

## **LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982**

### **STREET TRADING**

Test Valley Borough Council made the following resolution on 6 January 2005:

'That for the purposes of controlling street trading and in accordance with para. 2, Schedule 4, Local Government (Miscellaneous Provisions) Act 1982, all streets (present and future) within the administrative area of the Council, including any forecourts, car parks, roads, footways or other areas adjacent to the streets referred to in this resolution for a distance of 10 metres, be designated 'consent streets', with effect from 17<sup>th</sup> February 2005.'

### **POLICY**

This Policy will be applied to street trading activities in the Borough of Test Valley to ensure consistency in decision making. Each application will be considered on its own merits so that individual circumstances, where appropriate, are taken into consideration.

#### **1. Definitions of terms used in these Guidelines**

Within the terms of the Borough Council of Test Valley's Street Trading Consent Scheme the following definitions apply:

The Council:-	The Borough Council of Test Valley.
Street Trading:-	The selling or exposing or offering for sale of any article (including a living thing) in any street.
Street:-	Includes: (a) any road, footway, or other area to which the public have access without payment. (b) a service area as defined in section 329 of the Highways Act 1980, and also includes any part of a street.
Consent Street:-	Means a street in which street trading is prohibited without the consent of the Council.
Consent: -	A consent to trade on a street granted by the Council, pursuant to Paragraph 7, Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
Consent Holder:-	The person or company to whom the consent to trade has been granted by the Council.
Authorised Officer: -	An officer of the Council authorised by it to act in accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1982.

## **2. Procedure for determining Street Trading Consent applications**

The application and approval procedure normally comprises of the stages as set out below and in Appendix 1, though alternative arrangements for applications, consultations and site assessments may be made in the following circumstances:

- (a) Applications for trading on land owned or managed by the Council; and
- (b) Applications for trading for a period of 7 days or less.

All applications for Street Trading Consent will be determined in accordance with delegated powers of the Head of Housing & Environmental Health, except for Consents on land owned or managed by the Council, in which case the relevant Head of Service may issue the Consent or else refer the application back to the Head of Housing & Environmental Health for determination.

## **3. Submission of the application**

An application for a Street Trading Consent must be made to the Council in writing. An application form will be made available for this purpose, though this may be dispensed with in the case of trading on land owned or managed by the Council where a broader consent process applies.

Applications will not be processed unless / until adequate information is provided to enable the application to be determined. Applications will be rejected if not accompanied by the applicable fee and may also be rejected if, where requested, all or part of the following information is not provided:

- (a) A completed Street Trading Consent application form (except if expressly told that one is not required), signed and dated.
- (b) Where the proposed street activity is from a fixed position, a copy of a map or plan. The map should clearly identify the proposed site position by marking the site boundary with a red line.
- (c) At least one colour photograph of the stall, van, barrow, cart etc that will be used for the street trading activity.
- (d) An in-date copy of the certificate of insurance that covers the street trading activity for third party and public liability risks (minimum cover to be set by the Head of Housing & Environmental Health).
- (e) For traders intending to sell food, the name of the local authority that the trader is registered with for food hygiene purposes and the current food hygiene rating score.
- (f) For street traders using gas appliances, an in-date copy of the most recent gas safety check record.
- (g) A signed declaration from the applicant that all work activities in connection with the street trading activity will be conducted by workers who have the legal right to work in the UK.
- (h) The arrangements for the disposal of litter and waste.

An applicant for an initial new Street Trading Consent should normally give a minimum of 30 working days notice of the application to provide sufficient time for consultation and determination.

#### **4. Consultations on applications made**

Before a Street Trading Consent is granted or renewed, the Council may carry out a consultation process with various persons and groups. The extent of the consultation will be at the discretion of the Service issuing the consent and will depend upon the type of trade, the duration of the proposed consent, and location of the proposed street trading consent applied for. In particular the following organisations or persons may be consulted.

- Hampshire County Council Highways – area office
- The Test Valley Borough Council Property and Asset Management Service
- Hampshire Constabulary
- Local Councillor(s)
- The appropriate Parish or Town Council
- Test Valley Borough Council Environmental Services
- Test Valley Borough Council Health Protection Team
- Test Valley Borough Council Environmental Protection Team

Any written observations from such consultees will be taken into consideration when determining an application.

#### **5. Site Assessment**

Street Trading Consents will not normally be granted where any of the following apply:

- A significant effect on road safety would arise either from the siting of the trading activity itself, or from customers visiting or leaving the site.
- Where there are concerns over the recorded level of personal injury accidents in the locality where the street trading activity will be sited.
- There would be a significant loss of amenity caused by traffic, noise, rubbish, potential for the harbourage of vermin, odour or fumes.
- There is already adequate like provision in the immediate vicinity of the site to be used for street trading purposes.
- There is a conflict with Traffic Orders such as waiting restrictions.
- The site or pitch obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use for street trading purposes.
- The trading unit obstructs the safe passage of users of the footway or carriageway.
- The pitch interferes with sight lines for any road users such as at road junctions, or pedestrian crossing facilities.

- The site does not allow the Consent Holder, staff and customers to park in a safe manner.
- The street trading activity is carried out after dusk and the site is not adequately lit to allow safe access and egress from the site for both customers and staff.
- In the case of a food business, it is rated a 0 (urgent improvement necessary), 1 (major improvement necessary) or 2 (improvement necessary) under the national food hygiene rating scheme, and/or is considered to present a significant food safety risk to the public, at the time of the application or renewal.
- The business presents a significant health and safety risk to the public or employees under the Health and Safety at Work etc. Act 1974.

## **6. Inspection of the Street Trading Unit**

The vehicle, van, trailer, stall or other device to be used for the proposed street trading activity may be subject to compliance checking from time to time during the Street Trading Consent period and prior to the issue of any Street Trading Consent where this is reasonably practicable. The unit to be used for the street trading activity shall comply in all respects with the legal requirements relating to the type of street trading activity proposed.

## **7. Determination of the Application**

The application will be determined using the criteria listed below. Similarly any objections received will be considered against these criteria. All should normally be satisfied, with equal weight applied to the criteria listed. Each case will be assessed on its merits and individual circumstances, where appropriate, may be taken into consideration.

**a) Public Safety:** The location of the proposed street trading activity should not present a substantial risk to the public, for example in terms of road safety, obstruction, food safety, health & safety or fire hazard.

**b) Public Order:** The street trading activity should not present a risk to good public order in the locality in which it is situated. Observations from the Hampshire Constabulary will be taken into consideration.

**c) Avoidance of Nuisance:** The street trading activity should not present a substantial risk of nuisance from noise, rubbish, potential for the harbourage of vermin, smells or fumes to households and businesses in the vicinity of the proposed street trading site. Observations from Council Officers will be taken into consideration.

**d) Needs of the Area:** The sufficiency of other trading outlets will be taken into consideration in relation to:

- i. The presence of like outlets already existing in the immediate locality of the proposed street trading site.

ii. The general needs of a locality, should no comparable outlets exist.

Applicants will have to demonstrate to the Council the need for the proposed street trading activity in relation to either points i. or ii. above, whichever applies.

**e) Compliance with legal requirements:** The proposed street trading activity should be carried out from a trading unit that complies with the relevant legislation.

**f) Consultees Observations:** In relation to points a) – d) above, consideration will also be given to written observations from consultees. Any objections made to the proposed street trading activity will be considered in terms of relevancy and appropriateness to the application that has been made.

**g) Trading Hours:** The Council may restrict trading hours in some cases where appropriate.

**h) Market days:** Those Street Consent Holders who have consent to trade in the town centres may not be permitted to do so on Market days.

## **8. Approval of Applications**

The Head of Service may approve applications meeting the criteria contained within these guidelines.

On approving the application the Council will issue a Street Trading Consent to which standard conditions will normally be attached. The Consent may also contain specific terms such as days and hours when street trading is permitted, or the goods that may be sold. Additional conditions may be attached if special circumstances apply to the Consent being granted by the Council. The Consent will normally be issued within 21 days of the decision.

The conditions attached to the Consent form part of the approval to carry out street trading in the Borough of Test Valley. They MUST be complied with at all times and failure to do so could lead to the Consent being either revoked, or not renewed.

Consent Holders are therefore requested to familiarise themselves with the terms and conditions attached to the Street Trading Consent and comply with the requirements.

## **9. Issue of Street Trading Consents**

A Street Trading Consent for any particular site will be issued for a maximum period of 6 months for the first year and thereafter for 12 months providing there have been no problems. Shorter term Consents may be issued on a daily, weekly or monthly basis. These particular Consents will expire, unless renewed, on the date specified in the Consent.

If a cheque is dishonoured by a bank this will result in the revocation of the Street Trading Consent issued by the Council unless payment of the outstanding fees is made in cash within 5 working days. In such cases an administration charge will also be imposed on the Consent Holder. If an application is refused then a full refund will be made.

#### **10. Decision to refuse or revoke**

If the Head of Service is unable to grant a Street Trading Consent, or decides to revoke a Consent, the applicant will be notified in writing within 21 days and will be offered a meeting with them to discuss the reasons for a potential refusal of the application or revocation of the Consent. At the meeting the applicant will be informed of the criteria from these guidelines that have not been met or adhered to. The applicant will be given an opportunity to discuss any relevant matters in relation to the application or Consent. After the meeting the outcome will be confirmed in writing by the Head of Service within 5 working days of the meeting taking place. The Head of Service may decide to: revoke the Consent, grant the Consent or allow the existing Consent to continue.

If an applicant refuses an offer of attending a meeting with the Head of Service or fails to attend, then the Head of Service will review the matter and a letter will be sent to the applicant confirming the decision reached.

If the applicant is not satisfied with the decision to revoke or refuse a Consent, he/she may make representation, in writing within 28 days, to the Licensing Committee for it to consider the application.

#### **11 Representation to the Licensing Committee**

The Council's Licensing Committee has been established to consider applications and hear objections and appeals in relation to licensing matters.

The role of the Licensing Committee as regards Street Trading Consents is to:

Hear representations from applicants in cases where the application has been refused or revoked by the Head of Service.

On receipt of a written representation, arrangements will be made to have the application heard at the next available meeting of the Licensing Committee.

Once arrangements have been made for the representation to be heard by the Licensing Committee the applicant will be advised in writing of the date, time and place where the representation will be heard. The person making the application is expected to attend the hearing. The applicant can be represented by a solicitor, or supported by a friend or colleague. The Licensing Committee will follow a set procedure that will be notified to the applicant in advance of the meeting, along with any officer reports that will be presented at the meeting.

The decision of the Licensing Committee will be confirmed in writing to the applicant within 5 working days of the meeting at which the application was considered.

The Licensing Committee will always adhere to the rules of natural justice when it is considering an application to ensure that all persons get a fair hearing.

## 12. Refusal of Applications

The Local Government (Miscellaneous Provisions) Act 1982 does not allow any legal appeals against the decision of the Council in relation to the refusal of Street Trading Consents. A person aggrieved by a decision of the Council may seek a Judicial Review of the decision, should it be felt necessary.

## 13. General Information on Street Trading Consents

**Reimbursement of Fees:** Fees will be reimbursed to Consent Holders where they cease to trade and surrender their Consent to the Council. Any reimbursement will be strictly from the date the Consent is surrendered to the Council.

Refund of any fee paid in connection with the granting of a Street Trading Consent will be based on the following formula:

Number of complete days remaining divided by the fee paid **less** the current administration fee.

**Persons under the age of 17 years:** The Council will not grant a Street Trading Consent to persons under the age of 17 years.

**Access by Council and Police Officers:** Consent Holders should allow access to Authorised Officers of the Council and Police Officers at all reasonable times.

**Street Trading Consents:** The conditions attached to all Street Trading Consents stipulate that a Consent Holder shall not assign, sub-let or part with his interest or possession of a Street Trading Consent.

**Variance of conditions:** The Council may at any time vary the conditions of a Street Trading Consent.

*The Consent granted is specific to the person to whom it is issued and is **non-transferable and there can be no sub-letting**.*

## 14. Enforcement of Street Trading

The Council will enforce the provisions of the Street Trading legislation within its area in a fair and consistent manner. All enforcement activities will comply with the relevant Service Enforcement Policy.

## **15. Complaints against the Service**

The Council has a Corporate Complaints Procedure copies of which are available from the Council Offices or on the Council's website [www.testvalley.gov.uk](http://www.testvalley.gov.uk).

## Appendix 1

### Summary of the Procedure for Determining Street Trading Consents

