

Street Trading Policy Review 2022

Definitions

“Street Trading” is defined in paragraph 1 of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (LG(MP) Act 1982) – as “the selling or exposing or offering for sale of any article (including a living thing) in a street”.

The above Act defines the term “street” as including: “any road, footway, beach or other area to which the public have access without payment”; and a service area as defined in section 329 of the Highways Act 1980”.

Any part of a street is a “street” for the purposes of the Act. This would include private land, car parks, industrial estates that the public has access to without payment.

Under the provisions of Schedule 4 a Local Authority may designate streets within its borough as either:

- Prohibited Streets - in which street trading is not allowed.
- Licence Streets - in which a licence to trade is required.
- Consent Streets - where prior consent requirements operate.

Street trading does not include:

- Goods sold by a certificated pedlar. A pedlar is a trader who must: keep moving, stopping only to serve customers at their request, move from place to place and not circulate within the same area, hold a valid pedlar’s certificate, issued by a Chief Constable of Police.
- Anything done in conjunction with an **established** market or fair.
- Trading in a trunk road picnic area.
- News vendors. Where the only articles sold or exposed or offered for sale are newspapers or periodicals; and (ii) they are sold or exposed or offered for sale without a stall or receptacle for them or with a stall or receptacle for them which does not :- 1. exceed 1m. in length or width or 2m. in height. 2. occupy a ground area exceeding 0.25 sq.m. 3. stand on the carriageway of a street).
- Trading carried out by a petrol filling station or shop located next to a road.
- Goods sold by a rounds man. An individual who visits a ‘round’ of customers and delivers the orders of those customers, for example a milkman. A person operating an ice-cream van is **not** classed as a roundsman.

What we have now

In 1987, The resolution to adopt schedule 4 of the LG(MP) Act 1982 was taken (minute 219 8 June 1987 refers).

In 1999, Members approved a new street trading policy with a list of consent street and prohibited streets (Minute 3049, 24 February 1999 refers).

In 2001, The policy was amended to add Yarm Lane as a prohibited street, (minute 46, 26 April 2001 refers). On the grant of a current street trading consent, conditions are attached, these conditions have not been reviewed since 1999.

The current policy includes a list of prohibited streets in which street trading is not allowed, and a list of consent street in which consent is needed. Street trading in the rest of the borough is unregulated, with an increasing number of mobile food vendors appearing in roadside lay-bys and on industrial estates with instances of causing obstruction and/or damage to the highway. These operators often have a competitive advantage over other traders having low overhead costs, paying no business rates and currently requiring no prior approval to operate.

Current street trading information is on the website at: [Street Trading Consent - Stockton Council](#)

What we want to develop?

An extension to the consent street trading scheme for the purposes of Schedule 4 of the LG(MP) Act 1982 the borough shall be designated as a consent area for the purposes of street trading.

An extension of the consent street trading scheme to the whole borough would enable greater regulation of standards across the whole borough, with all traders required to obtain prior consent and meet defined conditions before trading.

Since the pandemic enquires for street trading have increased and more often than not these are in unregulated areas. The proposed scheme gives greater clarity of the standards expected of all street traders operating from burger vans to ice cream vans to community markets without causing undue restriction or inflexibility of where trading may occur.

During this process the current prohibited and consent streets list would be removed and no trading in any area of the Borough would be permitted without the prior consent of the Council. This is a common approach nationally and in other neighbouring Local Authorities Hartlepool, Redcar & Cleveland and Darlington.

Making the whole Borough a consent area allows flexibility and fit with developing Town Centres and Place Strategy. When granting or renewing a consent, the council may attach any reasonable conditions and the council can, at any time, vary the conditions attached to the consent. There is no right of appeal against any council decision made in regard of a street trading consent. The consent cannot be granted for a period of time exceeding twelve months and can be revoked at any time.

Why Change?

Street Trading balances the right of an applicant to make an application under the LG(MP) Act 1982 to trade in the Borough, and to have the application considered on its own merits; against the right of any person to live in the Borough without being disturbed by the trading activity, and the rights of established businesses to continue trading, creating a vibrant local economy.

The Council has no control in other areas where it has not designated a street as either a consent or prohibited street. This has resulted in the Council being ineffective to respond to complaints associated with trading in areas where no provisions exist.

Current conditions allow street traders to set up operations at will, in any most locations, with minimal regulation and can lead to confusion and uncertainty about which areas are regulated. Extending the scheme would provide a simpler scheme, with greater clarity to existing and prospective traders about where conditions apply.

Whilst there will be an additional increase in administration and cost to a business wishing to trade on the street in an area previously not covered, this is already the case nationally and in neighbouring local authorities and the scheme will provide a number of benefits which outweigh this:

- Provide protection to existing retail traders, and security to consent holders, as any new trader will have to apply to the Council for permission to trade.
- Consultation process for any new application where local representations will be taken into account, ensuring any new application meets local needs.
- Traders will be regulated to protect the public across the Borough.
- Higher quality street trading concessions in the right location will enhance the local environment.
- Permits a future proof, business friendly, demand led approach.
- Opens up areas and remains relevant to reflect redevelopment.
- Gives more regulation on the obstruction of and repair to damage of the highway.

A resolution designating the whole borough means that as streets evolve during redevelopment, the Council retains control without having to revisit the list of consent streets with the aim to:

- prevent obstruction of the streets
- ensure the safety of persons using them
- recognising the importance of businesses to the local economy and the character of the area
- ensuring that the activities do not cause nuisance or annoyance to the people of the area.

An appropriate balance will help businesses to develop successfully whilst providing assurance to the public and existing traders. An updated resolution will enable the Council to manage street trading across the Borough in areas where currently no control exists and to promote economic development through a consistent street trading policy. In addition, it will improve the efficiency of the council licensing team by ensuring consistent and effective enforcement and business advice.

Markets

Charter / statutory markets are exempted from the street trading regime. Weekly markets in Stockton, Thornaby and Billingham Town Centres would be exempt, however any non-established markets which did not meet this definition would be subject to the consent street trading regime.

Charity / Special / Community Events

A review of the current policy would mean all street trading would fall within the scope of requiring regulation, including trading at organised events, consideration has been given to the different type of event such as a community event or those raising money for charity. These events could benefit from a sliding fee scale depending on the number of stalls, which the event organiser applies for rather than individual stall holders. Events raising money only for charity could be exempt from a fee.

Conditions and Enforcement

Locally set standard conditions can be attached to every Consent, detailing the holder's responsibility to maintain public safety, prevent nuisance and preserve the amenity of the locality.

Additional conditions may also be attached limiting the days and hours when street trading is permitted, the goods which may be sold, the size of the trading unit any other relevant matter.

Failure to comply with these conditions may lead to revocation or non-renewal of the consent. The following are offences under the LG(MP) Act 1982 and will be considered in line with the corporate enforcement policy:

1. Street trading in a prohibited street.
2. Street trading in a Consent street without a relevant Consent to Trade.
3. Street trading with a Consent to Trade, but not complying with the times or location stated within the Consent to Trade.

General Provisions of Consent Street Trading Legislation

The Council is bound to act reasonably and consistent with its general obligations (e.g. those under the Human Rights Act), but subject to that the council enjoys a very wide discretion with regard to the granting or refusal of street trading consents and the following general provisions apply;

- The Licensing Authority is under no duty to grant a street trading consent and need not specify statutory grounds for refusal.
- There is no statutory limitation on the Licensing Authority's power to revoke or refuse to renew a street trading consent.
- There is no right of appeal against the refusal to grant or renew a consent or against the revocation of variation of a consent.
- Any application for the grant or renewal of a consent shall be made in writing.
- A street trading consent shall not be granted to a person under the age of 17 years: or for any trading in a highway to which a control order under section 7 of the Local Government (Miscellaneous Provisions) Act 1976 is in force, other than trading to which the control order does not apply.

- When granting or renewing a street trading consent, the Licensing Authority may attach such conditions to it as they consider reasonably necessary
- When granting or renewing a street trading consent the Licensing Authority may attach such conditions to prevent the obstruction of the street or danger to persons using it, or nuisance or annoyance (whether to persons using the street or otherwise)
- The Licensing Authority may at any time vary the conditions of a street trading consent
- A street trading consent may be granted for any period not exceeding 12 months but may be revoked at any time
- The holder of a street trading consent may at any time surrender the consent to the Licensing Authority and it shall then cease to be valid.
- A street trading consent holder may only be prosecuted for a breach of a condition where he trades from a stationary van, cart, barrow, vehicle or from a portable stall in a place, or at a time not included in the consent, or for breach of a condition relating to the positions and times in which he may trade but not for a breach of a condition relating to the type of article to be sold.
- A person guilty of an offence shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale
- No person under the age of 17 years shall be employed in street trading
- Where a consent is surrendered or revoked, the Licensing Authority shall remit the whole or part of any fee paid for the consent.

Legal Process to Change Current System

The proposal is for Stockton Borough Council to designate the whole of the borough as a consent area. The proposed street trading policy must be in accordance with the powers granted in Section 3 and Schedule 4 of the LG(MP) Act 1982.

The LG(MP) Act 1982 Schedule 4 sets out the process for designating a consent area and rescinding the existing street trading resolution. The process is set out and must be followed.

To change to a Borough wide consent area consultation must take place, statutory consultees are:

- Public
- Police
- Highways

Timeline

To present the General Licensing Committee with a draft resolution to designate the whole Borough as a consent area for the purposes of street trading under Paragraph 2(1) of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982.

Licensing Committee agrees a draft resolution for public consultation (28 days) under Paragraph 2(1) of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982, to designate the whole Borough as a consent area for the purposes of street trading and to update policy and conditions relating to this activity.

It is a statutory requirement to advertise (one day) the proposed draft resolution in local papers to consult the public. The consultation should also be posted on the council's website. It is a statutory requirement to serve a copy of the notice on the Police, Highways Authority and other relevant bodies, this notice will contain a draft of the resolution.

The Council can also consult with all interested persons by:

- Writing to or emailing the responsible authorities
- Writing to or emailing those people representing the interests of persons carrying on businesses or persons who may be affected such as current consent holders
- Publicising a notice of the draft resolution on the Council's website
- Using social media to inform the public of the consultation and direct them to the website

Following the end of the 28 day consultation period, a further report detailing any representations received should be brought to Licensing Committee – Cabinet for comment – Council Decision which may, if it thinks fit, pass the resolution for approval and publication confirming the designation of streets within the Borough.

The council needs to publish the final resolution in local papers and on the council website advertising the decision. (This should be no later than 28 days before the date of operation of the new scheme)

The designation shall take effect on the day specified in the resolution which must not be before the expiration of the period of 28 days beginning with the day on which the resolution is passed.

Consultation is critical to ensure any changes to the street trading resolution are clear and transparent for businesses, responsible authorities and the public.

Financial Implications of change

The cost of administering the consent street trading scheme can be recovered through street trading fees, which are set locally and reviewed annually. The fees must be set at a level to recover the cost of the scheme and can take into account the location, the duration of the Consent, trading hours, and the articles to be sold.

Where trading ceases during the term of Consent, refunds will not be given for any outstanding period of less than 3 months.

Fees vary across the Tees Valley and further work is need on fee setting.