

**TITLE: LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 – REVIEW OF STREET TRADING POLICY**

**COMMITTEE: LICENSING COMMITTEE**

**DATE: 9 MARCH 2022**

**AUTHOR: SENIOR LICENSING OFFICER**

[W150]

1.0 ISSUE

1.1 To consider minor amendments to the Council’s Street Trading Policy.

2.0 RECOMMENDATION(S)

2.1 That Members:

- i. note the contents of the report, and approve the revised policy attached at Appendix 2 to come into effect immediately.
- ii. approve the reversion back to the previous fees in relation to Street Trading, and instruct Officers to reflect this in the 2022/2023 annual fees and charges document.

3.0 BACKGROUND

3.1 In November 2021 Members approved minor amendments to the Council’s Street Trading Policy. Amongst these amendments was the introduction of two new forms of street trading permission designed to cover pop-up trading on private land. These permissions were termed “Host Premises” and “Pop-up Trader” Consent.

3.2 Following the resolution made on 10 November, Officers received feedback from food traders via Off the Beaten Truck (OTBT) (an organisation representing food truck operators, who had worked with Officers in 2021 on the new proposal) raising concerns over the impact of the new policy. This feedback is attached as (**Appendix 1**).

3.3 There are many points raised in the feedback regarding the legality of street trading, and the perceived introduction of new requirements, and so the table below has been included to answer these points.

*Table 1*

<i>Point</i>	<i>Answer</i>
<i>This is their private property and as they pay council tax, rents and rates, they have the right to use their land how they see fit</i>	<i>A premise is required to comply with regulations regardless of ownership, i.e planning and waste management regulations. To this extent they are also required to comply with street trading regulations if the location is within the definition of a street, and one of the exemptions does not apply.</i>

<i>Does not believe the Charity Commission would allow any payment to be made as fee to be a host site owed to the Council would not be considered a charitable donation</i>	<i>The Council cannot comment on whether the Charity Commission would or would not permit a payment to be made in specific cases, but Officers are aware that a great many charities and community not for profit organisations hold various licensing permissions that are subject to fees without issue.</i>
<i>This site has looked at the legislation and they do not accept visits count as street trading</i>	<i>Each case will be assessed on its own merits to determine whether Consent is required, but visits from traders exposing products for sale in locations falling within the very wide definition of a street in the Local Government (Miscellaneous Provisions) Act 1982 do require Consent to conduct such trade unless an exemption applies.</i>
<i>The food vans operate on private property and there is no public access without consent</i>	<i>See above answers. Consent is not a factor to be considered.</i>
<i>“If we were forced to pay an imposed (fee) as well as the electricity bill for the vans to use our power, we would not be able to afford to have any vans so this is totally unviable”</i>	<i>The host premises fee is not a new proposal. Venues wishing to allow street trading on their car parks have required Consent since 2016.</i>
<i>“I do not have food vans for the pub so much as for the community...this is going to severely impact my business which is already struggling...I find this threatening by the Council”</i>	<i>The host premises fee is not a new proposal. Venues wishing to allow street trading on their car parks have required Consent since 2016.</i>
<i>“This is a Community centre run by the community. We have a free vans here every so often...We have already had to make redundancies here... we don't even charge the vans because they bring such a huge benefit to the area.”</i>	<i>Venues hosting on limited occasions (less than 16) per annum can apply for daily permits (providing the required notice period is observed), or they can rely on the trader applying for on, subject to the same restriction..</i>

3.4 Following the receipt of the trade feedback Officers met with representatives of OTBT and the Nationwide Caterers Association (NCASS) to discuss potential options moving forward. The two biggest issues raised were the issue of fees, and the impact that requiring both the host premises and the trader to register would create.

3.5 It was argued that the trader registration fee of £240 would reduce the potential for traders to register due to the collective costs of trading in multiple district areas, which would be too much of a financial burden to them to make it financially viable. It was also argued that the fee for charitable venues was too high and should be set lower than that of commercial operations. Linked to the issue of the trader fee was the second point raised regarding requiring both parties to register. It was argued that this scheme creates a chicken and egg scenario where hosts will be reluctant to register if there are not enough traders to use, and traders will not register if there are not enough hosts to use.

#### 4.0 CONCLUSION

4.1 Officers are confident that the policy adopted in November 2021 is lawful, and that trading on private land adjoining Consent Streets, such as trading on car

parks, business parks, etc does fall within the realms of requiring Street Trading Consent, and has done in this district since 2016 (when the Council resolved to designate all streets in the district Consent Streets)

- 4.2 As detailed in this report, the suggestion that the decision in November 2021 introduced additional burdens on the trade is a misconception, as the requirement to obtain Consent to trade in the District was already present. The amendments were hoped to remove some of the constraints that existed and were not compatible with pop-up trading. To this end, the “Host Premises” scheme is essentially the same as the Static Trader permission contained in the original policy adopted in 2016 with one distinct difference, the strict one pitch, one trader at all times condition has been removed to allow greater flexibility for private venues wishing to allow pop-up trading on their land.
- 4.3 The only additional permission introduced in November 2021 was the “Pop-up Trader” Consent scheme and the associated fee of £240, which was introduced with the intention of simplifying the process for venues, whilst removing the risk of rogue traders putting customers at risk with substandard food and hygiene practices.
- 4.4 Whilst the amendments adopted in November 2021 can be considered lawful, it is clear from the feedback that the scheme will not have the desired impact that Officers and Members wished to see. To this end, Officers would recommend that the “Pop-up Trader” Consent scheme is scaled back, and the fee is removed entirely. To mitigate this recommendation, and in order to ensure that public safety is not put at risk, additional conditions are recommended to be added to the current standard conditions of a static street trading consent, to specifically cover “Host Premises”. These can be found below.

#### **Condition 1**

The “Host Premises” Consent holder shall ensure that all traders they allow to trade from the host premises pitch are vetted to ensure that the following documents are held:

- Trader/Public Liability Insurance
- Food Hygiene certificates
- Food business registration with their local Council
- Pop-up trader badge from ECDC licensing
- Current gas and/or electricity safety/test certificates if such facilities used

Or

- Current NCASS membership
- Pop-up trader badge from ECDC licensing

#### **Condition 2**

The “Host Premises” Consent holder shall ensure that a record is maintained of all “Pop-up Traders” trading at their pitch. This record shall be retained for a period of six months, and shall be made available to an authorised officer upon request. The record shall record:

- The name of the trader
- A contact number for the trader
- The registration number of the trading unit, or vehicle towing the trading unit
- The trading name

4.5 The scaled back “Pop-up Trader” Consent scheme would require all traders wishing to trade from “Host Premises” to complete a simple one-page notification form with the Council, so the Licensing Authority has a simple record of all traders wishing to trade throughout the district. This will tie in with the Host Premises scheme, and enable checks to be made if the “Pop-up Trader” is not a registered food business with the Council.

4.6 In the feedback a suggestion was made to work with OTBT and NCASS to identify alternative cost recovery schemes and take away the cost to host sites. The issue the Council has in this regard is that the Council has a duty to ensure that the amenity of the areas surrounding street trading pitches are promoted, and that those in the immediate areas affected are given the opportunity to comment on any proposed use of the pitch for trading. All of this work relates to the site, not the numerous (and at the time of considering the site’s appropriateness) unknown traders that may frequent it over future years. The fee charged for Annual Static Traders, Annual Mobile Traders, and Annual Host Premises covers these upfront costs as well as a portion of the general costs of running the department, and all street trading fees are on a not for profit cost recovery only basis. Any alternative cost recovery scheme would be hard to calculate and justify, and could result in higher than cost recovery income.

4.7 The Council is not blinkered to the impact that Covid has had on the economy, but Officers believe the recommendations in this report create a balance between the rights and needs of the various interested parties, and creates a level playing field with those trading on public land via Annual Static and Annual Mobile Consents. The recommendations all but revert back to the original policy which has been in place successfully since 2016, but they do provide greater flexibility to enable pop-up street trading to occur, with no new fees. With the ability to spread the cost of the Consent over the trading year, which in most cases amounts to £15 a week, as well as the ability to apply for daily permits, Officers believe the recommendations in this report creates the best possible solution to a very complex area of regulation.

## 5.0 FINANCIAL IMPLICATIONS

5.1 There are no financial implications other than Member and Officer time which is already budgeted for.

5.2 An Equality Impact Assessment (EIA) has been completed showing there is no adverse impact on the community if Members follow the Officer recommendations.

6.0 APPENDICES

- 6.1 Appendix 1 Trade feedback document
- 6.2 Appendix 2 Draft amended Street Trading Policy 2022
- 6.3 Appendix 3 Fees table.
- 6.4 Appendix 4 Equality Impact Assessment (EIA)

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<u>Background Documents</u>	<u>Location</u>	<u>Contact Officer</u>
Local Government (Miscellaneous Provisions) Act 1982	Room SF208 The Grange, Ely	Stewart Broome Senior Licensing Officer (01353) 616477