

Report To:	LICENSING COMMITTEE	Date:	8TH JULY 2019
Heading:	DRAFT STREET TRADING POLICY: CONSULTATION RESPONSES		
Portfolio Holder:	DEPUTY LEADER – OUTWARD FOCUS		
Ward/s:	ALL		
Key Decision:	Yes		
Subject to Call-In:	No		

Purpose of Report

To agree a Final Street Trading Policy following a public consultation having concluded.

Recommendation(s)

The Licensing Committee is recommended to:

- a) Consider the responses to the consultation on the Draft Street Trading Policy;**
- b) Agree to the amendments to the Draft Policy in light of the responses to the consultation (as attached at Appendix One);**
- c) Approve the fees and charges proposed for the Street Trading functions; and**
- d) Recommend the adoption of the Final Policy to Council.**

Reasons for Recommendation(s)

The powers to control Street Trading within the Council’s area are conferred by Schedule 4 Local Government (Miscellaneous Provisions) Act 1982, which has been adopted by the Council. Under Schedule 4 of the Act, the Council is able to manage Street Trading by designating streets as Consent Streets, Licence Streets, or Prohibited Streets.

Currently no Policy has been adopted in relation to Street Trading, rather a Resolution was made in 2002 that adopted 15 specific locations as Consent Streets where such trading is permitted, with trading prohibited from taking place anywhere else within the Council’s area.

The present state of play limits the opportunities to Street Traders, and as such hinders the transformation of the local area in relation to creating a more vibrant local economy.

Alternative Options Considered (With Reasons Why Not Adopted)

Do nothing: not recommended for a number of reasons.

The Council has a duty to carry out its licensing functions in accordance with the relevant legislation and regulations in force for each of the functions detailed within this report.

By carrying out its licensing functions, the Licensing Authority will contribute towards the reduction of crime, disorder and nuisance within the District, and seek to improve community safety and environmental quality, whilst in turn seeking to promote a vibrant and sustainable local economy.

Detailed Information

Introduction

Street Trading is defined as “the selling or exposing or offering for sale any article (including a living thing) in a street – subject to a number of exceptions”.

The Council currently issues Street Trading Consents in accordance with Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (the Act).

The Act states that a "street" is defined as: any road, footway, beach or other area to which the general public have access without payment.

Currently the Council has adopted 15 static locations from which Street Trading may take place.

The Draft Policy intends to promote a flexible approach in relation to applicants seeking to operate new Street Trading businesses, whilst also endeavouring to promote a well-regulated Street Trading function by ensuring that such Trading does not become a source of nuisance or annoyance to those who live in, work in and visit the District

This Draft Policy sets out the criteria the Council will use when considering applications for Street Trading Consents. It sets out the grounds upon which decisions are made about Street Trading applications, and any enforcement actions if required.

This Draft Policy also supports the Council's commitment to work in partnership with other agencies and avoiding duplication with other statutory controls.

A consultation has been held and the Draft Policy amended in light of matters raised by Members and stakeholders.

How will the Council ensure that Street Trading does not take place in locations that may be deemed inappropriate?

The Draft Policy states that applications for a Street Trading Consent (this relates to trading from a single fixed location) will be refused for locations deemed to be:

- **In close proximity to a place of worship;**
- **In close proximity to a place of education;**
- **In close proximity to a place of healthcare;**
- **In close proximity to a place of cultural or historical local / national significance;**
- **In close proximity to primarily residential properties;**
- **In close proximity to a business offering the same goods / services;**
- **Likely to undermine the safety and / or convenience of the general public and / or road users.**

What type of Trading Consents are proposed within the Draft Policy?

For the purposes of this Policy and to assist applicants, Ashfield District Council issues 4 types of Trading Consents, each specific in its nature:

- **Street Trading Consent:** Trading from a stall / unit / vehicle from a single designated location on a regular basis.
- **Mobile Trading Consent:** Trading from a vehicle at a number of locations across the Ashfield District, but for no more than 20 minutes at a time in any single location, and no location to be revisited within a 4 hour period.
- **Community & Charity Trading Consent:** Trading at non-profit making events (within the Ashfield District) held by a registered charity or community association, whether for a single day or for the duration of the entire event subject to there being no more than 4 traders (more than 4 traders will fall within the Markets Policy of the Council).
- **Special Events Trading Consent:** Trading at events (within the Ashfield District) where the organiser intends to make commercial gain, whether for a single day or for the duration of the entire event subject to there being no more than 4 traders (more than 4 traders will fall within the Markets Policy of the Council).

How will local residents, businesses and stakeholders be made aware of Street Trading applications that may affect them?

All Street Trading Consent applications (except from Mobile Traders, Community & Charity Traders, and Special Events Traders) for locations not already adopted by the Council will be subject to a 28 day consultation period.

The consultation on applications for new locations will seek the views of local residents and businesses (by way of a yellow A4 notice placed at the proposed trading site) that may be directly affected, and statutory agencies whose responsibilities may be impacted by the proposed business (by way of a consultation email).

Consideration will be given to all written representations that are not deemed to be irrelevant, frivolous, vexatious, or repetitive. Representations will be vetted by Officers of the Licensing Team for validity.

Applications subject to valid representations will be determined at a Hearing chaired by the Service Director: Place & Wellbeing, who is delegated authority by the Licensing Committee to determine such applications.

Consultation on the Draft Street Trading Policy

The draft Policy was given approval from the Committee prior to commencing a formal consultation. The consultation timetable is as follows:

- 14th March 2019: Licensing Committee agreed that the draft Street Trading Policy be put out to consultation.
- Consultation was held between 1st April 2019 and 12th May 2019 and invited the views of “Stakeholders” (Police, Fire Service, Highways, Trading Standards, Planning, Environmental Protection, Environmental Services, Children’s Safeguarding Board, Health & Safety, etc), representatives of current Street Trading Consent holders, and the local Primary Health Care. The general public were given access to the consultation via the Council’s website, reception area and local libraries.

- 8th July 2019: the results of the consultation to be put to the Licensing Committee for consideration, and to make any relevant changes to the Policy to finalise accordingly, and to make a recommendation to Council to adopt the final Policy.
- 25th July 2019: Council to consider the recommendation made by the Licensing Committee, and adopt the Policy.

Responses received during the Draft Policy Consultation Period

Two responses were received during the consultation period and are attached at **Appendix Two**.

One response was from a member of the public who opposed the potential increase in street trading locations for fear of unlicensed traders taking up any vacated new locations.

The Licensing Team Leader believes that such a concern whilst having some validity, can be overcome by way of regular mobile checks of the District being carried out by the Licensing Officers, who will then be able to ensure that any trading from any location is carried out with the necessary Consent having been granted by the Council, and unlicensed traders will be the subject of enforcement action initiated by the Licensing Team.

The other response was provided by the Assistant Director Neighbourhoods & Environment who correctly advised on the need to ensure all stakeholders consulted with were listed within the Policy to ensure transparency (The Draft Policy – appended - is amended accordingly at Page 2).

The Assistant Director also sought the Policy to be explicit in relation to potential traders looking to operate on Council owned parks and recreational spaces that may already have a permanent café or similar establishment in situ, in order to prevent unhealthy competition.

Such a concern is not applicable to those looking to trade solely from a fixed designated location, as the Neighbourhoods & Environment Service will be a consultee to such applications and can raise any concerns held on a case by case basis; but the concern is valid in relation to Mobile Traders and those Traders who attend events on Council owned parks and recreational spaces, and the Licensing Team Leader has made amendments to the Draft Policy to alleviate this concern.

Amendments to the Draft Policy in light of Consultation Responses and Members Queries

When the Licensing Committee convened to consider the Draft Policy at its meeting on 14th March 2019, a valid question was raised by Members in relation to how to prevent a Mobile Trader from dominating trade at prime locations.

The solution to this problem is to issue a Mobile Trading Consent that permits trading across the entire District. Further to this, and also taking into consideration the concern raised by the Assistant Director: Neighbourhoods & Environment, two restrictions are required in relation to Mobile Trading in order to prevent harmful competition, any negative impact on locations, and to protect the business interests of existing permanent premises selling similar goods and services. The proposed restrictions are:

- **That Mobile Trading may not take place from any Council owned park or recreational space during the operating hours of any existing permanent structure selling similar goods and services as those proposed to be offered by the Mobile Trader (this restriction will also apply to Events held); and**

- **That no location may be occupied by more than one Mobile Trader at any given time.**

The amendments can be found at **Pages 13, 16,17** and **25** of the appended Draft Policy and are highlighted for easy accessibility.

Fees & Charges for Trading Consents

The power to levy fees (or otherwise) is contained in the legislation relevant to each function or in the Local Government Act 2003 in relation to discretionary services. Licensing is not a revenue raising function and fees and charges should reasonably represent the costs of carrying out the function

The general principles when setting fees are that they must be reasonable, proportionate and not exceed the cost of the procedures and formalities under the relevant licensing scheme, including staffing, training, administration, regulation, hearings, etc.

The following fees are proposed for each of the different Trading Consents:

Type of Trading Consent	Duration	Proposed Fee
Street Trading Consent	12 months	£1294.00*
Street Trading Consent	6 months	£697.00*
Mobile Trading Consent	12 months	£750.00
Mobile Trading Consent	6 months	£375.00
Special Event Trading Consent	Per Event	£30.00 per stall
Charitable / Community Trading Consent	Per Event	£0.00 per stall (no charge)

*The proposed fee represents no change to the fee already in place for this function.

Implications

Corporate Plan:

The Council has a duty to carry out its licensing functions in accordance with the relevant legislation and regulations in force for each of the functions detailed within this report.

By carrying out its licensing functions, the Licensing Authority will contribute towards the reduction of crime and disorder within the District, and seek to improve community safety and environmental quality, whilst in turn seeking to promote a vibrant and sustainable local economy.

Legal:

Information Only

There are no legal implications contained within this report.

Finance:

Information Only

There are no financial implications to the Council contained within this report that are not already met within the budget of the Licensing Authority.

This report is effective from 8th July 2019 and has the following financial implications.

Budget Area	Implication
General Fund – Revenue Budget	None
General Fund – Capital Programme	None
Housing Revenue Account – Revenue Budget	None
Housing Revenue Account – Capital Programme	None

Risk:

Risk	Mitigation
The Council has a statutory duty to carry out its licensing functions.	Approved processes, procedures and policies are in force to ensure that the Licensing Authority minimises any risks it may be exposed to when carry out its licensing functions and decision making processes.

Human Resources:

Information Only

There are no direct HR implications contained within this report

Equalities *(to be completed by the author):*

Information Only

There no diversity or equality implications contained within this report.

Other Implications:

None

Reason(s) for Urgency (if applicable):

Not applicable

Background Papers

Appendix One: Amended Draft Street Trading Policy

Appendix Two: Consultation Responses

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