

**Civic Government (Scotland) Act 1982
Street Trader's Licence - Application – Newtonloan Toll**

Report by Director, Corporate Resources

1 Purpose of Report

The purpose of the report is to provide background information to enable the Committee to consider an application for a Street Trader's licence by Mr J Tod, 4 Eighth Street, Newtongrange, in respect of a static site at Newtonloan Toll, selling Fast Food.

2 Procedure for Considering Applications at Hearings

The Procedure for considering applications at Hearings is shown in a separate report.

The Police have made representations in respect of road safety at the proposed location. The Roads Services Consultant concurs with the comments that have been made. The comments were received after the 28 day period. The Committee can consider late representations if there is good reason. The reasons for the late submissions relate to the need for consultation between the Officers in the respective disciplines. At the commencement of the Hearing, the Committee should determine whether the representation should be considered.

The Police report and the Roads Services consultant's comments and a site plan are shown in **Appendices 1 and 2**.

3 Background

The conditions of licensing are shown in the **Appendix 3**. In relation to the restriction on the carrying on of the activity within 200 yards of a of any shop or business premises in which are sold goods or articles of the same description as those sold by the Licensee, the core business of the 'shop' involved is the sale of fuel oil; and in the past, such applications have been allowed.

4 Disposal of Applications for Licences

In disposing of an application for the grant of a licence the Committee may:-

- (a) grant the licence unconditionally;
- (b) grant the licence subject to conditions; or
- (c) refuse to grant the licence.

The grounds for refusal of applications of this kind are quite specific and include (a) the site not being suitable or convenient for the activity having regard to the location or condition of the site; (b) the nature and extent of the proposed activity; (c) kind of persons likely to be in or on the site; (d) the possibility of undue public nuisance; (e) public order or public safety considerations; or (f) other good reason.

If the Committee grant conditionally or refuse the application, the applicant has the right of appeal to the Sheriff. The Sheriff may uphold an appeal only if he considers that the Licensing Authority in arriving at their decision:-

- (a) erred in law;
- (b) based their decision on any incorrect material fact;
- (c) acted contrary to natural justice; or
- (d) exercised their discretion in an unreasonable manner.

There is no right of appeal against the Council's decision in relation to applications for Temporary Licences.

5 Report Implications

5.1 Resource

There are no resource implications.

5.2 Risk

The risk here relates to road safety.

5.3 Single Midlothian Plan and Business Transformation

Themes addressed in this report:

- ☒ Community safety
- ☒ Adult health, care and housing
- ☒ Getting it right for every Midlothian child
- ☒ Improving opportunities in Midlothian
- ☒ Sustainable growth
- ☐ Business transformation and Best Value
- ☐ None of the above

5.4 Impact on Performance and Outcomes

There is no impact on Performance and Outcomes.

5.5 Adopting a Preventative Approach

The representations relate to this topic

5.6 Involving Communities and Other Stakeholders

No other representations were received. Notice was posted at the site.

5.7 Ensuring Equalities

There is no impact on equalities.

5.8 Supporting Sustainable development

There is no impact on sustainable growth owing to the itinerant nature of the activity.

5.9 IT Issues

There are no IT issues.

6 Summary

An application has been submitted and requires to be considered. The representations were submitted late for the reasons described above.

7 Recommendations

It is recommended that:-

- (a) the Committee consider the late representations; and
- (b) determine the application.

25 March 2013

Report Contact:

Mr R G Attack Tel No 0131 271 3161
attackb@midlothian.gov.uk

Background Papers: Application for licence.

Director of Corporate Services,
Midlothian Council,
Midlothian House,
Buccleuch Street,
Dalkeith, Midlothian
EH22 1DN

E/LIC//4462/JL

6TH March 2013

Dear Sir,

**Civic Government (Scotland) Act 1982
Application for Street Trader's Licence**

I refer to the application by the under noted for a Street Trader's Licence.

Police enquiry reveals that nothing is known to the detriment of the applicant.

With regards to the location of his potential Fast Food Kiosk within the yard at "Tile Man" Auld Toll, Gorebridge it has the potential to cause traffic problems. The proposed site is directly opposite a fuel filling station with the access to the proposed site directly opposite egress from the service station. It is positioned on the A7 one of the main arterial routes between Edinburgh and the Scottish Borders and, as such, would benefit from a large volume of traffic in both directions. The entrance to the proposed site is also approximately 10 yards from traffic lights, which control the A7 at its junction with the B704. Although there appears to be adequate parking for cars within the site it is the reporting officers opinion that passing larger vehicles such as HGV's wishing to utilise the services of the proposed kiosk would park on the access pavement to the site causing zones of invisibility for traffic in both directions and causing an unnecessary hazard for traffic using the service station.

I would therefore object to the grant of a licence in the proposed location however do not object to the grant of a licence to the applicant in a more suitable location.

It should be noted the reply is out with the 21 day period for reply due to consultation with the Roads department of Midlothian council in relation to the application.

Jim Royan Chief Inspector, Local Area Commander, Midlothian

Lothian and Borders Police	Tel:	+44 (0)131 663 2855
Dalkeith Police Station	Fax:	+44 (0)131 654 5507
E Division Headquarters	Textphone:	+44 (0)131 311 3944
Newbattle Road, Dalkeith	Email:	enquiries@lbp.pnn.police.uk
Midlothian EH22 3AX	Web:	www.lbp.police.uk



Yours faithfully,

A large black rectangular box redacting the signature of the Divisional Licensing Officer.

Divisional Licensing Officer

Under Noted

John Tod
08/01/1958
4 Eighth Street
Newtongrange

APPENDIX 2

MEMORANDUM

To: Jane Lavin, Support Assistant, Council Secretariat,
Corporate Resources, Midlothian House

From: Ian Thomson, Senior Consultant, Corporate Resources,
Dundas Buildings

Our Ref: IT/LM/T/NW/GC/16

Your Ref: G.10.15

Date: 19 March 2012

Subject: CIVIC GOVERNMENT (SCOTLAND) ACT 1982
APPLICATION FOR STREET TRADERS LICENCE
JOHN TOD
SITE AT THE TILE MAN YARD, AULD TOLL, GOREBRIDGE



I refer to your memo dated 4 Feb 2013 regarding the above. I am unable to comment on the site for the trading vehicle as it is sited off the public road on private land. However, it assumed that the applicant has authorisation from the property owner to site at this location.

I would advise that the fuel filling station on the opposite site of the A7 (directly opposite) may sell snack and the like (but perhaps not fast foods?). As I understand as a condition of a traders licence the Licensee shall not occupy a stance within 200 yards of any shop or business premises in which are sold goods or articles of the same description as those sold by the Licensee. The trading vehicle would be within 200 yards of the filling station.

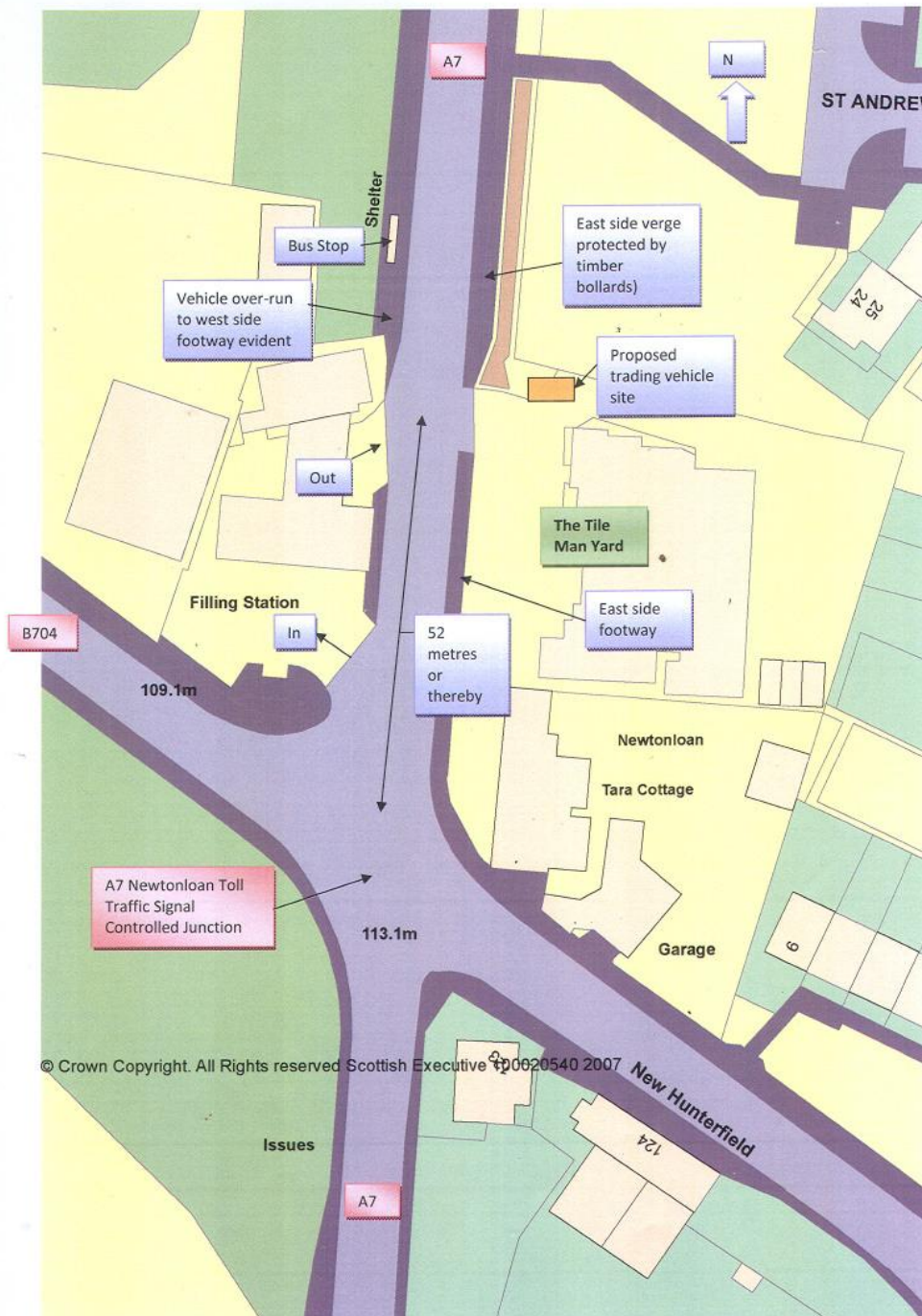
The proposed site is likely to attract a high volume of passing trade both A7 northbound and southbound traffic. Although there would appear to be ample parking within the curtilage of The Tile Man Yard which would be satisfactory for cars and small vans, the nature of this type of business throughout Midlothian attracts a regular volume of passing HGV traffic. This class of traffic would unlikely utilise the car park as this could result in manoeuvrability problems. Passing HGV traffic wishing to stop is more likely to mount the west side and east side footways. (The east side verge is protected by short length timber bollards). This could exacerbate damage to the west side footway which is already showing signs of deterioration owing to vehicle over-run and cause damage to the east side footway. Unnecessary damage places a burden on the road maintenance budget.

Additionally, the proposed trading location is located 52 metres or thereby from the A7 Newtonloan Toll traffic signal controlled junction. Short stop traffic on the A7 could impact on the safe operation of the junction and bus stop, blocking the sightlines for vehicles egressing from the filling station and give rise to road safety issue with drivers leaving and entering their vehicles when visiting the site.

Photographs are attached for clarity.

Road Services therefore do not support the application.

cc: Neil Dougall, Road Services Manager, Dundas Buildings, Bonnyrigg













MIDLOTHIAN COUNCIL

CIVIC GOVERNMENT (SCOTLAND) ACT 1982

STREET TRADER'S LICENCE CONDITIONS

1. This Licence is not transferable and any material change of circumstances affecting the holder of the Licence or the activity to which the Licence relates, shall be notified to Midlothian Council, Midlothian House, Buccleuch Street, Dalkeith, as soon as reasonably practicable after it has taken place.
2. The holder of the Licence shall not make, or cause to be made, or permit there to be made, any material change in the vehicle without the prior consent of the Council.
3. The Licensee shall not carry on business on any street so as to cause obstruction.
4. The Licensee shall carry on business subject to any directions which he may receive from the Police.
5. The Licensee shall collect and remove any paper, garbage or refuse which may be produced or may accumulate in the course of his business, and shall not place or deposit the same or allow the same to be placed or deposited or to fall on any street, footpath or footway.
6. **The licence holder shall, during business hours and at the end of each day, ensure the collection and removal of any paper, food wrapping, food, litter or refuse, containers and drinks containers on any pavement (or adjacent amenity area) around the stance within a distance of 25 yards either side.**
7. The Licensee shall not sell or offer or expose for sale, goods or articles of any objectionable or indecent character.
8. The Licensee shall not occupy a stance within 200 yards of any shop or business premises in which are sold goods or articles of the same description as those sold by the Licensee.
9. The Licensee shall never carry on his business in such a manner as to cause annoyance to the public.
- 10./

10. Street trading activities will not be permitted during the following hours:-
- | | |
|---|-------------------|
| Ice Cream | 10.30 p.m.-8 a.m. |
| Fish, Groceries and other associated articles | 7.00 p.m.-8 a.m. |
| Fish and Chip and other "fast foods" | 11.00 p.m.-8 a.m. |
11. A Street Trader shall not trade from any one location for more than twenty minutes and shall move at least one hundred yards away and shall not return to the previous location within twenty minutes. This shall not apply to traders who have the permission of the organisers to trade at local shows or events.
12. Where the licence allows the holder to sell from a stationary structure in any specified place in any street, the said structure shall be a form which can be speedily and easily removed and where such stalls are used for the sale of food they shall contain equipment for the proper cleaning and sterilising of all utensils and vessels used in connection therewith as shall be considered satisfactory by the Environmental Health Officer and shall comply at all times with any regulations made under Section 13 and 56 of the Food and Drugs (Scotland) Act 1956 (now Food Safety Act 1990). In the event of such a structure being located on a road, the consent of the Roads Services Manager, Dundas Buildings, Bonnyrigg shall be sought and granted before such location takes place.
13. Every Street Trader trading at a particular location for a period exceeding twenty minutes shall situate in the public place a litter bin or other receptacle for the deposit of paper, garbage or other refuse by customers.
14. (a) In relation to the Food Hygiene Regulations, the vehicles shall be inspected annually by the Environmental Health Officer and any proposed changes should be notified to the Council and a new Certificate of Compliance obtained by prior arrangement with the Food Safety Officer (Tel.No.0131 271 3549) and
(b) in relation to Wheeled Bin Cleaners, the vehicles shall be inspected annually by the Commercial Waste Officer (Tel No 0131 271 3346).
15. Where goods or articles are sold or which are offered for sale by any person engaged or employed in street trading are of a perishable nature, or are intended for human consumption, the licence holder shall not store such goods or articles in any place or vehicle until that place or vehicle has been approved by the Environmental Health Officer for that purpose.
16. Every Street Trader shall at all times when street trading keep himself and his clothing clean and keep and maintain any moveable structure, vehicle or receptacle used for the purpose of street trading in a clean and proper condition to the satisfaction of the Environmental Health Officer.
17. A Street Trader while trading must always wear conspicuously on his/her outer garment, the licence ID/photograph card, and bearing his/her name.
- 18./

18. A Street Trader shall not alter, erase or deface his/her licence or badge and shall, when reasonably required, produce it/them for examination.
19. The information contained in the application form to which the licence relates shall be of material effect, in relation to the operation of the licence, subject to the governing policies of the Council.
20. "Chimes" shall not be played:-
 - (a) before noon or after 7 p.m;
 - (b) so as to give reasonable cause for annoyance;
 - (c) for longer than 4 seconds at a time;
 - (d) more often than once every 3 minutes;
 - (e) when the vehicle is stationary;
 - (f) except on approach to a selling point;
 - (g) when in sight of another vehicle which is trading;
 - (h) when within 50 metres of schools (during school hours), hospitals and places of worship (on Sundays and other recognised days of worship);
 - (i) more often than once every 2 hours in the same length of street;
 - (j) louder than 80 db (A) at 7.5 metres; or
 - (k) as loudly in quiet areas or narrow streets as elsewhere.