

Telford & Wrekin Council

Licensing Committee – 17 January 2017

Street Trading Consent Policy Statement.

Report of the Service Delivery Manager – Public Protection

1. Purpose

- 1.1 To inform Members of the proposal to make a minor amendment to the current Policy Statement in respect of Street Trading Consents and to approve an eight week consultation with affected bodies.

2. Recommendations

Having considered all relevant information, Members:

- 2.1.1 To approve an eight week consultation on the proposed amendment to the Council's Policy Statement in relation to Street Trading Consents.
- 2.1.2 Delegate that the Chair of the Licensing Committee in conjunction with the Principal Licensing Officer consider the responses of the consultation process.
- 2.1.3 If following consideration of the consultation responses the Chair of the Licensing Committee and the Principal Licensing Officer determine that it is appropriate for the proposed amendment to the policy to remain unchanged then the Committee delegate power to the Principal Licensing Officer to implement the amendment to the policy with an immediate effect. However if there is any significant matter or issue which arises out of the consultation response or in their considerations under recommendation 2.2 above the Chair of the Licensing Committee and the Principal Licensing Officer determine that the proposed amendment to the policy should be further amended then the matter shall be referred back to Committee for further consideration and determination.

3. Previous Minutes

- 3.1 LC140114

4. Information

4.1 Background.

- 4.1.1 Street Trading is regulated by the Local Government (Miscellaneous Provisions) Act 1982. As a result, Telford & Wrekin Council, in pursuant to Section 3 of the 1982 Act, has resolved to adopt Schedule 4 of the Act to control street trading within the Borough. Furthermore, the Council has resolved every street within Telford & Wrekin should be designated as a Consent Street under the Act.
- 4.1.2 Street trading involves the sale and exposing or offering for sale, of any article in a street. Street includes any road, footway, or other area to which the public have access without payment and includes any part of a street.
- 4.1.3 As the definition of “street” includes any land to which the public have access without payment, private land to which the public has free access may also be included. Street trading law and this policy therefore can extend to events off the highway that are conducted on private premises.
- 4.1.4 Members should note that for the purposes of the Act, the following matters are not deemed to be street trading and therefore do not need to obtain a street trading consent;-
- Trading by a person acting as a Pedlar under the authority of a Pedlars Certificate granted under the Pedlars Act 1871. Such certificates are issued by the Police and not the local authority.
 - Anything done in a market or fair, the right to hold which was acquired by virtue of a grant or acquired or established by virtue of an enactment or order.
 - Trading as a news vendor.
 - Selling items, or offering or exposing them for sale, as a rounds person.
 - Trading which is carried on at a premises used as a petrol filling station, or is carried on at a premises used as a shop or in a street adjoining premises so used and as part of the business of the shop.

- Trading in a trunk road picnic area provided by the Secretary of State under section 112 of the Highways Act 1980
- Selling things, or offering or exposing them for sale, as a roundsman. (Roundsman include milkmen, coalmen etc. who have established or recognized customers in the street)
- The use of trading under Part VIIA of the Highways Act 1980 of an object or structure placed on, in or over a highway;
- The operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980

4.1.5 Telford & Wrekin Council has approved conditions to control street trading.

4.1.6 In addition to the conditions, there is an Information Pack issued to applicants to assist with the application process.

4.1.7 The current Policy & Conditions applicable to street trading were last reviewed in June 2015.

4.1.8 At the time of preparing this report, the Licensing Service currently issues:-

44 Street Trading Consents for static sites.

14 Street Trading Consents for mobile units.

In addition, since the introduction of Day Consents in April 2014, the Licensing Service has approved and issued 21 street trading day consents.

4.1.9 Telford & Wrekin Council issues static consents for units such as food catering trailers that operate from a designated fixed pitch.

4.1.10 Telford & Wrekin Council issue mobile consents for units such as ice cream vans and mobile food delivery vans who are only stationary whilst conducting a sale.

4.1.11 All street trading consents are issued for a period up to one year and are renewed annually. Currently, Telford & Wrekin Council charge £319 for an initial and first street trading consent, and this is renewed at a cost of £185.

4.1.12 Street trading day consents are issued for a period of up to 7 days at a cost of £60 for the first day and £18 for each additional day (Again Members will note that this fee is under consideration as part of the Review of Licence Fees Report).

- 4.1.13 Historically the Licensing Service has only consulted on new applications. . However, circumstances change in relation to trading locations, neighbourhoods, hours and days of trading, articles vended and so the Licensing Service consider it is reasonable, proportionate and more transparent to consult the parties again upon renewal. The Licensing Service is, therefore, recommending this minor amendment to the Policy Statement.
- 4.1.14 Licensing Officers seek approval to make a minor amendment to the current Street Trading Policy Statement. The 'Statement' indicates that the Licensing Service can consult with a number of bodies and organisations. However, the 'Statement' does not clarify which applications this relates to. Therefore, it will be necessary to make it clear that we will consult on any new and renewal applications. A copy of the amended Statement is attached as **Appendix A**, and amendments are highlighted in red.
- 4.1.15 It is also suggested by Officers that the opportunity be taken to make a number of other amendments to the Policy in order to update and improve the information made available to Street Traders.
- 4.1.16 The Licensing Service will consult with all existing street traders. **Appendix B** lists other bodies that will be asked for their comments and views to the proposed amendments of the Policy Statement for street trading.

5.2 Equal Opportunities

- 5.2.1 A Community Impact Assessment has been carried out on this review of Council's Policy and Conditions in respect of Street Trading and is attached at **Appendix C**.

5.3 Environmental Impact

- 5.3.1 The Licensing Service believes that there will be no environmental impact as a result of this report.

5.4 Legal Comment

- 5.4.1 The Council has a duty to provide for the issuing of street trading consents under the relevant adopted provisions of the Local Government (Miscellaneous Provisions) Act 1982. In addition, other duties that apply include:
- (a) Section 17 of the Crime and Disorder Act 1998 to take all reasonable steps to reduce crime and disorder.
 - (b) The Regulators' Code (set out under the Legislative and Regulatory Reform Act 2006) not to impede economic progress by the

regulations set out and to particularly consider the impact of regulations on small businesses.

- (c) The Provision of Services Regulations 2009 to ensure requirements are non-discriminatory justified by an overriding reason relating to the public interest, proportionate to that public interest objective, clear and unambiguous, objective, made public in advance, transparent and accessible.

5.4.2 There is no legal requirement for the Council to adopt a policy, however it is considered best practice and the policy document serves to outline for street traders the Council's approach to, and its standards for those engaged in, street trading.

5.4.3 Before issuing any policy or amendments the authority has an implied duty, and it is good practice, to consult all relevant parties. A policy must be reasonable and proportionate. However, the policy cannot fetter the Council's discretion and each application or any subsequent enforcement matter will be judged on its own merits whilst having regard to the policy ensuring a transparent and consistent approach to licensing that would reduce the opportunity for challenge through the Courts. If an applicant considers they have not been dealt with in accordance with the policy or otherwise treated unfairly they can seek to challenge any decision made.

5.5 Links with Corporate Priorities

5.5.1 This report has links to the following Corporate Priorities:

Protect and Create Jobs as a 'Business Supporting Winning Council'

5.6 Opportunities and Risks

5.6.1 In proposing this action the Corporate Risk Management Methodology has been complied with. This approach is not intended to eliminate risks but to identify the risks and manage them. However not all risks can be managed all of the time and some risks may not have been identified.

5.6.2 The following key risks and opportunities associated with this action have been identified and assessed and arrangements will be put in place to manage them.

- (i) The Financial risks to the Council in the event of a legal challenge to the change in Policy.

5.7 Financial Implications

- 5.7.1 Income generated from street trading consents contributes to the overall income target for licensing which is £191k for 2016/17. A review of license fees is currently being undertaken which includes a review of the current rates for street trading consents outlined in 4.1.10 and 4.1.11 of this report. A separate report will be prepared for the licensing committee detailing the outcome of this review.
- 5.7.2 There are no further financial implications arising from this report. The cost of the consultation process will be met from within existing budgets.
MLB 03.01.17

6. Ward Implications

- 6.1.1 This report has implications for all wards in the District.

7. Background Papers

- 7.1.2 Local Government (Miscellaneous Provisions) Act 1982.
- 7.1.3 T&WC Street Trading Policy
- 7.1.4 EU Regulations 852/2004.
- 7.1.5 T&WC Street Trading Conditions 2nd June 2015
- 7.1.6 T&WC Street Trading Information Pack

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