

HAVANT BOROUGH COUNCIL

LICENSING COMMITTEE

26 June 2023

STREET TRADING POLICY

FOR APPROVAL FOR CONSULTATION

Portfolio Holder: Councillor Elizabeth Lloyd

Key Decision: No

Report number: HBC/014/2023

1. Purpose

- a. This report is submitted to the Licensing Committee for policy implementation for the Council's administration of street trading consent in the Borough. The policy will outline how the Council intends to process and determine applications for street trading consent.

2. Recommendation

- a. Members are requested to:
 - i. Approve the draft street trading policy for public consultation.

3. Executive Summary

- a. Havant Borough Council adopted Part III and Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 in 1983, allowing the Council to grant and refuse street trading consents, designate consent streets, and determine fees and charges associated with street trading consents.
- b. The Council has designated several consent streets in the Borough, shown at Appendix 2 to the draft policy. Street trading consent is only required on these streets. Should an individual wish to trade somewhere other than a designated consent street, they should obtain permission from the landowner.

- c. The Council is in the process of re-adopting Part III and Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, and re-designating its consent streets, to ensure that complete records are maintained.
- d. The Council's Economic Development Team previously administered applications for street trading consent, and this function has now been delegated to the Licensing Team.
- e. The policy has been drafted to ensure transparency for customers applying for street trading consent, and guidance for the licensing authority and consultees in determining applications.
- f. The street trading licensing regime enables the Council to control the location of traders, the times during which they trade, the products that they sell and ensure that any individual granted consent is suitable to hold such consent.

4. Additional Budgetary Implications

- a. Street trading consent is accompanied by a fee set by the Council. The local authority is entitled to recover the cost of administering street trading consent only. Costs of enforcement cannot be recovered. The current fees for street trading consent can be found in the Council's Fees and Charges 2023/24.
- b. It is proposed to charge a single fee for street trading at events, rather than a fee per stall. This is in response to feedback from commercial and charitable organisations in the Borough that arrange events of this nature, and this proposal ensures that these events remain financially viable and continue to contribute to the vibrancy of the Borough. The administrative process and cost to the Council for issuing consent for street trading at events is the same as that for giving consent to an individual stall. This proposal ensures that the service remains cost neutral as required by the legislation.

5. Background and relationship to Corporate Strategy and supporting strategies and policies

- a. Pride in Place: Creating a great place to live, work and enjoy – enabling a vibrant and diverse street trading offering in the Borough, enhancing the retail and food/beverage offering for residents and visitors. The Street Trading Policy will enable the Council to create a street trading environment which complements premises based trading, is sensitive to the needs of the residents, provides diversity, consumer choice and safety of local environments
- b. Growth: Building our future – stimulating the local economy by encouraging local businesses to utilise street trading as part of their offering. Street trading consents will normally create employment for at least two people.

6. Options considered

- a. There is no statutory obligation to license or give consent for street trading. However, the Council's adoption of Part III and Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, and designation of consent streets under the same Act, demonstrates that the Council intends to manage street trading in the Borough to ensure high standards, fairness and vibrancy.

7. Resource implications

a. Financial implications

- i. The work involved in administering the street trading regime will result in an increased workload for the Licensing Team. It is not anticipated that additional staff are required to resource this work, although this may change if the number of applications far increases the number on the waiting list currently maintained by the Licensing Team. Should this be the case, additional staff ought to be funded by the additional revenue generated by the consent fees.

- ii. Street trading application fees are set to recover the costs incurred by the Council in processing the application. Enforcement costs cannot be recovered. The proposal to charge a singular fee for street trading at events, rather than per stall, is consistent with the level of administration required to process this type of application and ensures that the fees remain cost neutral.

Section 151 Officer comments

The financial impact of this report is limited and not material. There is currently no budgeted requirement for income for Street Trading and Havant BC received <£2k in 2022/23. The proposed changes will only see a minor change to the income received and it is as likely to be a positive change as it is a reduction in income.

The proposed policy will potentially also reduce demand on officer time and could present some future cost/efficiency savings.

Therefore, this policy report has my approval

Steven Pink, Chief Finance Officer and Section 151 Officer

Havant Borough Council

b. Human resources implications

- i. None at present, although this may change if the requirement for additional staffing is apparent.

c. Information governance implications

- i. Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 specifies information that must be collected as part of the application process for street trading consent. It also specifies information that the Council may request at their discretion.
- ii. A Data Protection Impact Assessment relating to street trading activities will be drafted and agreed with the Council's Data Protection Officer to ensure that the processing of any data

relating to street trading is done so in accordance with the relevant legislation.

d. Climate and environment implications

- i. The draft policy includes the requirement to consider environmental sustainability when determining an application. This may include requesting that the applicant undertake measures to minimise the impact of the street trading activity on the local environment, i.e., type of power supply, type of packaging, recycling provision etc.

e. Other resources implications

- i. The Licensing Team's current software package is capable of supporting the street trading application process.
- ii. Licensing Officers have not received any additional training since taking on the street trading functions. Appropriate training courses have been arranged with the Institute of Licensing and funded from the team's existing budget.

8. Legal implications

- a. The Local Government (Miscellaneous Provisions) Act 1982 does not contain provisions that directly require the Council to prepare and publish a policy relating to street trading.
- b. The Regulators' Code (which has statutory effect by virtue of section 22 of the Legislative and Regulatory Reform Act 2006), requires the Council to have regard to the requirements of the Code. The development of a street trading policy ensures that the Council satisfies its legal responsibilities with respect to specific elements of the Code and will assist the Council in demonstrating that it has due regards to the Code. For example, the Code requires the Council to provide advice and guidance to those they regulate to understand and meet

their responsibilities; the street trading policy fulfils this requirement with regards to the Council's regulation of street trading activities.

- c. There is no right of appeal against the decision to either refuse or revoke street trading consent. However, the street trading policy provides the Council with a basis for a robust defence to any complaints or challenges that may be received in respect of decisions made and enforcement action taken.
- d. It is good practice for the Council to consult on any changes made to local policy. A public consultation will be undertaken, including engagement with relevant stakeholders, prior to this policy being recommended for adoption. Any adverse comments received during the consultation will be considered by the Licensing Committee prior to the policy (as amended) being recommended for adoption.
- e. The policy could be challenged by way of Judicial Review, but as an open and fair consultation will take place and the Council's decision-making process is considered lawful, a successful challenge is considered unlikely.

Monitoring Officer comments

The Licensing Committee has the authority to approve the policy for consultation prior to adoption.

Jo McIntosh

9. Risks and mitigations

- a. Financial exposure: fees charged for street trading consent cannot be used to generate profit for the Council, and must be 'reasonable' i.e., recover the costs of administration only (see *Regina v Manchester City Council ex parte King [1991] 89 LGR 696*). To ensure that fees are maintained at a reasonable level, the Council undertake an annual review of all fees charged and the Licensing Team undertake an internal review to ensure that any fees charged for licensing processes are for the recovery of administration costs only.
- b. Exposure to challenge: The policy and associated conditions could be challenged by Judicial Review, but as an open and fair consultation will

take place and the Council's decision-making process is considered lawful, a successful challenge is considered unlikely.

- c. Reputation: The policy and associated conditions set out the expectations of applicants and consent holders, balancing their right to operate their business and generate income and the Council's duty to regulate street trading activities.

10. Consultation

- a. Following approval of the draft policy by the Licensing Committee, a 28-day public consultation period will be undertaken. Key stakeholders such as Hampshire Highways, Hampshire Constabulary and other departments within the Council will be consulted.
- b. The mechanism for submitting comments will be made clear in all consultation correspondence.
- c. Any adverse comments received during the consultation period will be considered prior to the policy being recommended for adoption.

11. Communications

- a. Once the street trading policy has been adopted by Full Council, the Licensing Team will liaise with Public Relations to update the information available to customers on the website relating to street trading consent.
- b. The Council will produce a guidance document that can be easily handed out to street traders, should the Licensing Team be made aware of any trader who does not hold the requisite consent. This will ensure that the process for obtaining consent and ensuring compliance is clear to customers.

12. Appendices

Appendix 1: Street Trading Policy 2023 (Draft)

13. Background papers

None.

Agreed and signed off by:

Portfolio Holder: Councillor Elizabeth Lloyd 15/06/2023

Executive Head: Alex Robinson 15/06/2023

Monitoring Officer: Jo McIntosh 16/06/2023

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