

General Licensing Committee Meeting	
Meeting Date	21 st January 2021
Report Title	Draft Street Trading Policy
Cabinet Member	Councillor Richard Palmer, Cabinet Member for Community
SMT Lead	Nick Vickers, Chief Financial Officer
Head of Service	Della Fackrell, Resilience & Licensing Manager
Lead Officer	Christina Hills, Licensing Officer
Key Decision	No
Classification	Open
Recommendations	<ol style="list-style-type: none"> 1. To approve the draft Street Trading Policy following a 14 week consultation 2. Members to determine the level of fees to be set for Street Trading Consents 3. To recommend to Full Council that the policy be approved and published

1 Purpose of Report and Executive Summary

- 1.1 At the General Licensing Committee of 2nd February 2020 a draft Street Trading Policy under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 was approved for public consultation. This report seeks approval from Members to endorse the draft Street Trading Policy following a 14 week consultation so that it can be presented to full Council for formal adoption.
- 1.2 Members are also asked to determine the level of fees that should be set for Street Trading Consents

2 Background

- 2.1 Under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, a local authority may regulate street trading in their area. Swale BC has adopted these provisions for the whole of its area and on 23rd July 2010 designated all streets in the area as 'consent streets'
- 2.2 The effect of this designation is that any street trading in any street is prohibited, subject to legal exemptions, without first obtaining a street trading consent from the Council.

- 2.3 On 1st December 2010 to ensure compliance under the European Service Directive, the Council approved a Street Trading Local Policy and Guidance Document.
- 2.4 A revised Street Trading Policy was approved by the Council on 24th July 2013 and which, although set to be reviewed in 2016, is still in existence to date. This is shown as **Appendix I**.
- 2.5 The Street Trading Policy outlines how the Council will execute its decision making functions when dealing with applications for Street Trading Consents.
- 2.6 There is no statutory requirement for a local authority to have a formal Street Trading policy; however, a Council can choose to adopt such a policy.
- 2.7 The adoption of a Policy benefits customers as well as reassuring the general public and other public bodies. It also reinforces effective practices and ensures proportionate, consistent and targeted regulator activity, whilst also developing a transparent and effective dialogue and understanding between regulators and those we regulate.

3 Proposals

- 3.1 The existing policy was reviewed by officers. There have been no changes to legislation to take into account. The current policy has been expanded in some areas to provide clarification as to what is defined within the Local Government (Miscellaneous Provisions) Act 1982 and, where appropriate, exemptions contained within the existing policy have been deleted.
- 3.2 The draft Street Trading Policy is attached as **Appendix II**
- 3.3 The existing policy has been amended as shown below:
- Street Trading at Fetes and Carnivals – outdoor events staged mainly for public entertainment and benefiting charitable concerns. It is for Members to determine what percentage of monies raised will be contributed to the beneficiary individual, organisation or charity. This is shown at point 3.6.1 within the draft policy.
 - Removal of ‘7 metre rule’ within the existing policy whereby anyone trading more than 7 metres from the highway was exempted from the requirement of obtaining a Street Trading Consent. This exemption was taken from the London Local Authorities Act 1990 rather than the Local Government (Miscellaneous Provisions) Act 1982 and is not a legal exemption.
 - Removal of the requirement for ice-cream vendors to register and use a specific chime. This was originally imposed to assist with enforcement.

However, it leads to complaints from ice-cream vendors that another vendor is using their chime and is difficult to enforce.

- Ice Cream Vans and Mobile Food Vans will be required to supply details of their proposed routes, streets and stopping places (which may vary from day to day) again to decrease complaints from other traders.
- Removal of the 'Trial Period' which permits individuals, under the control of an existing consent holder, to try their hand at street trading for a limited period of three weeks.
- The surrender and revocation of a Street Trading Consent is now included in the Policy.
- Amendments to the application procedure to make it more comprehensive. This includes the requirement for applicants to obtain a standard Disclosure and Barring Service criminal records check for new and renewal applications and for one-off consents where considered necessary in order to check the suitability of the applicant.
- Event organisers will no longer apply on behalf of all stall holders, instead each individual stall holder will require a separate Street Trading Consent. The reason for this change is because currently the event organiser is the only person who would be legally accountable and the only person that the Council could take enforcement action against, should there be any problem (for example trading in counterfeit goods).
- Enforcement – this section has been expanded.
- Data Retention – this section has been expanded.

4 Fees

- 4.1 The licensing fees have been reviewed taking into account that they will need to reflect the increased administrative burden that will fall to the licensing team with this enhanced policy whilst at the same time ensuring they are not set at a rate that would be prohibitive to applicants for Street Trading Consents
- 4.2 Currently, fees are charged to event organisers based on the number of stalls at an event, whereas if the proposal to require individual stall holders to apply for their own consents is approved this will lead to a relatively substantial increase in income.
- 4.3 A benchmarking exercise was conducted comparing fees currently charge by Swale and authorities within our CIPFA group which is attached as **Appendix III**.

Members will note that fees tend to vary widely between authorities but that Swale is on the lower end of the spectrum.

- 4.4 Taking into account the above factors, fees have been worked up as shown as **Appendix IV**.

5 Alternative options

- 5.1 The Council could choose not to introduce an updated policy on Street Trading, however, to do so would be contrary to best practice and may lead to a lack of clarity on the application of legislation.

6 Consultation Undertaken

- 6.1 A consultation ran between 30th March 2020 until 19th June 2020 which was then extended until 30th June 2020. Methods of consultation were by the advertising on the Council's website, in local newspapers and where appropriate by email and post.

- 6.2 The consultees were:

- All Swale Councillors
- All Town and Parish Councils
- Town Markets/Co-Operatives
- Kent Police
- Kent Fire and Rescue
- Kent County Council Highways Department
- Kent County Council Trading Standards
- Kent County Council Safeguarding Unit
- Swale BC Environmental Services (Commercial and Environmental Response teams)
- Swale BC Planning
- Swale BC Economy and Community Services team
- Swale BC Green Spaces team
- Any relevant trade associations
- All existing Consent holders

- 6.3 All responses have been entered onto a grid for consideration.

- 6.4 Licensing officers, in consultation with the Resilience and Licensing Manager have conducted an evaluation of each response and have given

recommendations as to whether or not to amend the policy statement, and if so, in what way and to what extent.

6.5 The grid and recommendations are attached as **Appendix V**.

7 Implications

Issue	Implications
Corporate Plan	Having an adopted Street Trading Policy satisfies the corporate objective of: A Council to be proud of
Financial, Resource and Property	<p>There are no direct financial implications for Swale Borough Council concerning this draft Policy as the consultation is being carried out by officers. However, if at any time in the future the policy was subject to legal challenge, there could be costs associated with this process.</p> <p>There could be traders who previously were informed that they required no street trading consent because they were trading more than 7 metres from the highway. As this was an illegal exemption these traders will now require a street trading consent and to pay the requisite fee.</p>
Legal and Statutory	The relevant legislation in relation to street trading is contained within Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).
Crime and Disorder	It is a criminal offence to trade in the street without an appropriate consent. The policy provides a framework for consistent decision-making
Environmental Sustainability	No implications
Health and Wellbeing	No implications
Risk Management and Health and Safety	It is important that Swale BC has a robust and accountable regulatory regime in relation to street trading in order to ensure fair trading, prevent crime and to protect consumers
Equality and Diversity	<p>The Council has a legal obligation under section 149 of the Equality Act 2010 to have due regard to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups.</p> <p>When considering street trading consent applications, only issues provided for in Schedule 4 of the Local Government (Miscellaneous</p>

	Provisions) Act 1982 and provided for in the Street Trading policy for Swale BC will be taken into account. This will ensure a consistent approach is adopted. Under the terms of the policy, every application will be considered on its own merits.
Privacy and Data Protection	Normal data protection and privacy rules will apply. Under the 2013 Act the Council is obliged to provide certain information to the Environment Agency who compile and keep a public register.

7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Existing Street Trading Policy 2013 - 2016
- Appendix II: Draft Street Trading Policy 2021 – 2024
- Appendix III: Benchmarking of Fees
- Appendix IV: Proposed Fees
- Appendix V: Consultation Evaluation Grid

8 Background Papers

Local Government (Miscellaneous Provisions) Act 1982