

Licensing Sub-Committee of the Regulatory Committee

2.00pm, Monday, 17 May 2021

Application for Street Trader's Licence – Soul Water Sauna, Portobello Promenade

Item number

Report number

Executive/routine

Wards

Ward 17 – Portobello/Craigmillar

Council Commitments

N/A

Executive Summary

An application for a Street Trader's Licence for the operation of a mobile sauna at Portobello Promenade has been received.

There have been 73 public objections to the granting of the licence and there are additionally objections from relevant council services to the granting of the licence.

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Application for Street Trader's Licence – Soul Water Sauna, Portobello Promenade

1. Recommendations

- 1.1 The committee is asked to:
 - 1.1.1 note the recommendation that the application is refused from council officers on the following grounds:
 - 1.1.1.1 the licence applied for relates to an activity consisting of or including the use of premises or a vehicle or vessel, those premises are not or is not suitable or convenient for the conduct of the activity having regard to—
 - (a) the location of the premises
 - (b) the possibility of undue public nuisance; or
 - (c) public safety; or
 - (d) there is other good reason for refusing the application
 - 1.1.2 consider the public objections presented and any submissions made by those objectors at the hearing; and
 - 1.1.3 after hearing from the applicant or their representative, determine whether to grant or refuse the Street Trader's Licence application.

2. Background

- 2.1 Street trading is regulated by the Civic Government (Scotland) Act 1982 ('the 1982 Act'). The Council has chosen to adopt the requirement to obtain a licence and therefore a licence is required within the city of Edinburgh. This application (Appendix 1) is for a Street Trader's Licence.

3. Main report

- 3.1 This application resulted in objections from Council teams (Appendix 2). Roads Services object to the granting of the licence in that location as being unsuitable and presenting safety risks to users of the promenade. The Environmental Health Service has objected on the basis that the operation of the facility would be in

breach of the Control on Smoke Free Zones and has pointed out that the location is in close proximity to residential property nearby, and is likely to cause nuisance to occupiers within those buildings.

- 3.2 Separately there is the requirement of licence conditions to remove any vehicle or structure at the end of each trading day. The committee has previously allowed exemptions for some vehicles to remain in situ on roads and some temporary structures to be in place during the Festival. There are no known examples of a structure of this type being left in situ on a permanent basis. It is highly likely that the applicant will require separate planning permission. Finally, for completeness, public health rules would not permit this sauna to operate until the legal restrictions are eased.
- 3.3 The application attracted 73 objections from members of the public (Appendix 3a). The Committee will be required to additionally consider these.
- 3.4 The applicant has submitted responses to the objections and has provided submissions which were received in support of the application. These are shown at Appendix 4.
- 3.5 Members will be aware that the licensing system provides specific grounds of refusal, and alternatively the ability to attach reasonable conditions. The grounds of refusal are summarised below:
 - 3.5.1 A licensing authority shall refuse an application to grant or renew a licence if, in their opinion—
 - 3.5.2 The applicant is not a fit and proper person to be the holder of the licence;
 - 3.5.3 the activity to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such a licence if he made the application himself;
 - 3.5.4 where the licence applied for relates to an activity consisting of or including the use of premises or a vehicle or vessel, those premises are not or, as the case may be, that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to—
 - 3.5.4.1 the location, character or condition of the premises or the character or condition of the vehicle or vessel;
 - 3.5.4.2 the nature and extent of the proposed activity;
 - 3.5.4.3 the kind of persons likely to be in the premises, vehicle or vessel;
 - 3.5.4.4 the possibility of undue public nuisance; or
 - 3.5.4.5 public order or public safety; or
 - 3.5.4.6 there is other good reason for refusing the application;
- 3.6 The applicant and objectors have been invited to attend.

4. Measures of success

- 4.1 Not relevant, as decisions on individual licences have to be considered on their own merits.

5. Financial impact

- 5.1 The Council's scale of fees for licensing applications was approved with effect from 1 April 2018. The committee should note that the Licensing Refunds Policy will apply in this case, should the application be unsuccessful or be withdrawn.

6. Risk, policy, compliance and governance impact

- 6.1 The process outlined takes account of the relevant statutory provisions.
- 6.2 The applicant has a right of appeal against any decision made. The appeal lies to the Sheriff Court.

7. Equalities impact

- 7.1 There is no equalities impact arising from the contents of this report.

8. Sustainability impact

- 8.1 There is no environmental impact arising from the contents of this report.

9. Consultation and engagement

- 9.1 This application was subject to public consultation.

10. Background reading/external references

- 10.1 None

11. Appendices

- 11.1 Appendix 1 - Application for renewal of Street Trader's Licence
- 11.2 Appendix 2a – Objections received from Council teams
- 11.3 Appendix 2b – Applicant's responses to the Council teams
- 11.4 Appendix 3a – Objections received from members of the public

- 11.5 Appendix 3b – Applicant’s responses to public objections
- 11.6 Appendix 4 – Submissions in support of the application
- 11.7 Appendix 5 – Further relevant information provided by applicant