

**General Licensing and  
Registration Sub-Committee (1)**

**Date: 20<sup>th</sup> January 2016**

**Appeal against the refusal to grant a  
Street Trading Consent**



---

**Report of Terry Collins, Corporate Director, Neighbourhood  
Services**

---

**Name and address:** Mr Angelo Fella

**1. Summary**

The Sub-Committee is asked to consider and determine the appeal submitted by Mr Fella to be granted a street trading consent to sell confectionary, drinks, cigarettes etc from an ice cream van (Roma Ices) for all consent streets in the Derwentside area excluding any prohibited streets.

**2. Details**

On 28<sup>th</sup> October 2015, an application for the renewal of Mr Fella's street trading consent was received. His previous consent expired on 16<sup>th</sup> December 2015. The application is attached as Appendix 1. (The original photos showing Mr Fella's ice cream van will be provided at the hearing)

Mr Fella has requested to trade Monday to Sunday between 12pm to 11pm.

For Members information Mr Fella has held a street trading consent in respect of Roma Ices since November 2012.

**3. The Representations**

As part of the street trading application process, Licensing Services consult with a number of relevant authorities. These include Durham Constabulary Traffic Management and Highways, DCC Planning Services, DCC Health and Safety Enforcement, DCC Food Safety, DCC Trading Standards and DCC Licensing Enforcement.

Between 28<sup>th</sup> October and 11<sup>th</sup> November 2015, Licensing Services liaised with and consulted the relevant authorities in relation to Mr Fella's application. Licensing Services requested consultee's comments or objections in relation to the applicants' proposals.

During this consultation period, Licensing Services received adverse comments and specific objections from DCC Trading Standards. Consequently, Licensing Services were unable to grant the application. The objection is attached as Appendix 2.

The letter detailed the street trading appeal process, which invited the applicant to respond in writing to the Licensing Manager.

#### **4. The Appeal**

On 24<sup>th</sup> November 2015, a letter was received from Mark Davies of Bennett Richmond Solicitors acting on behalf of Mr Fella which was to appeal against the decision to refuse to grant the application for street trading consent. A copy of the letter is attached as Appendix 3.

The next stage of the appeal process involved the Licensing Manager to re-consult with all relevant personnel from the Council's Trading Standards department, requesting they reconsider Mr Fella's application, taking into consideration all of the information he originally provided.

Following the re-consultation with Trading Standards the objection remained. The details of the remaining objection are contained within the Licensing Manager's letter to Mark Davies of Bennett Solicitors attached as Appendix 4.

In view of the nature and content of the objection to Mr Fella's application, Licensing Services remain unable to authorise the grant of street trading consent. Mr Fella's right of appeal to the Council is now to the General Licensing and Registration Sub-Committee.

#### **5. For Decision**

The Sub-Committee is asked to consider the appeal made by Mr Fella against the refusal to grant a street trading consent for all consent areas in the Derwentside area taking into account the objection received from DCC Trading Standards and the information provided by Mr Fella.

Options available to Members are:

- Grant the application for street trading consent with or without additional conditions to the standard conditions or;
- Refuse Mr Fella's appeal

#### **6. Background Papers:**

- Local Government (Miscellaneous Provisions) Act 1982, Schedule 4
- The Council's Street Trading Policy (April 2015)

---

**Contact: Helen Johnson    Tel: 03000 265101**  
**Email: helen.johnson2@durham.gov.uk**

---

**Appendix 1**  
**Application from Mr Fella**

---



**APPLICATION FOR A STREET TRADING LICENCE/CONSENT**

**1. Applicant Details - Please complete the following details:**

<b>Individual Application</b>	
Title: (Mr/Mrs/Miss/Other)	Surname: <b>FELLA</b>
First Names: <b>ANGELO</b>	Date of Birth:

<b>Joint Application</b>	
Title: (Mr/Mrs/Miss/Other)	Surname:
First Names:	Date of Birth:
Title: (Mr/Mrs/Miss/Other)	Surname:
First Names:	Date of Birth:

Address:	
Post town:	Post code:

Telephone:	Mobile:
National Insurance No:	Email:

**2. Application Details - Please indicate what you are applying for:**

Street Trading Licence   
 Street Trading Consent

Is the application for a new licence/consent or a renewal?

New   
 Renewal

Please give your existing licence/consent number:

*no consent-  
number)  
photocopy  
included*

Please detail how long you want the licence/consent to last:

One Day   
 Two – Seven Days   
 Eight Days to one calendar month   
 Annual

**Please refer to Appendix A for application fees.**

**3. Assistant Details - Please complete the following details for any assistants which you will have working with you (We will only authorise up to two assistants)**

No.1

Title: (Mr/Mrs/Miss/Other)	Surname:
First Names:	Date of Birth:
Address:	
Post town:	Post code:
Telephone:	Mobile:
National Insurance No:	Email:

No.2

Title: (Mr/Mrs/Miss/Other)	Surname:
First Names:	Date of Birth:

Address:	
Post town:	Post code:
Telephone:	Mobile:
National Insurance No:	Email:

**4. Proposed Trading Activity:**

Please detail your trading name:

\_\_\_\_\_

Please detail the location you wish to trade from (if you wish to be a mobile trader, please detail all requested streets, please refer to Appendix B before completing) (if you wish to specify a fixed location please provide a plan with the application, please refer to Appendix C for plan guidelines):

\_\_\_\_\_  
\_\_\_\_\_

Please detail the days and times you wish to trade:

Monday: 12 - 23:00      Tuesday: 12 - 23:00  
 Wednesday: 12 - 23:00      Thursday: 12 - 23:00  
 Friday: 12 - 23:00      Saturday: 12 - 23:00  
 Sunday: 12 - 23:00

Please note out street trading conditions permits trading from 06:00 – 18:00 hours. If you wish to carry out street trading outside of these hours, please detail below the reasons why.

often do flower fairs for stanley council which can  
run till 9pm. Also trade on the streets during the  
evening.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Please detail the articles you wish to sell:

Confectionary, ice cream/ice lollies, crisps, nuts, soft drinks, cigarettes, slush puppies etc

Please note if you are selling alcohol or hot food or drink between 23:00hours and 05:00hours, you will need to apply for a licence under the Licensing Act 2003.

Please give details of the unit you wish to trade from:

Vehicle  
Cart / Barrow  
Other type of stall

Describe:

Vehicle Make and Model:

Mercedes Sprinter 308 Diesel

Vehicle Registration No:

Dimensions of cart/barrow:

Length in metres:

Width in metres:

Depth in metres:

Please provide three photographs of any van, other vehicle, cart, barrow or stall from which street trading is intended to take place. (Please refer to Appendix D)

Have you registered your business with Food Safety? (Only applicable to food traders)

Yes

No

Please provide a copy of the food registration certificate

Hold a current Level 2 Food Safety and Hygiene certificate for catering.

Recent visit 14/10/15

I was award a 4 star \*\*\*\* in an announced Food Hygiene/standards visit by Durham County Council.

**5. Declaration and Signatures:**

I declare that I am not under the age of 17 years. I declare that I have checked the information given in this application form and to the best of my knowledge it is correct.

I understand that the giving of false information is an offence and may result in a Street Trading Consent being refused or revoked, and that the local authority reserve the right to make further enquiries with Durham Constabulary as a result of this application.

Signed: \_\_\_\_\_  
Print Name: MR ANGELO FELLA

Signed: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**6. Check Sheet:**

- I have fully completed the application form
- I have enclosed the relevant fee
- I have enclosed a passport photograph of applicant and proposed Assistants
- I have enclosed the applicant(s) Basic Disclosure(s)
- I have enclosed a suitable location plan
- I have enclosed three photographs of the van/cart etc detailing front, side & rear
- I have enclosed a copy of the Public Liability Insurance
- I have enclosed a copy of a food registration certificate

- 
- 
- 
- 
- 
- 
- 
- 

Street based not in a static position.

in and around Stanley Co. Durham with the exception of prohibited areas.





This certificate is presented to

**Angelo Fella**

who has successfully completed the  
training course and assessment in

**Level 2 - Food Safety and Hygiene  
(Catering)**

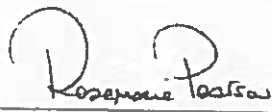
This course is designed to meet the national occupational standards and covers:

- The Importance of Food Safety and Hygiene • Impact of Food-Borne Illness
- Understanding Food Law • Food Safety Hazards and Contamination
- Food Preservation, Storage and Temperature Control • Personal Hygiene
- Hygienic Premises and Equipment • Hazard Analysis and Critical Control Point System (HACCP)

**04 January 2012**

Date: \_\_\_\_\_

Certificate No: **83931**

Signed:   
Course produced in conjunction with  
Dialog (food specialists)

Signed:   
Director (Virtual College)



Authorisation Seal



To verify, telephone 01943 605976

The content of this course has been independently certified as conforming to  
universally accepted Continuous Professional Development (CPD) guidelines

**Caterers Liability - Schedule of Insurance**  
**Arranged by Mobilers Insurance Services**  
**Administered by Caterers Club**  
**John Garth House, Engine Lane, Stourbridge DY9 7DF**  
**Tel: 0800 180 4175**

**Policy Number** SJ004187  
**Name and Address of Insured** A Fella

**Period of Insurance** 08/09/2015 to 07/09/2016

**Limits of Indemnity**

**Section 1 Employers Liability** £10,000,000 (any one occurrence or series of occurrences arising out of one cause)

**Section 2 Public Liability** £5,000,000 any one accident or series of accidents arising out of one event\*

**Section 3 Products Liability** £5,000,000 in the aggregate any one period of insurance\*

**Pollution and Contamination** £5,000,000 in the aggregate any one period of insurance\*  
\* increasing to £10,000,000 where stipulated under contract or regulatory requirement

**Section 2 and 3 combined**

**Excess (Section 2/3)**

**Declared Occupation:**

**Declared Employees:**

**Declared Seating Capacity:**

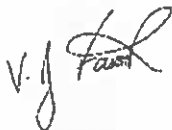
**Declared Turnover:**

**Premium (Including 6% Insurance Premium Tax)**

**Administration Charge**

**Total**

Underwritten by St Julians Insurance Company Limited,  
Authorised Insurers, registered in Malta (C-50869)



This Schedule of Insurance has been signed on behalf of the Company by and should be read together with the Liability Policy wording

**Date of Issue: 02 September 2015**

St Julians Insurance Company Limited is authorised and regulated by the Malta Financial Conduct Authority to carry on General Business (Class 13 – General Liability) in terms of the Insurance Business Act 1998 and subject to a limited regulation by the Financial Conduct Authority in respect of underwriting insurance business in the UK.

Contact: Susan Brown  
Direct Tel: 03000 261141  
email: Susan.brown2@durham.gov.uk  
Your ref:  
Our ref: IN / 037686



Mr A Fella

19<sup>th</sup> October.15

Dear Mr Fella,

### **Food hygiene inspection report and your food hygiene rating**

**Roma Ices, 7 Anthony Court, Stanley, DH9 8AG**

## **FOOD HYGIENE RATING**

We inspected your business premises on 14/10/2015 to check compliance with the requirements of food hygiene law and I am writing now to outline to you our findings and to tell you what your rating is under the Food Hygiene Rating Scheme.

### **Inspection report**

I have enclosed a copy of your inspection report. This outlines my findings and highlights the priority actions and improvements that are needed to ensure that you are complying with the Food Safety and Hygiene (England) Regulations 2013 and associated legislation. These are listed under three areas:

- Compliance with food hygiene and safety procedures
- Compliance with structural requirements
- Confidence in management/control procedures.

If you are unclear about anything in the report, please get in touch with me – my contact details are given at the end of this letter.

### **Your food hygiene rating**


This authority operates the Food Hygiene Rating Scheme. This scheme is designed to help consumers choose where to eat out or shop for food. It does this by giving them information about the hygiene standards in food outlets at the time they are inspected to check compliance with legal requirements. A good food hygiene rating will be a good

### **Environment, Health and Consumer Protection**

Durham County Council, Food Safety, PO Box 617, Durham DH1 9HZ  
Main Telephone 03000 261016

advertisement for your business. A leaflet explaining the scheme and an information sheet detailing how ratings are calculated is enclosed.

On the basis of the standards found at the inspection your rating has been calculated as follows:

Compliance with food hygiene and safety procedures	0
Compliance with structural requirements	10
Confidence in management/control procedures	10
Total score	20
Highest (this means poorest) individual score	10
Food hygiene rating	

A sticker and showing your rating is enclosed. You can tell your customers how good your hygiene standards are by putting the sticker up in the window or on the door. If you do not have a suitable glass surface, you could fix the sticker onto a transparent surface before fixing that onto a wall or other surface.

Please destroy the sticker showing your previous rating, as only one rating – the most recent rating - should be displayed. To continue to display a previous rating may constitute an offence under the Consumer Protection from Unfair Trading Regulations 2008.

Your rating will also be published on the Food Standards Agency's website at [www.food.gov.uk/ratings](http://www.food.gov.uk/ratings) between two and four weeks from receiving this letter.

### Safeguards

If you think that the rating is wrong or unfair – in other words it does not reflect the hygiene standards at the time of your inspection – you have 14 days in which you can **appeal** against this. You should appeal in writing to the Lead Officer for Food, Christine Ditchburn, but I would recommend that you please get in touch with me first so that I can help you to understand how your rating was worked out.

If you have improved hygiene standards since your inspection, or if there were unusual circumstances at the time of the inspection that might have affected your food hygiene rating, you have a '**right to reply**' so that you can explain this to potential customers that look up your rating online.

If you make the improvements to hygiene standards that are highlighted in your inspection report, you can **request a visit to carry out a re-inspection** with a view to giving you a new and higher food hygiene rating.

More information about these safeguards is provided on the FSA's website at: <http://www.food.gov.uk/multimedia/pdfs/enforcement/fhrssafeguards.pdf>

### Where may I get further information?

Further information about the scheme generally is available on the FSA's website at: [www.food.gov.uk/ratings](http://www.food.gov.uk/ratings)

**Appendix 2**  
**Objection from Trading Standards**

---

**Objection received from Trading Standards:**

The particulars for the objection being the sale of cigarettes from the ice cream van and the basis for the objection being the fact that we are currently in the process of prosecuting Angelo Fella for selling cigarettes from his ice cream van to an 11 year old schoolgirl. He has admitted the offence under Caution during interview and is therefore likely to be convicted in Court, irrespective of any mitigation he may put forward. We feel the combining of toxic nicotine products on a vehicle primarily designed to sell sweets and ice cream to children is to be wholly discouraged as this case has proven.

**Appendix 3**  
**Letter from Bennett Richmond Solicitors**

---



# Bennett Richmond

## Solicitors and Estate Agents

33 Front Street, Consett, Co. Durham DH8 5AB  
Tel 01207 504141 Fax 01207 580408

DX: 61932 Consett

23 Front Street, Lanchester, Co. Durham DH7 0LA  
Tel 01207 521843 Fax 01207 529367

DX: 61932 Consett

www.bennettrichmond.co.uk

Our Ref: MD/LMA/F447/1  
Your Ref:  
Date: 23<sup>rd</sup> November 2015  
e-mail: lisa@bennettrichmond.co.uk

The Licensing Manager  
Environment Health & Consumer Protection  
Durham County Council  
PO Box 617  
Durham  
DH1 9HZ

DURHAM COUNTY

24 NOV 2015

LICENSING

Estate Agency Tel 01207 599600

Dear Sir

Re: Mr Angelo Fella – Street Trading Consent

We act on behalf of Mr Angelo Fella of [REDACTED] County Durham. He has consulted us regarding the decision made by the Licensing Authority to refuse the grant of a Street Trading Consent, confirmed in a letter dated 13<sup>th</sup> November 2015.

We are aware that our client's wife has already written to the Licensing Team Leader to indicate our client's intention to appeal that decision. We shall be obliged if you will kindly accept this letter as formal notice of appeal.

We have noted the objection received from Trading Standards and would make the following observations.

Our client has traded from his ice cream van for many years with an unblemished record.

It is said that the Council is currently in the process of prosecuting our client but he has not received a summons or any other communication from the Court in this regard. Until such time as our client is convicted by a Court, then he is entitled to be treated as a person of good character and it is entirely inappropriate to pre-empt the outcome of Court proceedings which, at this stage, appear not even to have started.

It is said that the combining of toxic nicotine products on a vehicle primarily designed to sell sweets and ice cream to children is to be wholly discouraged.

Partners: Peter Aylmore and Mark Davies  
Assistant Solicitors: Jenna Lowes, Joanna McCoway  
Property Manager: Kate Walkins

Authorised and regulated by the Solicitors Regulation Authority (Ref No 325917)  
Members of: Police Duty Scheme, Court Duty Scheme & Resolution.



However, the Council will be aware that this activity is common place and is undertaken by operators of ice cream vans throughout the region, many of whom, we believe, will be the holders of consent granted by the Council.

We look forward to hearing from you.

Yours faithfully

Mark Davies  
Bennett Richmond Solicitors

---

**Appendix 4**  
**Letter from Craig Rudman, Licensing Manager**

---

Contact: Craig Rudman  
Direct Tel: 0300020090  
email: [craig.rudman@durham.gov.uk](mailto:craig.rudman@durham.gov.uk)



Your Ref: MD/LMA/F447/1

Mr Mark Davies  
Bennet Richmond Solicitors  
33 front Street  
Consett  
Co Durham  
DH8 5AB

Friday 4<sup>th</sup> December 2015

Dear Mr Davies,

**Re: Appeal by Mr Angelo Fella**

I write in connection with the appeal by your client Mr Angelo Fella against the Council's refusal to grant him a street trading consent.

In accordance with adopted policy I have brought your letter of appeal and all relevant documentation to the attention of the Officers of Durham County Council's Trading Standards section. I requested their reconsideration of your client's original application in combination with the information you subsequently provided on behalf of your client in response to Trading Standard's original objections.

The following paragraphs in italics are taken directly from the main body of the response provided to me by Trading Standards following this appeal:

*The Trading Standards Service would object to this application for the following reasons:*

*The Service has been investigating the supply of tobacco products by Mr Fella from his ice cream van. Whilst specific details of that investigation cannot be fully disclosed at this stage it has been our findings that tobacco has been supplied by Mr Fella to underage children believed to be as young as 8 years, 11 years and 13 years on at least two occasions in July 2015. It is on this basis that formal action is being progressed.*

*It is accepted that there are a number of Ice Cream vans in County Durham which sell cigarettes, and whilst ideally as a Service, Trading Standards would prefer such items weren't distributed from vehicles which are traditionally so child-appealing we would contend that most retailers take their responsibility of supplying age restricted products such as tobacco very seriously.*

**Environment, Health & Consumer Protection**  
Licensing, PO Box 617, Durham, DH1 9HZ  
Main Telephone 03000 265101



*Anyone supplying age restricted products should take all reasonable steps to prevent the products being bought or becoming available to those under age. Our program of reactive and pro-active test purchasing from such vehicles is testament to this. Each application will therefore be given due consideration on a case by case basis taking account all known factors at the time. Our investigation has shown that Mr Fella does not exercise the necessary professional diligence to satisfy Trading Standards that he understands the seriousness and consequences of his actions in supplying tobacco products to children under the age of 18 years.*

*Evidence shows that supplying tobacco products to under 18s is a practice Mr Fella has engaged in for some time – certainly with one particular family. It is our opinion that Mr Fella fails to demonstrate that he understands the seriousness of his actions, and in some instances, believing that if the children told him the cigarettes were for older family members then it was perfectly acceptable to hand them over. In view of this, our concerns would also extend to his supply of other aged-restricted products, including DVD's and video games.*

*For the purposes of clarification - cigarettes, tobacco and cigarette products, together with any other age-restricted products would be the only elements of the application to which Trading Standards continue to make an objection.*

It is clear that DCC Trading Standards do not consider that your client should be granted a consent to sell age restricted products including cigarettes, tobacco and cigarette products in the street. They do not however object to your client holding a street trading consent which relates to the sale of products that are not age-related e.g. ice-cream, confectionary etc.

I have also given full consideration to the information provided by you and your client in relation to this matter. Based on this and the information provided by Trading Standards I am of the opinion that currently TS hold sufficient evidence of apparent impropriety on behalf of your client in connection with the sale and or supply of tobacco products to children to warrant enforcement action and the consideration of legal proceedings.

This situation raises significant concerns in relation to your client's ongoing suitability to hold a street trading consent that includes authorisation to sell cigarettes, tobacco and cigarette products and other age-related products in the street.

The grant of a street trading consent is a matter that falls within our discretion. Our policy requires that applicants should always ensure that they comply with the requirements of any other relevant legislation, which may influence their business. The overriding purpose of Licensing Services is the protection of the public and in particular, the protection of children and those who may be vulnerable.

I therefore consider that it is at this stage it is appropriate that we continue to refuse to grant your client a street trading consent because the application includes the sale cigarettes, tobacco and cigarette products and other age-related products. To be clear, subject to any further change in circumstances, we would not refuse to grant a street trading consent to your client for the sale of other goods if he withdrew his application to sell cigarettes, tobacco and cigarette products and other age-related products.

In accordance with adopted street trading policy, following my refusal to grant a street trading consent, upon the applicants request I will arrange for his application together with

any written representations received to be considered at a hearing before the General Licensing Committee.

The General Licensing Committee may grant consent and impose any conditions as may be necessary or refuse to grant consent. Please note, there is no statutory right of appeal against a decision made by the committee concerning street trading consents.

Should you wish to appeal this decision please contact me in writing and I will make the necessary arrangements for the committee to give consideration to this matter. In the meantime, should you wish to contact me please do not hesitate to do so however, for recording purposes I do ask that all communications regarding this matter be in writing.

Yours faithfully

**Craig Rudman**  
**Licensing Manager**