

LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)

Agenda Item 6

Brighton & Hove City Council

Subject:	Review of Street Trading		
Date of Meeting:	23 June 2011		
Report of:	Head of Planning and Public Protection		
Contact Officer:	Name:	Jean Cranford	Tel: 292550
	E-mail:	jean.cranford@brighton-hove.gov.uk	
Wards Affected:	All		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 Brighton & Hove City Council's street trading policy was revised following consultation and it was agreed by licensing committee on 26 November 2009.
- 1.2 Brighton & Hove has streets in which street trading is prohibited, it has areas where consent is granted for street trading (e.g. East Street) and there are 5 pitches for street trading in the city centre. The Seafront area including Grand Junction Road and Kings Road is designated a consent street but is outside the trading policy established by the Council and control of that area is the responsibility of the Seafront Office.
- 1.3 Since revision of the policy, officers have been asked to deal with street trading situations including parking obstructions in Controlled Parking Zones and obstruction in city centre; fly traders; difficulties in George Street with farmers' market, and parking dilemmas in Upper Gardner Street.
- 1.4 A summary of complaints relating to street trading has been compiled and can be found at appendix A. This should be read in conjunction with the notes of the meeting at Appendix B. A number of more 'informal' complaints have been received via Councillors.
- 1.5 Due to the number and complexity of complaints received recently, officers are not currently issuing any further street trading permits until members have had an opportunity to review policy.
- 1.6 A scoping meeting relating to Street Trading policy (the problems we are experiencing, evidence and solutions) was held on 21 March 2011 and minutes can be found at appendix B. Those involved concluded that there is a small but growing level of complaint about traders using

restricted parking spaces from which to trade. There are wider issues of complaint from local businesses about what they perceive as being unfair rules which means they cannot obtain parking permission, but that traders can ignore the rules which bind them. If the anecdotal evidence is correct, then this situation is likely to grow as more street traders apply for licences.

- 1.7 Officers from the council's Transport Operations teams have been consulted and their comments can be seen under item 4 (Consultation).
- 1.8 Officers have received comments from two street traders who operate in Zone B. These comments are all appended at appendix C.

2. RECOMMENDATIONS:

- 2.1 The Committee notes the current position: 18 zone B traders (consents allowing trading outside the city centre) have generated 70 complaints (45 directly relating to behaviour). 15 of these are to do with nuisance and obstruction.
- 2.2 That the committee considers whether it is necessary to take further action by way of instructing officers to consult with ward Councillors to identify any issues that have been unreported and refer back to the Committee at a later date or,
- 2.3 That the Committee confirms the current policy.
- 2.4 That the Committee adopts the suggested guidelines on the relevance of convictions in Appendix E.
- 2.5 That the Committee approves the further issue of street trading consents for zone B (outside the city centre)

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 Current Policy
Officers in Environmental Health and Licensing issue permits for street trading. Any appeals against officer's decisions are heard by the Licensing Committee (Non-Licensing Act 2003).
- 3.2 There are currently 5 designated pitches for street trading in the city centre (Castle Street, Clarence Square, Dean Street, Crown Street and Marlborough Street). All pitches are let and there is a waiting list for traders who would like to take over a pitch if one becomes vacant.
- 3.3 A street market is held each Saturday in Upper Gardener Street between the hours of 07.00 and 17.00. Occasional markets are held in Bartholomew Square and George Street Hove. New Road and Black Lion Street in Brighton are also authorised for street markets.

- 3.4 Street artists and hot chestnut sellers are permitted to operate in East Street, Duke Street, Bartholomew Square and Market Street.
- 3.5 There are designated areas (zone B) where traders can request a permit for street trading. These are the residential areas outside the city centre.
- 3.6 There are areas throughout the city in which street trading is prohibited. These areas are generally main thoroughfares or areas in the city centre and run from the western boundary of Brighton & Hove in Vale Road, Portslade, along Portland Road, Sackville Road, Church Road, Western Road, Montpelier Road, Chatham Place, Viaduct Street, Upper Lewes Road, then southwards down Lewes Road, Albion Street and Grand Parade before heading East along Edward Street, Eastern Road and finishing in Arundel Road. A street trading map is attached at appendix D.

Commentary on street trading policy

- 3.7 Historically, parks have remained undesignated to allow Leisure officers flexibility permitting outdoor events. The Seafront has been a consent street managed on a day to day basis by Seafront officers. Economic development members and officers have been considering corporate market policies and officers are working to ensure corporate market policies and street trading policy work in harmony.

- 3.8 For members assistance:

Street trading is selling articles on the street, including exposing or offering articles for sale. It does not include provision of services, like henna tattooing, hair braiding, tarot reading etc.

The following activities are not subject to street trading controls:

- Pedlars, with a pedlar's certificate issued by the Police under the Pedlars Act 1871. These are itinerant traders.
- Markets covered by enactment or order (ancient – none in Brighton & Hove)
- Trunk road picnic areas (none in Brighton & Hove)
- News vending
- Trading at petrol filling station
- Trading on the street adjoining a shop as part of the business of the shop
- Selling things on a round like milk doorstep delivery
- Objects on a highway licensed under highways legislation, like tables and chairs or A boards
- Recreation or refreshment facilities licensed under highways legislation
- Charitable street collections which are subject to separate permissions

Controls only apply to the street or other public places.

- 3.9 It is recommended that the Committee adopts the suggested guidelines on the relevance of convictions in Appendix E.
- 3.10 Officers have had issues recently where street trading applicants have been reluctant to give sufficient information for essential licensing checks to be carried out. Information is requested so that a Police National Computer (PNC) check can be carried out on each stallholder. From this check we gather information on whether someone has any relevant criminal convictions which would be a relevant licensing and public protection consideration in regulating trading on a market/stall licensed by the Local Authority. When issuing trading consents the licensing authority should be satisfied that public safety is ensured. Street traders are not accountable to their customers in the same way that shopkeepers are, as they are transient.
- 3.11 The guidelines in Appendix E will apply to the Applicant and anyone trading with them. Applicants will be required to declare any unspent convictions on their application form.

4. CONSULTATION

- 4.1 Officers have already consulted all existing street traders and their responses can be found below at appendix C.
- 4.2 Before introducing a controlled parking zone (CPZ) the council should consult with all residents in the area. Results of the consultation are provided to Cabinet for review and agreement to proceed with implementation, if a majority of respondents are in favour of the scheme.
- 4.3 Resident permits are in huge demand particularly in central Brighton due to population density and limited on street parking. As such there are waiting lists for permits in most central Brighton parking zones of up to one year.
- 4.4 There are already waiting lists for residents in 9 out of the 14 parking zones and therefore insufficient capacity to allow traders to park in the controlled parking zones (zone B).
- 4.5 Parking on verges is a general issue rather than one where the council has had complaints about street traders specifically. However, we need to ensure that traders are not displaced from the carriageway or pavement onto verges. This is not an issue for Zone A. A condition could be amended to read "Zone B: the trader shall not trade from or sell, expose or offer for sale any articles from carriageway **or verge** within a controlled parking zone subject to parking restrictions including residents and pay and display bays".
- 4.6 If the committee decide that street trading should be reviewed, a full and measured consultation should involve residents (via the council's website), residents associations and Community Associations including

the North Laine Community Association, businesses (including individual street traders) in Brighton & Hove, Police and Highway Authority, Economic Development and Regeneration regarding the corporate markets policy, Tourism, Events Office, Seafront Office (including Seafront Trader Association), Trading Standards, City Clean, Legal, Finance, Ward Councillors, City Centre and Hove Business Fora, Trader Associations including North Laine Traders Association, Upper Gardener Street Traders Association, Brighton & Hove Albion Football Club, and the Education Authority (Children's Trust).

- 4.7 The regulation of street trading by consents covers infrequent, itinerant trading. There is no right of appeal against refusal and so it is vital that licensing authorities behave in a fair and reasonable manner. An established street trader would have a reasonable expectation that his/her consent would continue. Street trading consent regulations' primary purpose is to prevent obstruction of the street or danger to persons using it, or nuisance or annoyance to people using the street or otherwise.
- 4.8 The department promotes diet, health and local food issues including engagement with school children by its healthy awards scheme recently launched. Using street trading regulations to promote healthy food, although appealing, may not be proper use of the regulatory controls.

5. FINANCIAL & OTHER IMPLICATIONS:

- 5.1 Financial Implications:
Revenue: Street Trading fees are set at a level that officers reasonably believe will cover the costs of administering the service. Any costs associated with the Street Trading Policy will be met within existing Licensing budgets. Fees are set as part of the annual Council budget setting process.
Capital: There are no capital implications.
Finance Officer Consulted: Karen Brookshaw Date:
- 5.2 Legal Implications:
Section 3 of the Local Government (Miscellaneous Provisions) Act 1982 enables a district council in England and Wales to adopt a code for the regulation and control of street trading within its area. Certain types of trading are excluded from the definition of street trading and these traders are not required to obtain a licence or consent to trade on a licence or a consent street. Similarly, a trader falling within the exclusions may trade in a street designated as a prohibited street.
Lawyer Consulted: Rebecca Sidell Date:
- 5.3 Equalities Implications:
Diversity is valued and strong, safe communities are vital to future prosperity.

- 5.4 Sustainability Implications:
Some street trading supports recycling of goods. Farmers markets may reduce "food miles".
- 5.5 Crime & Disorder Implications:
Transparent, proportional street trading controls minimise danger of obstruction and nuisance. Street trading can be a source of stolen or counterfeit goods.
- 5.6 Risk and Opportunity Management Implications:
Street trading is a crucial business and employment opportunity and unnecessary regulation might lead to legal challenge.
- 5.7 Corporate / Citywide Implications:
Street trading represents some traditional, historic heritage

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SUPPORTING DOCUMENTATION

Appendices:

- Appendix A – Street trading complaints
- Appendix B – Minutes of meeting re street trading
- Appendix C – Responses from existing street traders
- Appendix D – Current street trading zone map
- Appendix E – Guidelines on the Relevance of Convictions

Documents In Members' Rooms:

None

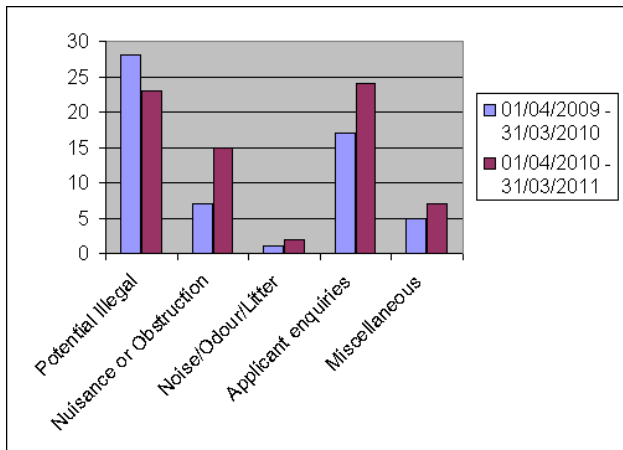
Background Documents:

None

Appendix A

Street Trading Service Requests 2009 - 2011

Potential Illegal	Nuisance or Obstruction	Noise/Odour/Litter	Applicant enquiries	Miscellaneous
28	7	1	17	5
23	15	2	24	7



MINUTES OF STREET TRADING MEETING MONDAY, 21ST MARCH 2011 – 9.15 AM

Attending:- Jim Whitelegg (JW), Debbie Cowley (DC), Becky Keely, (BK), Sarah Cornell (SC); Tim Nichols (TN); Sarah-Jane McNaught (S-JMcN); Paul Nicholls (PN); Simon Court (S CT); Jean Cranford (JC)

SCT (Simon Court) opened the meeting. Fears were raised as we have been inundated (comparatively) with street trading licences, with the prospect of many more to come if anecdotal evidence is accurate. This presents a problem for the future. This is a scoping meeting relating to Street Trading policy – the problems we are experiencing, evidence and solutions.

The number of street traders has increased in Zone B from 7 in April 2010 to 18 currently, plus ice cream sellers (Seafront Office). There has been an increase of 100% in licences over the City and a potential 100% further increase.

Last year complaints covering Zones A and B amounted to approximately 70:- 10 miscellaneous; 4 noise and litter; 6 obstruction to shops; 22 illegal street traders (trading without a licence); 12 parking obstructions; 2 fees. This is up from 55 the previous year – so a 50% increase. There may be other complaints from other teams – Highways asked for information so they can cross reference with their own complaints. There are significant concerns that complaints will increase. This especially seems to be the case when it comes to parking – this has been the source of several recent complaints. If you take out the miscellaneous and illegal trading it is the single largest complaints area.

Of the complaints this is one area where policy could have an impact (as opposed to e.g. litter or illegal trading – which is not part of the policy or can prosecute respectively).

Given the cost of a parking permit it seems unfair that traders should be advantaged over and above residents.

JC to send a courtesy email to the Seafront Office telling them about this meeting.

Legislation/policy relates to consent streets, prohibited streets and occasional markets – this relates to Zones A and B.

We consult Highways Authority re each application and if no response, explicit consent given which overrides policy considerations. Non-motorised vehicle (trailer) can be removed.

Consent says that trader must remove trailer at the end of day (Conditions B) e.g. trader parking in a pay and display bay in John Street.

PN consults before imposing policy restrictions etc. so background information already to hand. It was mentioned that residents have to wait up to a year for a Parking Permit. SC stated that it was quite appropriate for us to use this as our residents consultation – the system is that consultation takes place with residents before imposition of a DPZ. So if the residents want it then clearly they want parking restricted as a local issue. It follows that they would not want those parking spaces taken up by those without permits.

So we have a reasonable understanding of what local residents want.

TN email dated 7th March 2011 (page 3 of 4) giving 23rd June 2011 as committee date. Suggested wording:-

Zone B: the trader shall not trade from or sell, expose or offer for sale any articles from carriageway within a controlled parking zone subject to parking restrictions including residents and pay and display bays. SCT suggested adding shall not obstruct the highway or footway in any way that prevents the free movement of vehicles and pedestrians. Also on to both a provision saying save for exceptional circumstances so as to deal with things like street parties.

Zone A: the trader's operation including waiting customers shall not obstruct the highway or footway in any way that prevents the free movement of vehicles and pedestrians.

SCT agrees – should write to existing 18 traders – this is what is considered, plans would be that any new traders would have new conditions, existing traders would have existing rights to last at least 12 months then the new conditions would come into place. This will allow them to make representations . If a draft letter can be drawn up SCT to come up with exact wording.

Zone A Crown Street page 3 of 4 Tim's email – SCT could add “not to obstruct payments”. No catering on Crown Street in invitation letter.

DC to issue a list of street traders in Zone A (on double yellow lines).

Considering Zone A traders – recommendation consent street or not?

Applications – picture required of vehicle. This to assist in assessing impact on public safety and nuisance and so that words of advice can be given where problem is identified and refusal where problem is insurmountable – example of burger van by Primark discussed – situation where because of

configuration of van could only trade in to road, causing traffic problems and putting road users at risk.

Revoke or illegal street trading offence – 3 warnings then revoke/review enforcement action for leaving all night.

- 1) Photo. Letter advice.
- 2) Photo. Letter warning.
- 3) Photo. Revoke/Review.

To clarify the 7 points raised in SCT's email dated 8th March 2011:

- 1) 23rd June 2011 Committee Hearing.
- 2) Consult Zone B Traders.
- 3-4) Not doing these – instead use Parking justifications – residents permits.
- 5) Continue to monitor complaints.
- 6) Agreed.
- 7) Agreed – Zones A and B proposed conditions.

Email Paul Nicholls of any parking complaints.

Meeting closed at 10.15 am

Responses from existing street traders

~~xxxx xxxxxx~~

TO SARAH JANE 4-5-2011
McNaught

TO WHOM THIS MAY CONCERN

I MR JAMIE ENGLISH RECEIVED YOUR LETTER ABOUT RESTRICTING TRADING FROM CONTROLLED PARKING ZONES. I HAVE JUST STARTED MY BUSINESS AND YOU (THE COUNCIL) GAVE ME PERMISSION TO PARK IN A PARKING ZONE IN JOHN STREET BRIGHTON. IF YOU STOP THIS THEN MY BUSINESS WOULD BE FINISHED. I DON'T HAVE ANY JOB SKILLS SO IT'S VERY HARD FOR ME TO FIND WORK THIS HAS BEEN MY FIRST JOB FOR 3 YEARS NOW. AND I HAD TO BORROW MONEY FROM MY WIFE'S FAMILY JUST TO START UP THIS BUSINESS. AND I CAN SEE MY LIFE GETTING BETTER. AND YOU WANT TO TAKE THIS AWAY FROM ME. IN YOUR LETTER YOU SAY THAT THERE IS NOT MANY PARKING SPACES IN BRIGHTON BUT IN THE ZONE B TRADING ALL OF THE ROAD ARE PARKING BAY OR YELLOW LINE SO WHAT CAN WE DO. I WOULD SAY THAT WHAT YOU ARE PLANNING TO DO IS JUST NOT FAIR.

yours Sincerely
MR J ENGLISH

BRIGHTON & HOVE CITY COUNCIL

Brighton & Hove City Council
- 5 MAY 2011

09 MAY 2011 DIRECT, BRIGHTON

Health, Safety & Licencing

Sarah McNaught

From: Paul Mcknight [paul.mcknight@blueyonder.co.uk]

Sent: 09 May 2011 22:42

To: Sarah McNaught

Subject: Street Trading, your ref SJM/JC

Dear Sarah McNaught

I am writing in response to your letter 19.04.11 concerning the parking bays in the zone B area.

Firstly could I ask where all of these potential Controlled Parking Zones are.

My concern at the moment would be if you continue to issue more and more street trader ice cream van licenses, while imposing more restrictions on the zone B area, this will cause a smaller trading area, covered by increased numbers of ice creams vans, leading to several vans vying for the same trade on the same streets every day. With the possibility of the council having to deal with more complaints because of the increase number of Ice Cream vans and their chimes.

For the last six years as a licensed ice cream business in Brighton, abiding by all the rules and regulations. I believe the current problem has been caused partly by your lack of support and your continued failure to stop the unlicensed traders going to the Parks and sitting there all day or pulling up on the seafront for an hour or so and then disappearing. This not only effects the surrounding café's and shops, but reflects badly on License Ice Cream Vans and I feel we get tainted with the same brush.

I believe that the current level of licensed vans is correct for the zone B area. However due to the current increased number of unlicensed vans there is now an unacceptable cover in the Zone B area and this is having an adverse effect on the local community as parents are put under pressure to buy from both Vans and it can often be the Licensed van attending his round at the usual time that loses out.

I feel that by addressing this problem, will you be addressing that of Supermarket delivery drivers, who use the parking bays constantly or actually block the streets in order to make their deliveries.

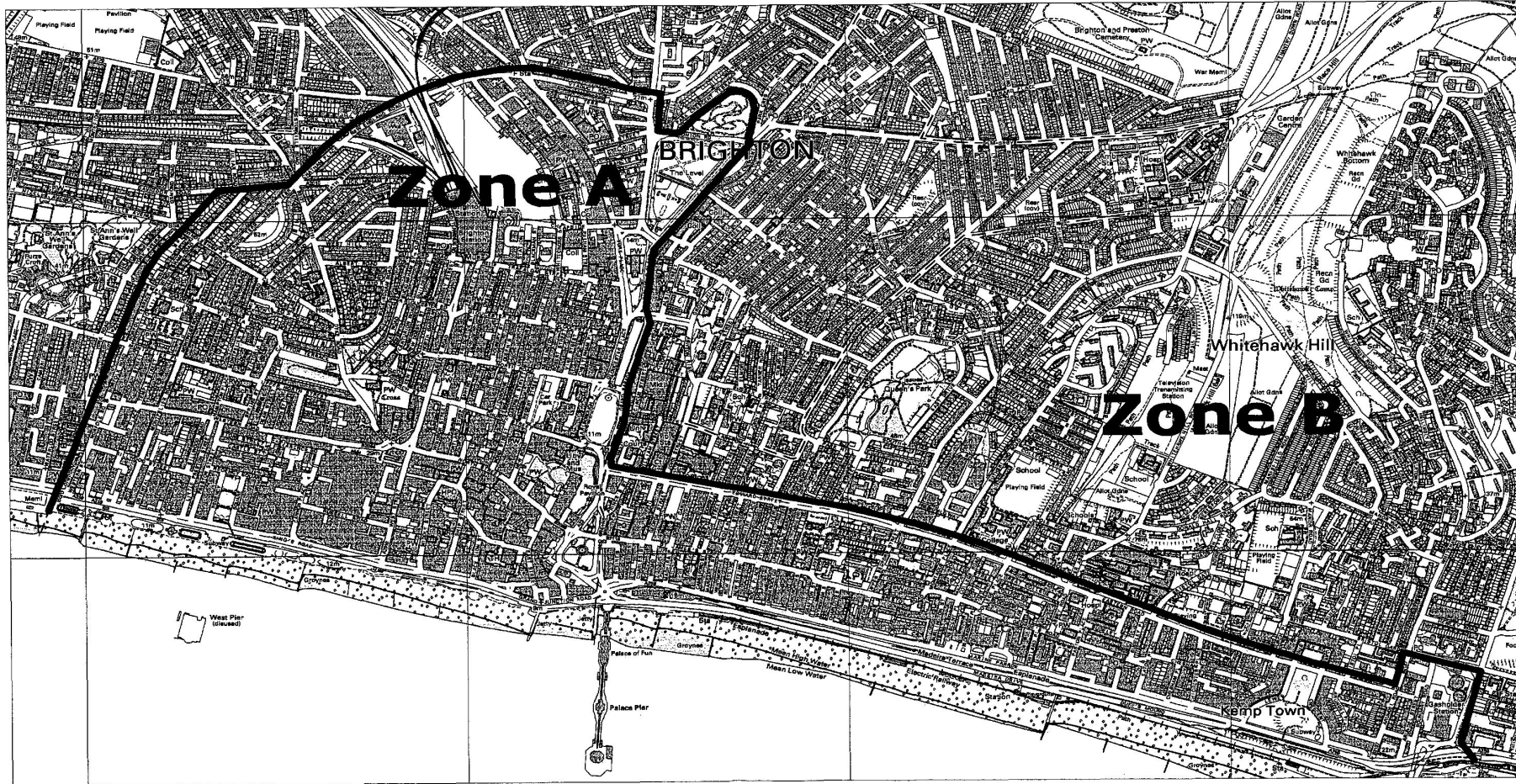
I would kindly ask for the opportunity to discuss this issue further in a meeting, possibly along with other licensed traders, who I know have had problems with unlicensed vans.

I look forward to hearing from you and thank you in advance in this matter.

Yours sincerely

Paul Mcknight
Knights Ice Cream
Tel No 07971 914316

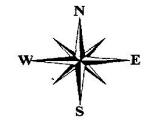
Street Trading Zones



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Date: 25/10/07 Scale 1:10000

Public Safety



GUIDELINES ON THE RELEVANCE OF CONVICTIONS

General Principles:

1. Each case will be decided on its own merits.
2. A person with a current conviction for serious crime need not be permanently barred from registration but should be expected to remain free of conviction for 3 to 5 years, according to the circumstances, before an application is entertained. Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. However, the overriding consideration should be the protection of the public.
3. The following examples afford a general guide on the action to be taken where convictions are admitted:

Offences involving violence

- It is imperative that applicants with convictions for offences involving violence are considered carefully. When applicants have convictions for causing grievous bodily harm, wounding or assault, or even more serious offences involving violence, at least five years should elapse before an application is considered.

Drug- related offences

- An isolated conviction for a drug offence, whether for unlawful possession only or involving the supply of controlled drugs, need not necessarily debar a candidate from registration, provided the applicant has at least three years free of convictions or five years since detoxification if he/she was an addict.

Indecency offences

- Applicants with recent indecency offences would normally be debarred.

Dishonesty

- Convictions for isolated minor offences should not debar an applicant, but in cases involving serious theft or fraud at least three years should elapse before an application is considered. When offences of dishonesty have been accompanied by violence, it is suggested that at least five years should elapse before registration.

