

Agenda Item No: 6 **Report No:** 39/15
Report Title: Street Trading Review in Lewes District
Report to: Licensing Committee **Date:** 12 March 2015
Lead Councillor: Cllr Paul Franklin
Ward(s) Affected: All
Report By: Director of Service Delivery

Contact Officer -

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Purpose of Report:

1. To review the street trading consent scheme following its first year of implementation. This report aims to update the committee on the past year and makes recommendations to amend the Policy for Street Trading together with application processes and conditions for the Lewes District.

Officer's Recommendations:

1. That the committee considers amendments to the Policy, Application processes and Conditions.
 2. That the committee agree the recommendations and confirm their agreement to the revised Policy, processes and conditions.
 3. That deemed consent is agreed for certain Street Trading activities
 4. That delegated powers are given to the Licensing Officer to determine non contentious properly made applications
 5. That delegated powers are given to the Service Manager to refuse street trading applications with an ability to appeal to the Licensing Committee
 6. To require future applicants to provide evidence that planning permission and land owner's consent has been obtained and a material consideration for the Licensing Officer in making their decision
 7. The agreed revised Street Trading Policy, Application processes and Conditions is publically consulted upon and a further report presented to the committee.
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1 Information

- 1.1** The Committee previously agreed the street trading consent policy together with an application process and conditions for Lewes District Council on 16 April 2014.
- 1.2** The Committee resolved in April 2014 that from 1 May 2014 the Street Trading Policy would come into effect and be implemented. The committee also resolved that following 1 year a further report should be presented to the committee.
- 1.3** A period of 10 months has now elapsed since the introduction of the street trading consent scheme and a summary of the key findings are provided in section 2.0.

2.0 Key Findings

- 2.1** There are a number of mobile food traders that operate for a limited duration at various sites. These traders are predominantly either ice cream vehicles or food wagons that have rounds turning up at various sites and selling food goods before moving onto the next location. They predominantly sell cold produce such as ice cream or sandwiches. These food traders will be deemed to be mobile and therefore have deemed consent if they do not stay stationary for more than 15 mins. These activities have proven to be extremely time consuming for officers to investigate and are extensively regulated under food hygiene controls. A number of other authorities have experienced similar situations with these type of vendors and have introduced a deemed consent for such vendors.
- 2.2** Local Town and Parish Council's allow the use of their land for car boot fairs and Charitable, local authority organised and community type events (where an admission charge is not made for entry) (i.e. outdoor school fayres, carnivals, fund raisers, car boot sales). The consent scheme was not intended to be overly bureaucratic where local town and parish councils already undertake their own due diligence checks and vet their traders.
- 2.3** The current system of issuing a consent and waiving the fee for individual householders and community group sales still requires an application form to be completed and the application processed and the fee to be waived. This system is overly bureaucratic and could be resolved by having a deemed consent.
- 2.4** Concern has been raised over the level of fee for small 'Fresh from the Ground Producers' and a request has been received to consider a lower fee for startup businesses and local community initiatives. A copy of a letter from Barcombe Nurseries outlining these concerns is attached to this report at Appendix 4.

- 2.5** There have been a number of one off markets/events such as late night shopping where the full Market Fee is not feasible. It is suggested that a lower one off market fee is introduced.
- 2.6** Criticism has been received that there is no appeal process where a consent has been refused by the licensing committee. The legislation does not allow for an appeal to be made where a decision of the licensing authority has been made.
- 2.7** Currently there is no application fee and applicants have found it difficult to raise funds for a full years consent with the application when there is no guarantee of a successful application. It is suggested that a non-refundable application fee of £25 which is the same as a single day consent is applicable.
- 2.8** It is been evident that many applicants have not obtained either land owners consent or the necessary planning approval. Consents have been issued whereby Lewes District Council has issued a consent to trade and the traders have been subject to investigation by the planning department or land owners.
- 2.9** On occasions it has become necessary to request that individual traders do not trade in the precinct due to other community activities. It is not expected that these will exceed more than 4 per year.
- 2.10** There are a limited number of small mobile vehicles that provide a service to small villages in the evenings once a week such as fish and chips or pizza. They regularly visit the same village community once a week and provide a much needed service to out of town locations. They do not trade for more than 2 hours at any single location and they have advised that the £700 yearly fee is unsustainable and they would have to stop this vital service to out of town communities.

3.0 Recommendations

- 3.1** In order to reduce bureaucracy it is suggested that a 'deemed consent' is introduced to the policy to effectively allow lower risk activities to trade without the unnecessary need for officers to chase applicants round the district. Reduce the need for dual consenting and vetting of applicants on other local authority controlled spaces. This is shown at point 6 in the revised policy document.
- 3.2** Implementation of a on a one off Market Fee of £25 to deal with single events such as Late Night Shopping as it benefits established static businesses and the street consent scheme should be seen to promote static businesses.
- 3.3** Introduction of a reduced fee for locally "own grown" produce sellers such as local nurseries and farms. It is suggested that this fee would be a concession of half the individual trader fee. These locally "own grown" produce sellers would need to be businesses which currently grow their produce within the Lewes District Boundary.

- 3.4** It is suggested that delegation is given to the Service Manager (Environmental Health) to refuse consents and that an appeal process is provided by a hearing of the licensing committee to scrutinise the original decision.
- 3.5** The inclusion of a flat rate non-returnable application fee to consider and process all applications. Payment of the fee would then only be required once the consent had been approved. This would not cover the full cost of the application but would serve to differentiate the cost of an initial application from the cost of issuing a consent. It is proposed that this fee is £25 and separate from the consent fee.
- 3.6** The addition of a requirement for an applicant to demonstrate that they have obtained the necessary permission from the land owner and obtained planning permission for the trading site.
- 3.7** The addition of a condition relating to community events held in the pedestrian precincts where sole use of the precinct is required for operational or safety reasons. This is laid out in section 8 of the policy and is attached a condition 19 in Appendix A General conditions **The Consent Holder Shall Not**.
- 3.8** It is proposed that the consent fee is waived for mobile traders providing a vital village community service for no more than 2 hours per evening in a different village location. They would still be required to submit an application form and application fee of £25. By having the consent scheme in place we shall be able to ensure that there is only one mobile vehicle is able to trade in each location at any one time.

4.0 Consultation

- 4.1** It is suggested that subject to the committee's agreement the revised Street Trading Policy goes out for consultation for a period of not less than 28 days.

5.0 Financial Appraisal

- 5.1** The fee that is charged to each Trader will cover the costs of administration and monitoring, but not the costs of enforcement. Recent case law has established that License fees, in general, should not include any element of the costs of enforcement against unlicensed Traders.
- 5.2** It is not anticipated that existing fees will need to increase as new Policy and Application processes will be managed within existing resources.

6.0 Legal Implications

The Legal Services Department has made the following comments:

The policy has been drafted to reflect current legislative requirements. All applications for consents under the Local Government (Miscellaneous Provisions) Act 1982, Schedule 4, have to be made and determined in accordance with the council's street trading policy.

7.0 Sustainability Implications

7.1 I have completed the Sustainability Implications Questionnaire and there are no significant effects as a result of these recommendations

8.0 Equality Screening

8.1 An Equality Impact Assessment screening exercise has been undertaken and all due regard has been given to equalities issues. This report is not found to have a negative impact upon equalities. Form AF40480.

9.0 Risk Management Implications

9.1 I have completed a risk assessment. The following risks will arise if the recommendations are not implemented, and I propose to mitigate these risks in the following ways, No new risks will arise if the recommendations are implemented.

9.2 Reputation Risk: It is important that the Council is seen to consider the regulation of Street Traders in an open and transparent process. The Council has a duty to protect residents going about their daily activities in the locality and to promote the economic wellbeing of existing businesses in Lewes District. It is paramount that the Council is seen to be addressing the issue in order to retain a good reputation with the public and businesses. Failure to consider the impacts of Street Trading upon the community appropriately may adversely affect the reputation of the Council. The Policy and associated conditions seek to balance the rights and responsibilities of itinerant as well as permanent Traders with those of residents.

9.3 Health and Safety: Street Traders may create an obstruction to both pedestrian and vehicular traffic. Further, some activities, such as the use of LPG and generators, may present risks to the public. Allowing Street Trading to be unregulated may lead to significant disruption and puts pedestrians and drivers at risk of injury.

10.0 Background Papers

10.1 Previous committee reports dated 30 August, 22 October 2013, 24 February 2014 February, 16 April 2014

11.0 Appendices

- Appendix 1 – Proposed Lewes Street Trading Policy 2015.
- Appendix 2 - Lewes Street Trading Consent application and fees processes.
- Appendix 3 - Lewes Consent conditions and associated guidance.
- Appendix 4 – Letter from Barcombe Nurseries