

Name of Committee:	Licensing Committee		
Committee Date:	19 October 2023		
Report Title:	Street Trading Policy		
Responsible Officer:	Alex Robinson – Executive Head of Place		
Cabinet Lead:	Councillor Elizabeth Lloyd		
Status:	Non-Exempt		
Urgent Decision:	No	Key Decision:	No
Appendices:	Appendix A: Draft street trading policy		
Background Papers:	Licensing Committee – Monday 26 June 2023 17:00, Item 12: Street Trading Policy		
Officer Contact:	Name: Briony Appletree Email: licensing@havant.gov.uk		
Report Number:	HBC/041/2023		

Corporate Priorities:

Pride in Place – to enable a vibrant and diverse street trading offering in the Borough.
Growth – stimulate the local economy.

Executive Summary:

This report outlines the responses received during the consultation period for the Council's proposed Street Trading Policy, which details how the Council will exercise its functions under Part III and Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.

Recommendations:

Recommend that the Licensing Committee:

- A. Notes the content of the report.
- B. Recommends that Full Council:
 - a. Adopt the Street Trading Policy
 - b. Delegate the power to make any minor amendments to the Street Trading Policy to the Executive Head of Place in consultation with the Cabinet Lead.

1.0 Introduction

- 1.1 This report outlines the responses received during the consultation period for the Council's proposed Street Trading Policy, which details how the Council will exercise its functions under Part III and Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.

2.0 Background

- 2.1 Havant Borough Council is in the process of adopting 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.
- 2.2 This 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.
- 2.3 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.
- 2.4 Following a Licensing Committee held on 26 June 2023 and the statutory advertisement of the Council's intention to adopt the relevant legislation, the Council invited comments on the proposed policy during a four-week public consultation. Responses were invited in writing to the Licensing Department. The consultation period ended on 10 October 2023.

3.0 Options

- 3.1 The Council received no responses during the consultation period, and therefore it is not considered that any further amendment to the policy are necessary prior to it being recommend for adoption by Full Council.

4.0 Relationship to the Corporate Strategy

- 4.1 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
- 4.2 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.

5.0 Conclusion

- 5.1 The Licensing Committee are requested to recommend the adoption of the Street Trading Policy, following any amendments made considering representations received during the consultation period.

6.0 Implications and Comments

6.1 S151 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

6.2 Financial Implications

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.

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.

6.3 Monitoring Officer Comments

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

6.4 Legal Implications

- (i) 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.
- (ii) 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.
- (iii) 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.

- (iv) It is good practice for the Council to consult on any changes made to local policy. A public consultation has been undertaken, including engagement with relevant stakeholders, prior to this policy being recommended for adoption. Any adverse comments received during the consultation have been considered by the Licensing Committee prior to the policy being recommended for adoption.
- (v) 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.

6.5 Equality and Diversity

All applications will be treated fairly, free from bias and with due regard the Council's Equality Policy.

6.6 Human Resources

There are no human resources implications arising as a result of this report.

6.7 Information Governance

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.

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.

6.8 Climate and Environment

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.

7.0 Risks

- 7.1 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.
- 7.2 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.
- 7.3 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.

8.0 Consultation

- 8.1 Following approval of the draft policy by the Licensing Committee at a meeting held on 26 June 2023, a four-week public consultation period was undertaken. The consultation ended on 10 October 2023, with comments invited in writing to the Licensing Department.
- 8.2 No comments were received during the consultation period.

10

9.0 Communications

- 9.1 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.

9.2 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.

Agreed and signed off by:		Date:
Cabinet Lead:	Councillor Elizabeth Lloyd	11/10/2023
Executive Head:	Alex Robinson	11/10/2023
Monitoring Officer:	Jo McIntosh	11/10/2023
Section151 Officer:	Steven Pink	11/10/2023