

# Street Trading Consents Policy

Report of the Housing & Environmental Health Portfolio Holder

## Recommended:

- 1. That the revised Street Trading Consent policy as set out in Annex 1 to this report be adopted.**
- 2. That the Head of Housing & Environmental Health, in consultation with the Housing & Environmental Health Portfolio Holder, be given delegated authority to make minor amendments to the policy from time to time, including the updating of standard conditions.**
- 3. That the Head of Communities and Leisure and the Head of Property & Asset Management be given delegated authority to grant Street Trading Consents in respect of street trading activities where those activities are taking place on land under their management.**

## SUMMARY:

- The Council has adopted provisions under the Local Government (Miscellaneous Provisions) Act 1982, making it a legal requirement in most cases for street traders to be granted Street Trading Consent by the borough council, prior to conducting any trading on or within 10 metres of any street within the borough.
- Accordingly, the Council has a Street Trading Consents Policy that sets out how applications for Street Trading Consents will be determined.
- The Housing & Environmental Health Service has undertaken a review of the Street Trading Consents Policy with a view to making amendments that would both bring it up to date and make the application process quicker and more flexible in appropriate cases.
- The resulting amendments proposed to the policy include:
  - Giving greater flexibility to dispense with the normal consultation process in some circumstances (particularly for short term street trading of less than 7 days and on land managed by the Council).
  - Simplifying the consent process on land that is managed by the Council and in the interests of avoiding duplication of consent processes. To achieve this, the amendments include proposing that the Head of Communities & Leisure and the Head of Property & Asset Management are given the option to grant Street Trading Consents on land under their management.
- Removing more detailed operational arrangements for dealing with Street Trading Consents (such as the format of the application form and wording of standard conditions) from the policy, with delegated authority for the Head of Housing & Environmental Health to adjust and develop these aspects in accordance with the policy, but without having to amend the policy itself.

- Other minor revisions to the policy are proposed and highlighted in the ‘tracked changes’ version of the existing policy at Annex 2.
- This report sets out an options appraisal for revising the current arrangements, and recommends that the Council continues to require street traders to apply for the Council’s consent to trade, and with appropriate updates to the policy as proposed at Annex 1.

## **1 Introduction**

- 1.1 The current Street Trading Consents Policy was approved on 18 August 2004.
- 1.2 The policy has not been updated since that time and a review has been carried out by the Housing & Environmental Health Service.
- 1.3 This review has resulted in identified changes to the policy that would make it more practicable and that would bring it up to date. The proposed revised Street Trading Consents Policy is set out in Annex 1 to this report with Annex 2 containing a track changes version of the original Policy for ease of reference.

## **2 Background**

- 2.1 Section 3 of the Local Government (Miscellaneous Provisions) Act 1982 gives local authorities the power to adopt the street licensing provisions given in Schedule 4 to the Act. These provisions prohibit most mobile trading (i.e. the sale of goods from a van or stall) in streets designated by formal resolution as ‘consent streets’ without the prior consent of the local authority.
- 2.2 The aim of the legislation is to minimise problems associated with mobile trading, allowing controls to be put in place in respect of matters such as nuisance, litter, traffic hazards, public safety, trading hours and anti-social behaviour.
- 2.3 On 6 January 2005, a Council resolution was passed, following a consultation process, to adopt the Local Government (Miscellaneous Provisions) Act 1982 powers and designate all streets (present and future) within the borough as ‘consent streets’.
- 2.4 The effect of the resolution is to make it an offence, in most cases, to trade within 10 metres of any street without a valid Street Trading Consent, or to trade in breach of any of the conditions attached to the Street Trading Consent. As required in law, new applications must be made every year, and consent cannot last for longer than 12 months.
- 2.5 There are some exemptions to the requirement for a Street Trading Consent as set out in the 1982 Act. These include news vendors, persons trading under a pedlar’s certificate, markets and fairs established by virtue of a grant, an enactment or order, and trading in connection with adjoining shop premises.

- 2.6 The Street Trading Consents policy written in 2004 anticipated the resolution to adopt the Street Trading Consents provisions and set out the principles for how the Street Trading resolution would operate in practice.
- 2.7 Since that time, applications have been determined by the Head of Housing & Environmental Health, consistent with the Scheme of Delegations. The policy includes safeguards for applicants who have their applications refused and who are unhappy with the refusal. In these circumstances, the policy allows for a request for the decision to be reviewed by the Licensing Committee. The Licensing Committee is empowered to hear representations from
- (a) applicants, in cases where the application for a Street Trading Consent has been refused by the Head of Housing and Environmental Health; or
  - (b) the holder of a Street Trading Consent which has been revoked by the Head of Housing and Environmental Health.
- 2.8 In the year 2018/19, twelve traders held a consent for year-round trading, nine of which were mobile food trading vans and the other three involved non-food trade. In addition, there were another six short-term consents issued, mostly in respect of incidental street trading associated with short events in either Andover High Street, Stockbridge High Street or Romsey town centre. These were the Andover A Fest, the Romsey Beggars Fair, the Andover Cycling Festival, the Andover Shilling Fair, the Stockbridge Trout 'n About Festival and the Christmas lights switch on in Andover.
- 2.9 The Housing & Environmental Health Service's review of the Street Trading Consent Policy concluded that the Council should sensibly continue to require street traders to apply to the Council for Street Trading Consents, and for the same reasons the resolution was adopted in 2005. However, the review also identified that the current approach would benefit from a number of specific changes. These changes are set out in more detail in Section 3 below.

### **3 Key Changes Under The Proposals**

- 3.1 The existing policy requires that consultation is undertaken in all cases (21 days is generally allowed). This means that Street Trading Consents normally take at least 28 days to be issued, even if no objections are received. Whilst the consultation process is warranted for traders wishing to trade regularly throughout the year, flexibility should be built into the revised policy to dispense with the consultation requirement in some situations where the risk of problems occurring is low. This would enable Street Trading Consents to be issued at much shorter notice in some cases, such as street trading in connection with short duration festivals and community events in well-established locations.
- 3.2 It is therefore proposed that the policy is revised to include discretion to dispense with the normal consultation process in cases of street trading:
- (a) for a period of 7 days or less; or
  - (b) on land that is managed by the Council.

- 3.3 The current policy could further be revised to give the Head of Service responsible for managing land on which street trading is requested, authority to grant Street Trading Consents as part of their existing consent processes for use of the land. Whilst it is not possible under the existing resolution to exempt sites from the requirement to hold a Street Trading Consent, the format of the consent is not prescribed but should contain conditions which are reasonably necessary, so it can be integrated with existing terms and conditions for using the Council's land. The benefit would be avoiding users of the land requiring separate consents from the land managing Service and the Housing & Environmental Health Service.
- 3.4 The revised policy therefore makes provision to enable the *option* for the Head of Communities & Leisure and Head of Property & Asset Management to grant Street Trading Consents in respect of street trading on land managed by that Head of Service on behalf of the Council. This would be reserved for straightforward situations where no significant concerns are identifiable and the wording in the scheme of delegation should reflect this. In all other cases, the application would be referred to the Head of Housing & Environmental Health for consideration with a view to granting or refusing in the usual way.
- 3.5 The revised policy at Annex 1 no longer includes the information that is provided in Appendix 2 and Appendix 3 of the existing policy as these relate to operational detail that is not strictly 'policy'. These appendices include the application form, notes for applicants and standard conditions. It is proposed to remove these elements from the actual policy because they will benefit from more frequent updating, will remain subject to the Council's policy, and doing so would enable practical changes to be made quickly. It is proposed that the detailed arrangements for implementing the policy should be delegated to the Head of Housing & Environmental Health in consultation with the Housing & Environmental Health Portfolio Holder to formulate and revise as necessary.
- 3.6 Various minor revisions and updates to the policy are also being proposed. These include widening the scope of what constitutes 'public safety' to include food safety and health & safety. It is proposed to refuse Street Trading Consent if the business has been rated as a low performer (rated 0 to 2 out of 5 under the Food Hygiene Rating System) either at the time of application or at the time of renewal. This revision is in the interests of preventing significant food safety risks to the public and would not be an onerous restriction in practice. At April 2019, just 3% of rated food businesses within the borough scored below 3 on the Food Hygiene Rating System. The intention of this revision is simply to exclude very poor performing traders from achieving Street Trading Consent while encouraging high standards to be upheld.
- 3.7 The flowchart contained in Appendix 1 of the policy has been updated to reflect these proposals. The flowchart gives a simple overview of the procedure for determining Street Trading Consent applications.

3.8 Finally, this report proposes that delegated authority is given to the Head of Housing & Environmental Health, in consultation with the Housing and Environmental Health Portfolio Holder, to make minor amendments to the policy itself. This would enable small changes to be made, including to reflect any relevant future organisational changes (such as job titles referred to in the policy), without requiring re-approval of the whole policy by Cabinet.

#### 4 Corporate Objectives and Priorities

4.1 The proposed changes aim to make it quicker and simpler for traders and event organisers to obtain a Street Trading Consent for short term trading in established sites and also on land managed by the Council. This may have benefits for the delivery of town centre projects of importance to the Council and more generally for the vitality of the town centres.

4.2 Streamlining the Street Trader Consent process is good for business, and will support town centres, communities, people and the local environment. In that context, the proposed revised Street Trading Consent Policy will contribute to the delivery of the Council’s Corporate Plan “Growing Our Potential”.

#### 5 Consultations/Communications

5.1 Internal consultees who are routinely consulted about Street Trading Consent applications have been consulted and their feedback incorporated into the proposed revisions.

5.2 The Head of Communities and Leisure and Head of Property & Asset Management were consulted about the proposal to enable a Street Trading Consent to be incorporated into their land hire approvals process.

5.3 All current consent holders have been consulted regarding the proposed revisions. No objections, comments or suggestions for improvement were received.

#### 6 Options

6.1 The possible options for change are summarised in Table 1 below.

	<b>Option</b>	<b>Anticipated Requirements to Implement the Change</b>	<b>Preferred Option?</b>	<b>Key Reasons</b>
A	No change	Not applicable	No	<ul style="list-style-type: none"> <li>• Inflexible towards short term trading</li> <li>• Duplication of consent requirements on Council land</li> <li>• The policy would benefit from some updating</li> </ul>

B	Keep the resolution unchanged but revise / update the policy	Cabinet approval to amend the policy adopted by the Executive on 18 August 2004.	Yes	<ul style="list-style-type: none"> <li>• Improve flexibility towards short term trading</li> <li>• Avoid duplication of consent requirements on Council land</li> <li>• The policy would benefit from some updating anyway so this is a simpler option than revising the resolution</li> </ul>
C	Vary the resolution to enable certain streets to be exempt	Publish a notice of intention in a local newspaper, consult the Police and Highway Authority, obtain the consent of the Highway Authority, make the resolution, then publish another notice of the resolution in a local newspaper.	No	<ul style="list-style-type: none"> <li>• The resource implications of altering the resolution are likely to be disproportionate to the benefits</li> <li>• This would not address every shortcoming identified</li> <li>• Defining the exempted streets, or parts of streets, could be quite complicated</li> <li>• Lesser flexibility than Option B</li> </ul>
D	Rescind the resolution completely and dispense with all street trading controls		No	<ul style="list-style-type: none"> <li>• The lack of control over trading locations risks adverse consequences for public safety and nuisance, as well as potentially reduced standards</li> <li>• Would be unable to recover any monitoring costs</li> </ul>

## 7 Option Appraisal

7.1 Option A is the 'Do Nothing' option. This is not recommended because it would not address the shortcomings identified with the existing policy.

7.2 Option B is the preferred option and the reasons for this are set out in Section 3 above.

7.3 Option C would require amending the Council resolution made on 6 January 2005. Whilst this option could have some advantages, for example to make exceptions applicable to some favoured street trading locations and/or all Council land, it is also true that whilst a site may be favoured for certain types of street trading it may not be favoured for *all* types of street trading. Option C would be inflexible in that context. Defining sites to be exempt would also be complex and fraught with challenges (for example if only parts of streets were exempted). The approach could not be changed easily after the effect and could create confusion over those areas included and those which are not. Furthermore, the policy would have to be revised in any case, whether or not the resolution were amended. For these reasons, option B is considered the most appropriate course of action to address the shortcomings that were identified with the existing arrangements.

7.4 Option D is to rescind the resolution, thereby removing the requirement for street traders to apply for and be granted Street Trading Consent. The Regulators' Code (published in 2014 by the government Department for Business, Innovation & Skills and in accordance with the Legislative and Regulatory Reform Act 2006) requires that, in developing policies, local authorities should consider whether or not regulatory controls remain relevant and necessary, so as to avoid placing unnecessary regulatory burdens on businesses. The shortcomings of this option are that it would remove: (i) controls which are considered to be valid safeguards to the public; (ii) a mechanism for compliance checking and cost recovery for doing that; (iii) an incentive for traders to trade responsibly in order that Consents are not revoked. The circumstances associated with the original resolution remain the same, and the risks of inappropriate and irresponsible trading are considered unacceptable. This option is not recommended.

## **8 Risk Management**

8.1 An evaluation of the risks indicate that the existing controls in place mean that no significant risks have been identified at this time.

## **9 Resource Implications**

9.1 There are no resource implications associated with the implementation of the proposals.

## **10 Legal Implications**

10.1 No legal implications have been identified.

## **11 Equality Issues**

11.1 No equality issues have been identified.

## **12 Other Issues**

12.1 Community Safety – No further issues have been identified.

12.2 Environmental Health Issues - No further issues have been identified.

12.3 Sustainability and Addressing a Changing Climate – No issues have been identified.

12.4 Property Issues - No further issues have been identified.

12.5 Wards/Communities Affected - No specific issues have been identified.

### **13 Conclusion and reasons for recommendation**

13.1 Following a review of the existing Street Trading Consents Policy, it has been identified that the current Council resolution remains relevant and should be unchanged, but the policy itself would benefit from specified changes.

13.2 The proposed changes would make the consent process more flexible and speed up the process for short term consents in most cases.

<u>Background Papers (Local Government Act 1972 Section 100D)</u> None			
<u>Confidentiality</u> It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
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