

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

STREET TRADING

The Borough Council of Test Valley has by the powers invested in it resolved that for the purposes of controlling Street Trading all current and future streets (adopted or unadopted highway), Council car parks including all forecourts, roads, footways or other areas adjacent to the streets referred to in this resolution for a distance of 10 metres be designated as 'consent streets'

POLICY

This Policy will be applied to street trading activities in the Borough of Test Valley to ensure consistency in decision making. Each application will be considered on its own merits so that individual circumstances, where appropriate, are taken into consideration.

1. **Definitions of terms used in these Guidelines**

Within the terms of the Borough Council of Test Valley's Street Trading Consent Scheme the following definitions apply:

- The Council:- The Borough Council of Test Valley.
- Street Trading:- The selling or exposing or offering for sale of any article (including a living thing) in any street,
- Street:- Includes:
(a) any road, footway, or other area to which the public have access without payment.
(b) a service area as defined in section 329 of the Highways Act 1980, and also includes any part of a street.
- Consent Street:- Means a street in which street trading is prohibited without the consent of the Council.
- Consent: - A consent to trade on a street granted by the Council, pursuant to Paragraph 7, Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
- Consent Holder: - The person or company to whom the consent to trade has been granted by the Council.
- Authorised Officer: - An officer of the Council authorised by it to act in accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1982.

3. **Procedure for determining Street Trading Consent applications**

The application and approval procedure comprises of the stages as set out at Appendix 1.

4. **Submission of the application**

An application for a Street Trading Consent must be made to the Council.

The following will be required to be submitted with the application

- (a) A completed Street Trading Consent Application Form.
- (b) The payment of the full fee as appropriate for the periods of trading applied for.
- (c) Where the proposed street activity is from a fixed position, a copy of a map of at least 1:1250 scale. The map should clearly identify the proposed site position by marking the site boundary with a red line.
- (d) Three colour photographs of the stall, van, barrow, cart etc that will be used for the street trading activity.
- (e) A copy of a current certificate of insurance that covers the street trading activity for third party and public liability risks.

An applicant for an initial new Street Trading Consent should give a minimum of 60 days notice of the application.

5. **Consultations on applications made**

Before a Street Trading Consent is granted or renewed the Council will carry out a consultation process with various persons and groups. In particular the following organisations or persons are consulted.

- Hampshire County Council Highways – area office
- Estates & Economic Development
- Technical Services
- Hampshire Constabulary
- Hampshire Fire & Rescue Service
- Local Councillor(s)
- The appropriate Parish or Town Council
- The local Chamber of Trade or Commerce where relevant

For new applications, in addition to the above, further consultations could be carried out with property owners within 100 metres of the proposed site. This consultation will be by the Council sending copies of the Application to the relevant property owners.

Written observations from the above organisations and occupiers of properties will be sought and taken into consideration when determining an application.

6. **Site Assessment**

Street Trading Consents from static locations will not normally be granted where:

- A significant effect on road safety would arise either from the siting of the trading activity itself, or from customers visiting or leaving the site, or

- Where there are concerns over the recorded level of personal injury accidents in the locality where the street trading activity will be sited, or
- There would be a significant loss of amenity caused by traffic, noise, rubbish, potential for the harbourage of vermin, odour or fumes, or
- There is already adequate like provision in the immediate vicinity of the site to be used for street trading purposes, or
- There is a conflict with Traffic Orders such as waiting restrictions, or
- The site or pitch obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use for street trading purposes, or
- The trading unit obstructs the safe passage of users of the footway or carriageway, or
- The pitch interferes with sight lines for any road users such as at road junctions, or pedestrian crossing facilities, or
- The site does not allow the Consent Holder, staff and customers to park in a safe manner, or
- The street trading activity is carried out after dusk and the site is not adequately lit to allow safe access and egress from the site for both customers and staff.

7. Inspection of the Street Trading Unit

The vehicle, van, trailer, stall or other device to be used for the proposed street trading activity will be inspected by an Authorised Officer of the Council, prior to the issue of any Street Trading Consent, where this is reasonably practicable. The unit to be used for the street trading activity shall comply in all respects with the legal requirements relating to the type of street trading activity proposed. In particular the unit to be used shall comply with the following legislation:

- Regulation (EC) 852/2005.
- Food Safety Act 1990.
- Food Hygiene (England) Regulations 2006.
- The General Food Hygiene Regulations 2004.
- Health and Safety at Work etc Act 1974 and any Regulations made under this Act.
- Environmental Protection Act 1990.

8. Determination of the Application

The Environmental Health Manager, acting on delegated powers will use the criteria listed below in determining any Street Trading Consents. Similarly any objections received will be considered against these criteria. All should normally be satisfied, with equal weight applied to the criteria listed. Each case will be assessed on its merits and individual circumstances, where appropriate, may be taken into consideration.

Once the application is referred to the Environmental Health Manager, The applicant will be informed in writing and notified that application will be determined within 28 days unless advised otherwise. Persons or bodies making

written objections will also be informed along with the appropriate Ward Councillors for the proposed street trading site.

a) Public Safety: The location of the proposed street trading activity should not present a substantial risk to the public in terms of road safety, obstruction and fire hazard. The term “public” refers to both customers requesting the street trading activity, and other members of the public using the street. In particular reference will be made to the guidelines set out in section 6 on site assessment criteria.

b) Public Order: The street trading activity should not present a risk to good public order in the locality in which it is situated. Observations from the Hampshire Constabulary will be taken into consideration.

c) Avoidance of Nuisance: The street trading activity should not present a substantial risk of nuisance from noise, rubbish, potential for the harbourage of vermin, smells or fumes to households and businesses in the vicinity of the proposed street trading site. Observations from Council Officers shall be taken into consideration.

d) Needs of the Area: The sufficiency of other trading outlets will be taken into consideration in relation to:

1. The presence of like outlets already existing in the immediate locality of the proposed street trading site.
2. The general needs of a locality, should no comparable outlets exist

Applicants will have to demonstrate to the Council the need for the proposed street trading activity in relation to either points 1 or 2 above, whichever applies.

e) Compliance with legal requirements: The proposed street trading activity should be carried out from a trading unit that complies with the relevant legislation.

f) Consultees Observations: In relation to points a) – d) above, consideration will also be given to written observations from consultees. Any objections made to the proposed street trading activity will be considered in terms of relevancy and appropriateness to the application that has been made.

g) Permitted Trading Hours: The Council generally will only permit street trading between 6.00 am and Midnight, in Andover town centre, 22.00hrs in Romsey town centre and until 2.00am elsewhere, on any one day. Any trading outside these hours will have to be approved by the Council. Street Trading outside the guideline hours will be assessed in terms of the criteria detailed above. The Council however retains the right to specify permitted hours of trading that are less than those specified above if local circumstances dictate.

h) Market days: Those Consent Street licensees who have consent to trade in the town centres will not be able to do so on Market days.

9. **Approval of Applications**

The Environmental Health Manager may approve applications meeting the criteria contained within these guidelines.

On approving the application the Council will issue a Street Trading Consent to which conditions will be attached. The Consent will also contain specific terms such as days and hours when street trading is permitted, the goods that may be sold. A copy of the Council's standard conditions, which are attached to Street Trading consents, are shown at Appendix 2. Additional conditions may be attached if special circumstances apply to the Consent being granted by the Council. The Consent shall be issued within 21 days of the decision.

The conditions attached to the Consent form part of the approval to carry out street trading in the Borough of Test Valley. They **MUST** be complied with at all times and failure to do so could lead to the Consent being either revoked, or not renewed.

Consent Holders are therefore requested to familiarise themselves with the terms and conditions attached to the Street Trading Consent and comply with the requirements.

10. **Issue of Street Trading Consents**

A Street Trading Consent for any particular site will be issued for a maximum period of 6 months for the first year and thereafter for 12 months providing there have been no problems. Shorter term Consents may be issued on a daily, weekly or monthly basis. These particular Consents will expire, unless renewed, on the date specified in the Consent.

In all cases when a Consent has expired, and an application has not been submitted to the Council for renewal, a new application will have to be made. In such cases the application will be required to go through the full consideration process outlined in these guidelines. If an application is refused then a full refund will be made.

11. **Decision to refuse or revoke**

If the Environmental Health Manager is unable to grant a Street Trading Consent the applicant will be notified in writing within 21 days and will be offered a meeting with them to discuss the reasons for a potential refusal of the application. At the meeting the applicant will be informed of the criteria from these Guidelines that have not been met. The applicant will be given an opportunity to discuss any relevant matters in relation to the application that has been made. If after the meeting the Environmental Health Manager is still unable to proceed with the granting of Consent, the outcome of the meeting with the applicant will be confirmed in writing within 5 working days of the meeting taking place. If an applicant refuses an offer of attending a meeting with the Environmental Health Manager or fails to attend, a letter will be sent to the

applicant confirming the reasons for being unable to proceed with the application.

If the applicant is not satisfied with the decision they make representation, in writing within 28 days, to the Licensing Committee for it to consider the application.

12. **Representation to the Licensing Committee**

The Council's Licensing Committee has been established to consider applications and hear objections and appeals in relation to licensing matters.

The role of the Licensing Committee as regards Street Trading Consents is to:

Hear representations from applicants in cases where the application has been refused or revoked by the Environmental Health Manager.

On receipt of a written representation, arrangements will be made to have the application heard at the next available meeting of the Licensing Committee.

Once arrangements have been made for the representation to be heard by the Licensing Committee the applicant will be advised in writing of the date, time and place where the representation will be heard. The person making the application is expected to attend the hearing. The applicant can be represented by a solicitor, or supported by a friend or colleague. The Licensing Committee will follow a set procedure that will be notified to the applicant in advance of the meeting, along with any officer reports that will be presented at the meeting.

The decision of the Licensing Committee will be confirmed in writing to the applicant within 5 working days of the meeting at which the application was considered.

The Licensing Committee will always adhere to the rules of natural justice when it is considering an application to ensure that all persons get a fair hearing.

13. **Refusal of Applications**

The Local Government (Miscellaneous Provisions) Act 1982 does not allow any legal appeals against the decision of the Council in relation to the refusal of Street Trading Consents. A person aggrieved by a decision of the Council may seek a Judicial Review of the decision, should it be felt necessary.

14. **General Information on Street Trading Consents**

Reimbursement of Fees: Fees will be reimbursed to Consent Holders where they cease to trade and surrender their Consent to the Council. Any reimbursement will be strictly from the date the Consent is surrendered to the Council.

Refund of any fee paid in connection with the granting of a Street Trading Consent will be based on the following formula:

Number of complete days remaining divided by the fee paid **less** the current administration fee.

Persons under the age of 17 years: The Council will not grant a Street Trading Consent to persons under the age of 17 years.

Access by Council and Police Officers: Consent Holders should allow access to Authorised Officers of the Council and Police Officers at all reasonable times.

Street Trading Consents: The conditions attached to all Street Trading Consents stipulate that a Consent Holder shall not assign, sub-let or part with his interest or possession of a Street Trading Consent.

Variance of conditions: The Council may at any time vary the conditions of a Street Trading Consent.

*The Consent granted is specific to the person to whom it is issued and is **non-transferable and there can be no sub-letting.***

15. **Enforcement of Street Trading**

The Council will actively enforce the provisions of the Street Trading legislation within its area in a fair and consistent manner. All enforcement activities will comply with the Service Enforcement Policy.

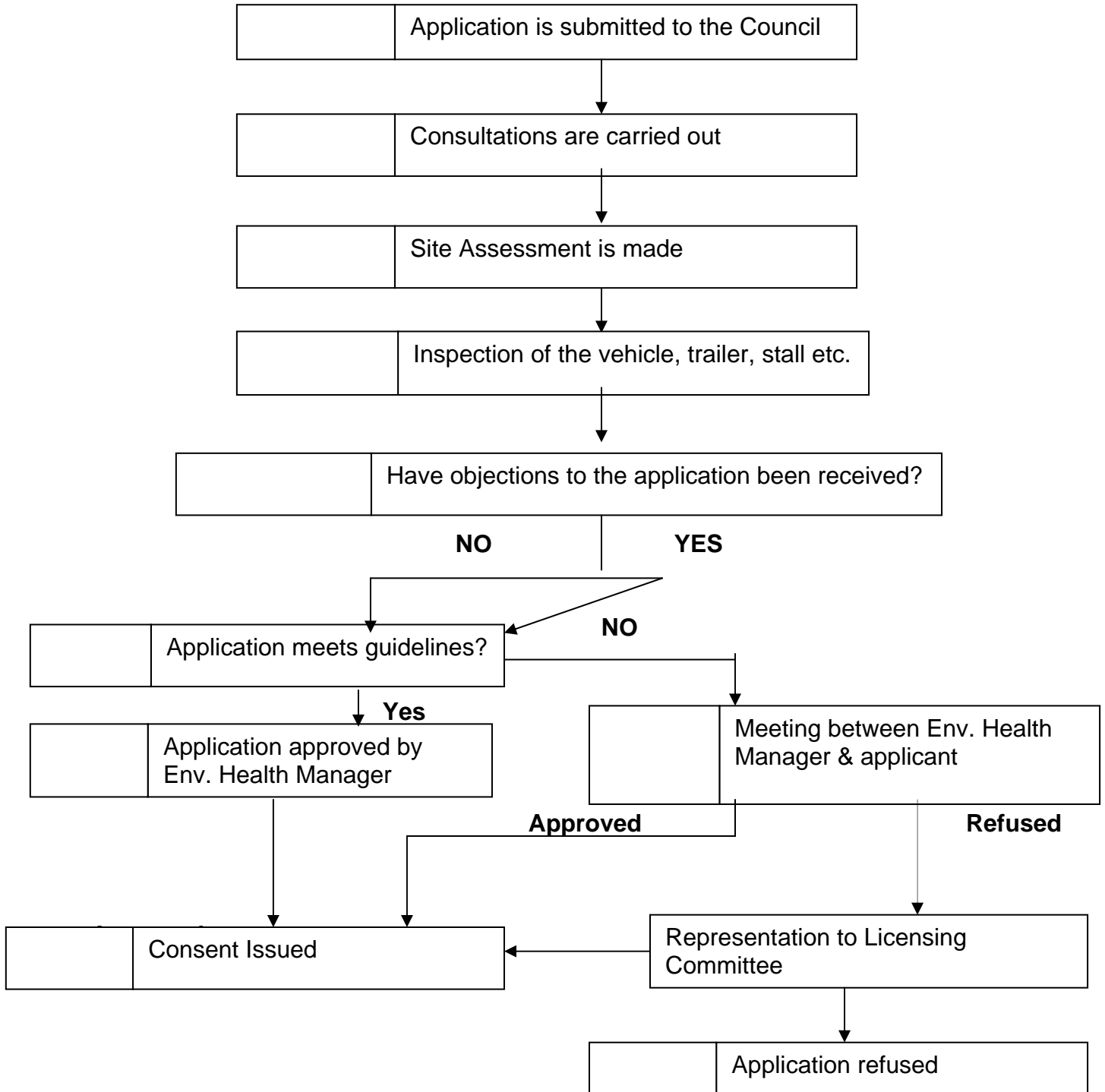
16. **Complaints against the Service**

The Council has a Corporate Complaints Procedure copies of which are available from the Council Offices or on the Council's website www.testvalley.gov.uk

APPENDIX 1

PROCEDURE FOR DETERMINING STREET TRADING CONSENT APPLICATIONS

The application and approval procedure comprises of the following stages



NOTES FOR APPLICANTS

The Council will normally attach Standard Conditions to a street trading consent.

Exemptions from consent street charging fees

Street trading consents issued to registered charities on non- market days in Romsey Town Centre are exempt from the consent street trading charges. (Romsey market days will be on Tuesdays and Fridays)

Safe Use of Liquefied Petroleum Gas (LPG) in mobile catering units

Guidance notes are enclosed on the safe use of LPG and applicants will be expected to comply with the advice contained therein.

Enforcement Policy-Refusal or Revocation

The following grounds will be considered for refusing an application or revoking a consent:-

- 1) That the applicant/consent holder has, without reasonable excuse, failed to avail himself to a reasonable extent of a previous, or as the case may be, current, street trading consent.
- 2) That there is not enough space in the street for the applicant/consent holder to engage in the trading in which he desires to trade without causing undue interference or inconvenience to persons using the street. This is relevant even if the circumstances have reasonably arisen since the granting a consent.
- 3) That the applicant/consent holder has failed to comply with the conditions of a consent or any statutory requirement relevant to street trading (e.g. hygiene or safety requirements).
- 4) That the applicant/consent holder is unsuitable to hold a consent by reason of having been convicted of an offence material to safety of the public, or public order, littering or pollution.
- 5) That the consent holder's stall has been the focus for incidents involving public disorder or nuisance.

APPENDIX 2

Standard Conditions

1. The following standard conditions will normally be attached to a street trading consent:-
 - (a) The subletting of consents is prohibited
 - (b) Any stall, barrow, vehicle used in connection with a street trading consent shall be kept in good condition and so presented as not to detract from the appearance of the street.
 - (c) The consent holder shall be responsible for the temporary storage of refuse, liquid and other deleterious material accumulated or created whilst trading and its subsequent removal from the site and shall satisfy the Council regarding its proper disposal;
 - (d) The consent holder shall be responsible for collecting, removing all litter within 100 metres in any direction of the stall or vehicle and disposing of it in a proper manner
 - (e) No sullage water from the washing of food equipment or hand washing shall be allowed to discharge to ground and the consent holder shall satisfy the Council regarding its proper disposal
 - (f) The consent holder shall ensure that at all times whilst trading in a consent street, a sign bearing his name and address and the expiry date of his consent shall be displayed on the vehicle /stall in such a position as to be clearly visible to all customers at the vehicle/stall;
 - (g) The consent holder, if intending to sell food from a stationary vehicle/stall shall operate from a purpose made vehicle/stall constructed and managed so as to comply with the relevant hygiene regulations currently in force within the provisions of the Food safety Act 1990.
 - (h) The consent holder shall not obstruct the street or cause danger to persons using the street
 - (i) The consent holder shall not cause any nuisance or annoyance (whether to persons using the street or otherwise)
 - (j) Those Consent Street licensees who have consent to trade in the town centres will not be able to do so on Market days.