further advice or assistance please do not hesitate to contact the Protection Team at the above address or visit our website.

Kind regards

Fire Safety Admin
Surrey Fire & Rescue Service

Response 4- Received 21st February 2023
Respondent: Witley Parish Council

Response Type: No Objection
Received via: email

Dear Elizabeth

With regards to the below application please be advised that the Parish Council have no objection.

Kind regards
Assistant Clerk
Witley Parish Council