

Lewes District Council (draft) Street Trading Policy

1) Introduction

The Council has exercised its powers sensibly to control Street Trading since the Local Government (Miscellaneous) Provisions Act 1982, Schedule 4, enabled it to do so. These powers have predominantly been used to regulate such trading in the Lewes and Newhaven town centres.

However, in view of changes in wider Street Trading practices and concerns about the spread of Street Trading outside these areas, the Council has resolved to extend formal control throughout the whole district. This followed detailed consideration of this by the Council's Licensing Committee and a formal consultation process through late summer of 2013.

The Council has resolved to make all streets in its District "Consent Streets". This means that a person trading without the consent of the Council will be guilty of an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Anyone wishing to trade in the street will need to obtain a "Consent". Any Consent can be made subject to conditions which the Council consider are reasonably necessary.

2) Policy Scope and Purpose

In view of the wide discretion the Council has to control Street Trading, this Policy sets down how its powers will be delivered and the aims and purpose it has in using its powers.

In administering the Street Trading controls the Council aims to:

- a) recognise the importance and contribution of regulated businesses to the wellbeing of the local economy;
- b) enhance the reputation and economic diversity of the area;
- c) balance the rights and needs of the residential and business communities;
- d) protect public safety and promote risk reduction;
- e) protect the permanent business community from unfair and unlawful competition;
- f) protect and, where possible, enhance the amenity and character of the District and local communities within it;
- g) prevent crime and disorder;
- h) promote sustainability and reduce adverse environmental impacts of trading in streets;
- i) promote and protect public health and prevent nuisances;

- j) promote equality and balance everyone's rights;
- k) ensure coherence with Council policies;
- l) ensure coherence with relevant legislation; and
- m) promote fairness, transparency and consistency.

3) Consideration of Applications for Consent and their Administration

In considering applications and subsequently regulating Consents we will work within the following principles:

- a) Nothing in this Policy will undermine the rights of any person to make an application for a Consent and to have that application considered on its merits or, override the right of any person to make objections about such application and any decision resulting from it.
- b) Adherence to the Council's Enforcement Policy and other relevant Council policies.
- c) Observing presumptions against granting a Consent as set out in paragraph 4 below.
- d) Seeking compliance with all relevant legislative requirements.
- e) Ensuring the suitability of applicants, their proposals and their appropriateness to the proposed trading location.
- f) Consultation with interested parties and enabling the consideration of relevant views and concerns as part of our decision making.
- g) Ensuring applicants and anyone that may be affected by an application have reasonable opportunities to influence our decisions.
- h) Making our processes clear and easy to access.
- i) Aiming to be as consistent as we can in delivering our responsibilities for Street Trading control.
- j) Where, during the introduction of this policy, existing trading conflicts with the policy because two similar traders are within 100m of each other, then unless spacing can be adjusted the trader considered to be first on the site, historically, (the primary trader) will be given preference. However, where in such circumstances, the primary trader has failed significantly to prevent crime and disorder the Licensing Committee may consider applications from both traders and determine which trader should be allowed to trade.

4) Presumptions against Granting a Consent

Whilst all applications will be considered on their merits the following factors are likely to be influential in any refusal:

- a) Significant risks to the public in terms of highway safety and obstruction such as interference with sight lines, junctions, accesses, pathways and crossings.
- b) Conflict with traffic orders.
- c) Activity likely to present a crime or public disorder risk.
- d) Activity likely to cause nuisance e.g. noise, light, odour, refuse, and litter or encourage vermin.
- e) Sales, products or activity with an adverse environmental impact.
- f) Sales, products or activity that offend public decency, or that presents a public health risk.

- g) Sales, products or activity that is inappropriate for the location e.g. sale of firearms, sale of animals.
- h) Lack of commercial need.
- i) Applicants with relevant unspent convictions, unpaid debt or previous Street Trading contraventions.
- j) Failure to meet legislative requirements, including risk assessment, relevant to the activity proposed or location, especially with regard to public safety.
- k) Failure to obtain or complete other necessary consents or registrations e.g. planning, licencing, food, waste disposal.
- l) Failure to put in place measures to prevent uncontrolled fire or explosion risk.
- m) Trading on or close to Bonfire Night in the Lewes town area.
- n) Lack of suitable insurance cover to a level of at least one million pounds (£1m).
- o) Direct competition, in terms of goods sold, with fixed businesses or other Street Traders within 100m. Trading close to the boundaries of hospitals or care premises (within 250m) or schools (500m).
- p) Trading within any Council owned car park.
- q) Use of any vehicle, trailer or stall that fails to match or enhance the quality of the street scene.
- r) Any activity or product that compromises child safety or wellbeing.

5) Street Trading Consent does not:

- a) permit trading outside the terms of the Consent;
- b) indicate that planning permission is not required;
- c) indicate that the unit is exempt from business rates;
- d) override parking restrictions or any other traffic regulations; or
- e) imply approval under any other system of control or regulation e.g. planning or licensing.

Any applicant for Street Trading is strongly advised to ensure that all necessary consents/permissions required under the Planning or Licensing Acts are obtained **before** they commence trading.

6) Consultation

In order to assist its decision making with a Consent application the Council may consult with a range of organisations, which may include those listed below or others as appropriate. A period of 28 days will usually be allowed for comments to be received.

- Sussex Police.
- Sussex Fire and Rescue Service.
- The Highways Authority, Children's Safeguarding Team, Public Health Network and Trading Standards Service at East Sussex County Council.
- Various section of Lewes District Council including Planning, Public Health and Noise Control Team, Commercial Food and Occupational Safety Team, Parking Team, Clean/Green Team, Enterprise and Regeneration Team.
- Relevant Ward Councillor of Lewes District Council.
- Town and Parish Councils.
- Local business groups or their representatives.
- Immediate neighbours, commercial and domestic (usually by Public Notice in the area).

7) Conditions

General conditions will be attached to every Consent detailing the holder's responsibilities. Additional conditions may also be attached which relate to the type of activity and location for which the Consent is granted.

The conditions may limit such things as: the days and the hours when Street Trading is permitted; the goods which may be sold; the size of the trading pitch; or any other relevant matter.

For the detail of the conditions see the appendices to this Policy.

Persons engaging in Street Trading (as defined in the Act) without a Consent or who fail to comply with the conditions may be liable to enforcement action including: prosecution; revocation; non-renewal of Consent and, in exceptional circumstances, use of its powers to seek an injunction.

Decisions regarding enforcement action will always be made in accordance with the Council's Environmental Health Enforcement Policy.

8) Bonfire Night

Street Trading Consents that are granted will be prohibited from operating on Bonfire Night within the boundaries of the Town of Lewes. A separate application will be required to be submitted to the Council for Street Trading on November 5th or the preceding Saturday if this falls on a Sunday. Applications for trading, which are located on streets in Lewes coloured green on the map in Appendix G of the Consent conditions, are unlikely to receive Consent. Consent on these streets will only be granted in exceptional circumstances and additional conditions to promote

public safety will be attached to any Consent granted. Applications on other streets not highlighted in green will be assessed on their individual merits in consultation with the normal agencies.

9) Complaints and Enforcement

Legitimate complaints will be fully investigated in accordance with our procedures. Consent holders are expected to liaise with the Council to resolve complaints about them. Substantiated complaints may result in enforcement action being taken or a Consent being revoked. Such decisions will be made in accordance with the Council's Environmental Health Enforcement Policy.

Complaints may also be taken into account when considering an application to renew a Street Trading Consent.

10) Review of the Policy

This Policy will be reviewed every five years. At the time of the review, we will again consult all interested parties. As well as the five-yearly reviews, we will continue to evaluate the Policy and may update it at any time. Any minor changes can be agreed by the Licensing Committee.

11) Exemptions

The following fall outside of the Council's Street Trading controls, but may require consent or approval from other agencies:

Charitable Stalls in Lewes District Council Precincts Newhaven and Lewes –

However, a separate application will be required to trade on the Council's land available from the Licensing Team at the Council.

Pedlars - Pedlars operate under the Pedlars Act 1871 and must obtain a Pedlar's Certificate from the Police. Pedlars are people who sell from place- to-place and cannot sell from a fixed pitch; they must move around and not wait for customers to come to them, they cannot stand in any one place for a considerable time, nor can they exhort those passing, to buy their goods. Pedlars can carry their goods and can use a wheeled trolley to transport them.

Hair braiding, face painting, henna tattoos etc. - The law which governs Street Trading relates to the selling of articles and, as such, people who provide a service e.g. hair braiders, are not considered by the Council to be trading for the purposes of the legislation. However, if quantities of accessories used in hair braiding are also offered for sale then this would be Street Trading and may require a Street Trading Consent.

Persons providing services in the street should take care not to cause any nuisance or obstruction as this could result in the Police or another authority taking action.

Busking – Can be controlled by the Council, in conjunction with the Police if need be. If a busker, or a group of buskers, act in such a way as to cause a nuisance, then they may be asked to cease and leave the area. Buskers using amplified music will not be tolerated.

News vendors/selling periodicals e.g. Big Issue - Selling or offering for sale newspapers or periodicals either with or without a stall does not require any Consent, however if the stall stands on the carriageway of a street, it must be less than 1m in length and width, less than 2m high and occupy less than 0.25m² of ground. Stalls larger than this or in contentious locations may require Consent.

Rounds Man - Selling, offering or exposing for sale things as a rounds man does not require a Consent to trade.

Charity Stalls - Street Trading Consent is not required, but they will require a Street Collection Permit issued by Environmental Health – Licensing.

Markets/Fairs – Street Trading Consent is not required for trading at market or fairs which are established by virtue of a grant, enactment or order.

Other markets or special events e.g. farmers or continental markets or late night Christmas shopping events may require consent. In such cases the Council will issue a single Consent to the organiser which will cover all traders at the event.

Streets Adjoining Premises – Street Trading Consent is not required for premises used as a shop or in a street adjoining premises so used and as part of the business of the shop.

A Trunk Road Picnic Area - provided by the Secretary of State under Section 112 of the Highways Act 1980;

A Petrol Filling Station - trading carried on at premises used as a filling station does not require Consent for Street Trading

Highways Act 1980 the use for trading of an object or structure placed on, in or over the highway and the operation of facilities for recreation or refreshment under part 7A of the Highways Act 1980.

Street Collections the doing of anything authorised by regulations made under section 5 of the Police, Factories etc. (Miscellaneous Provisions) Act 1916

For the purposes of Street Trading activity, all streets are designated as Consent Streets where Street Trading without a Consent is an offence.

12) Appendices to this Policy will include:

Applications and Renewal processes; Fees; General Conditions and specifically conditions relevant to:

- A. Motor Vehicle Conditions
- B. Fixed Site Conditions
- C. Food Related Conditions
- D. Gas Safety Conditions
- E. Bonfire Night Plan

Advice and guidance regarding:

- F. Definitions
- G. Guidance on Criminal Offences
- H. Offences

These should be referenced to establish what requirements and costs may be associated with any Consent application.