

Thursday, 11 January 2024

Report of the Assistant Director - Growth & Regeneration

Street Trading Policy 2024 - 2026

Exempt Information

None

Purpose

The aim of the Policy is to create a street trading environment which ensures fair trading, protects the amenity of residents, ensures the safety of those trading, promotes diversity and consumer choice and provides applicants with advice and guidance on the Council's approach to the administration for street trading consents and licences under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 ("the Act").

Recommendations

That Licensing Committee recommend to Full Council that they consider the draft Street Trading Policy 2024 – 2028 as suitable for adoption

And that the Licensing Committee recommend to Full Council that they consider the areas to be considered 'consent' streets suitable for adoption and to advertise the areas for consent once adopted.

Executive Summary

Tamworth Borough Council is the Licensing Authority responsible for considering applications for a range of activities that require a street trading consent under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.

This legislation allows the Council to set a policy, conditions and fees for the grant, variation, renewal and revocation of street trading consents or licences.

Tamworth Borough Council has adopted street trading provisions, but no areas have been classified as 'consent streets' for the purposes of street trading and no formal Street Trading Policy has ever been adopted.

In order to ensure that street trading in Tamworth reflects the current needs of the Borough, a draft Street Trading Policy has been produced.

At the Licensing committee that was held on the 11th September 2023, members considered the options in relation to the areas to be considered 'consent' streets and considered that the areas should include the whole of the Borough apart from the Castle Grounds and Town Centre streets to be determined by the Officers and the Portfolio Holder; and that the Committee noted the contents of the draft Street Trading Policy incorporating the agreed relevant consent areas and that the policy be suitable for public consultation.

The public consultation exercise was held between the 20th October 2023 and 15th December 2023. A list of those that were consulted is attached at Appendix 3. No responses

to the consultation were received. No amendments have been made to the draft policy following the consultation exercise.

Options Considered

The regulation of street trading could have implications for events ran by the authority. With this in mind, the Arts and Events team were consulted on the proposals. The team advised that they already experience significant issues with securing traders to attend events that the authority organise, any additional charge on these traders for such events is likely to result in traders refusing to participate and potentially restrict events that can be hosted by the authority.

The potential effect on events hosted by the council has resulted in a number of options regarding the administration of street trading needing to be considered. These are:

The whole Borough be consented. This may result in a reduction in the number of events that are viable to run and the number of traders at events due to the extra trader fee being charged. It was therefore considered more appropriate that the following wording be incorporated into the consultation policy.

Page 5 Local Exemptions

Any event that has been classified as an 'authorised event' by the Arts & Events Team of Tamworth Borough Council will be exempt from requiring Street Trading Consents.

Page 6 Street Trading within Tamworth

Tamworth Borough Council has designated all streets within the borough as consent streets, with the exception of the A5 dual carriageway and Lower Gungate from it's junction at Spinning School Lane and Little Church Lane which is designated as a prohibited streets. There are no licensed streets in Tamworth.

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Traders who wish to trade as part of an organised event must also apply to the Council for a street trading consent. This does not affect the contractual requirements in relation to the Market Provider.

Resource Implications

Street Trading should operate a net nil budget on a cost recovery basis with expenditure funded by income collected through consent fees. The cost of administration and compliance activity for street trading consent informs the setting of consent fees.

Legal/Risk Implications Background

The Council's primary statutory rights in relation to street trading are set out in Schedule 4 of the Local Government Miscellaneous Provision Act 1982.

In addition to activities authorised expressly under the above legislation, the Council may also do whatever is reasonably incidental to that power. This is given statutory effect in Section 111 (1) Local Government Act 1972 which states:

"Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions."

Equalities Implications

This report has been prepared in accordance with the Council's Diversity and Equality Policies.

Environment and Sustainability Implications (including climate change)

The Council is committed to tackling climate change and the proposed Policy will assist in ensuring that it contributes appropriately to this ambition.

Background Information

The legislation that applies to street trading is contained in the Local Government (Miscellaneous Provisions) Act 1982 and the Pedlars Act 1871. Some exceptions are contained in the Police, Factories etcetera (Miscellaneous Provisions) Act 1916 relating to charitable street collections.

The 1982 Act allows local authorities to adopt provisions to control street trading as follows: -

- Prohibited Streets- where no street trading is allowed;
- Consent Streets- where trading is allowed when a consent is issued;
- Licensed Streets- whereby trading is allowed from a designated pitch- this is often used for street markets.

There is no statutory appeal against the refusal to issue a consent, but there is a statutory appeal in the event there is a refusal to issue a licence. If the local authority does not apply a designation for street trading, then legislative controls are minimal and generally only cover pedlars and charity issues.

Tamworth Borough Council adopted the 1982 Act Street trading provisions, currently no public roads are classified as 'consent streets' for the purposes of street trading. No formal street trading policy has ever been implemented.

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.

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.

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

It should be noted that there are a number of different type of street trading activities, from static street trading (i.e. burger van), mobile street trading (i.e. ice cream traders), markets/fairs/carnivals and special events.

The Policy sets out the following in order to assist potential applicants before applying: - criteria for choosing a trading location/pitch which is aimed to assist potential applicants - requirements of trading vehicles i.e. emissions and encouragement of electric vehicles - guidance on employees of street traders - operating hours - guidance on ice cream van chimes - trading near to schools - how the application process works from submission, consultation and determination - guidance on suitability of an applicant - requirements for street trading during events / special events

The purpose of the Policy is therefore to: - provide guidance to applicants and the decision makers - to ensure fair trade occurs between mobile traders - protect the amenity of residents - promote diversity and consumer choice - provides applicants with advice and guidance on the Council's approach to the administration of applications for street trading licences - prevent obstruction of the streets in the district and to ensure the safety of persons using them.

The adoption of a proposed street trading policy is a Council function, supported by consultation with the Licensing Committee.

The draft street trading policy 2024 – 2028 was first presented to the Licensing Committee on the 17th July 2023. The Licensing Committee resolved: That the Policy be referred back to the Officers to find out where the initial instruction came from to develop a policy and consult with the current relevant Portfolio Holder with regards to whether the implementation of a policy was still relevant. Attached at Appendix 2 is a briefing note presented to and discussed with Councillor Summers, Portfolio Holder for Environmental Health and Community Partnerships. Upon Cllr Summers instruction the policy is now being presented back to the Licensing Committee.

Report Author

Sarah Gear – Senior Licensing Officer

List of Background Papers

Local Government (Miscellaneous Provisions) Act 1982

Appendices

Appendix 1 – Draft Street Trading Policy

Appendix 2 – Background information

Appendix 3 – List of Consultees