

| Licensing Committee Meeting | |
|------------------------------------|--|
| Meeting Date | 22 nd August 2022 |
| Report Title | To make a decision on whether to waive licensing application requirements contained in the adopted Swale Street Trading Policy 2021 – 2024 in respect of a two day Street Trading Consent application made on behalf of the organisers of Faversham Hop Festival 2022 |
| EMT Lead | Charlotte Hudson, Head of Housing and Community Services |
| Head of Service | |
| Lead Officer | Stephanie Curtis, Community Safety Manager Christina Hills. Licensing Team Leader |
| Key Decision | No |
| Classification | Open |
| Recommendations | <ol style="list-style-type: none"> 1. That members consider whether to allow a two day Street Trading Consent application to be made by the organisers of Faversham Hop Festival 2022, rather than by individual traders at the event. 2. That members consider whether to allow a two day Street Trading Consent application to be made without the requirement for any individual trader DBS checks to be completed 3. That members consider whether to allow a two day Street Trading Consent application to be made without a formal 8 week consultation as required within the current Swale BC Street Trading Policy 2021 -2024. 4. That members consider what fee should be charged for the Street Trading Consent, (should the decision on recommendations 1 and 2 be to allow). 5. That members advise the applicant to note that any decision to waive the licensing requirements of the policy in respect of a one-off street trading consent to the organisers of the Hop Festival without full compliance with adopted policy, as set out in this report, would be a concession for 2022 only and that it will be expected that any future Faversham Hop Festival events will fully comply with the requirements contained within the current Swale BC Street Trading Policy 2021 - 2024 |

1 Purpose of Report and Executive Summary

- 1.1 To consider whether to waive the licensing requirements contained within Swale BC's Street Trading Policy in respect of a 'one-off' two day street trading consent to the organisers of Faversham Hop Festival due to take place on 3rd and 4th September 2022, by permitting a Street Trading Consent application to be made by the organisers of the event rather than to individual traders, by waiving the requirement for an 8 week consultation on the application, to not require basic DBS checks from the individual traders and to consider the associated application fees.

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. Swale BC has had a policy in place since 2013. 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.
- 2.3 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
- 2.4 A draft revised policy was approved by General Licensing Committee on 2nd February 2020 for full public consultation which took place between 30th March 2020 and 30 June 2020. After this consultation the final policy was presented to General Licensing Committee on 21 January 2021 and was then formally adopted by full council on 31st March 2021. The current policy is shown as **APPENDIX I**.
- 2.5 Methods of consultation were by advertising on the council's website, in local newspapers and where appropriate by email and post.

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 - these were individuals who held a six month or yearly Street Trading Consent with the council and did not include event organisers who had previously held a 'one-off' consent with the council such as Faversham Hop Festival organisers.
- 2.6 Amongst the changes made to the previous Street Trading Policy were that Event organisers would no longer apply on behalf of all stall holders and be granted one Street Trading Consent, instead each individual stall holder would require a separate Street Trading Consent of their own. The reason for this change was because previously the event organiser was 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).
- 2.7 Additionally a basic DBS criminal records check would be required for each trader. For six month and yearly consents these checks are mandatory. For one off event consent applicants, these checks are required where it is considered necessary.
- 2.8 Faversham Hop Festival is due to take place on 3rd and 4th September 2022 following a two-year hiatus due to the Coronavirus pandemic.
- 2.9 The Hop Festival has run for a number of years by the same organiser and as far as the licensing team are aware there have never been any issues with any traders at the event which the festival organisers have taken responsibility for.
- 2.10 On 6th July 2022 the event manager for Faversham Hop Festival contacted the licensing team leader to ask what the licensing requirements were in relation to Street Trading consents following telephone conversations that had taken place with his colleague in June explaining the new process to be followed, however, due to annual leave this was not responded to until 19th July 2022 when confirmation of what was required was given. This email chain is shown as **APPENDIX II**.
- 2.11 On 27th July a Street Trading Application was received from the event organisers which was for a one-off event. No fee was received, and it was confirmed that DBS checks for the directors would follow together with a list of stall holders. The application is shown as **APPENDIX III**. The DBS checks and list of stall holders is

yet to be received. If the DBS check requirement is waived a list of traders must still be received.

- 2.12 On 8th August , director of Community Heritage Events Ltd emailed Swale BC chief executive Larissa Reed to ask her to intervene regarding issues on complying with the current licensing requirements for Street Trading Consents. The email is shown as **APPENDIX IV**. There was a letter from John Payne, chairman of Community Heritage Events which requested that the fee, (caused by the requirements for individual consents and DBS checks), for the Street Trading Consent be waived. This is shown as **APPENDIX IV**.
- 2.13 There is now not sufficient time to process any applications for Street Trading Consents to comply with the existing licence requirements contained within the policy which states that a consultation of 8 weeks is necessary. These consultees are:
- a) Kent Police
 - b) Kent Fire and Rescue Service
 - c) KCC Highways
 - d) Swale BC Environmental Health
 - e) Swale BC Environmental Response Team
 - f) Swale BC Planning
 - g) Swale BC Property Services
 - h) Swale BC Economy and Community Services
 - i) Swale BC Green Spaces team
 - j) Ward Councillors
 - k) Parish and Town Councils
 - l) KCC Safeguarding Unit

In the past no consultation was undertaken for one-off Street Trading Consent applications including that for the Hop Festival although the event management plan is always submitted for consideration by the Safety Advisory Group (SAG) which includes many of the consultees for Street Trading Consents. No adverse comments have been received by any of the SAG consultees for the 2022 Hop Festival.

- 2.14 Whilst the current policy does state that DBS checks are required 'where necessary' the licensing team have not provided any guidance as to when this should be, and this is something that will need to be addressed moving forward. DBS checks may not be relevant for all stall holders and could depend on the experience of the stall holder, the type of goods sold and access to the vulnerable for example DBS checks may only be necessary for stalls at greater risk of selling counterfeit goods or those which provide goods aimed at children. As there are many people around at this event the element of risk is far less than for holders of individual annual or six month consents.

- 2.15 The licensing team will also re-visit the application form to give more clarity in order to avoid the confusion that has been experienced on this occasion.
- 2.16 With regards to the fees to be charged under the old regime before the existing policy was adopted any event which had 50 or more stalls would have been charged £230. Under the existing policy individual consents for a period of up to 4 days are charged at £10 per applicant meaning that 50 stalls would attract a fee of £500. If a one-off consent is granted to the festival organisers alone then the fee due would be £10 as an individual applicant.
- 2.17 The current policy also allows for no fee to be charged in the following circumstances:
- *3.6.1 Street Trading at Fetes and Carnivals – outdoor events for which no entry fee is charged staged mainly for public entertainment and benefiting charitable concerns. It is expected that at least some of the monies raised will be contributed to the beneficiary individual, organisation or charity.*
 - *3.6.2 Street Trading at non-commercial or charitable events for which no entry fee is charged organised by not-for-profit organisations and charitable trusts.*

3 Options

- 3.1 The Committee agree to waive the licensing requirements within the current Street Trading Policy to allow a 2 day street trading consent to be made by the organisers of the Hop Festival and with no requirement for DBS checks from individual traders and to consider charging either no fee, £10 or the same as was charged historically i.e.£230. The Committee to waive the normal requirement for an 8 week consultation following the consideration of the Hop Festival by the Safety Advisory Group
- 3.2 The Committee could choose not to waive the requirements of the current Swale Street Trading Policy 2021 – 2024. It is doubtful if the Hop Festival could proceed without stalls trading at the event.
- 3.3 The event organisers for Faversham Hop Festival 2022 may choose to proceed with the event without any Street Trading Consents in place which would have the potential that each stall holder participating would be committing an offence and enforcement action would have to take place in accordance with the Street Trading Policy and the Council's Enforcement Policy. The maximum fine on conviction of an offence is £1,000.

5 Consultation Undertaken or Proposed

- 5.1 None as yet other than what is referred to in paragraph 2.13

6 Implications

| Issue | Implications |
|--|--|
| Corporate Plan | <p>The service is an important regulatory function undertaken to ensure the safety of the public consumers</p> <p>There are indirect links to:</p> <p>Priority 3:</p> <p>3.4 Ensure that the council plays a proactive role in reducing crime and antisocial behaviour.....</p> <p>3.5 Promote wellbeing and enjoyment of life by signposting and encouraging a wide range of sporting, cultural, leisure and development activities appropriate and accessible to each age group.</p> |
| Financial, Resource and Property | <p>There would be a loss of income as detailed in the body of the report. If the policy were subject to legal challenge there could be costs associated with this process.</p> |
| Legal, Statutory and Procurement | <p>The relevant legislation in relation to street trading is contained within Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).</p> |
| Crime and Disorder | <p>It is a criminal offence to trade in the street without an appropriate consent. The policy provides a framework for consistent decision-making</p> |
| Environment and Climate/Ecological Emergency | <p>No implications</p> |
| Health and Wellbeing | <p>No implications</p> |
| Safeguarding of Children, Young People and Vulnerable Adults | <p>Licensing regimes are largely designed to protect public safety. DBS checks for Street Trading Consents are deemed to be necessary in some circumstances to check that applicants are suitable to trade.</p> |
| Risk Management and Health and Safety | <p>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</p> |
| 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</p> |

| | |
|-----------------------------|---|
| | <p>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 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.</p> |
| Privacy and Data Protection | Normal data protection and privacy rules will apply |

7 Appendices

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

- Appendix I: Current Swale BC Street Trading Policy 2021 – 2024
- Appendix II: email from Hop Festival Event Manager
- Appendix III: Street Trading Application Form
- Appendix IV: Email from Director, Community Heritage Events
- Appendix V: Letter from Chairman, Community Heritage Events

8 Background Papers

None