

Extract from the Licensing Committee – 10th October 2007

20 **STREET TRADING AND COLLECTIONS POLICY**

INFORMATION: Consideration was given to a report on the proposed adoption of a revised Street Trading and Collections Policy. It was noted that a draft of the revised policy had been subject to public consultation between 20th March 2007 and 21st May 2007 and that the policy had been amended in response to the representations submitted.

DECISION: That it be **Recommended to Council** that the Council's revised Street Trading and Collections Policy, as amended, be adopted.

ADOPTION OF BRAINTREE DISTRICT COUNCIL REVISED STREET TRADING POLICY
Agenda Item 7

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Background Papers:-

Appendix 1 - Braintree District Council Revised Street Trading Policy
Appendix 2 – Letter of Response by Essex County Council Highways and Transportation

Financial Implications:- None
Equalities Implications:- None
Legal Implications:- None

Options:

- 1.To approve the adoption of the Street Trading policy with amendments deemed appropriate by Members.
- 2.To refuse to adopt the Street Trading policy.

Risks: The principal behind modifying the policy is to minimise any risk of a judicial review from an aggrieved applicant..

EXECUTIVE SUMMARY

To consider the adoption of a revised Street Trading Policy following public consultation which took place between 20th March 2007 and 21st May 2007. Members are to consider all valid responses that have been received during the consultation and to approve any changes to the revised Policy that are necessary in response to these responses.

DECISION

Members are requested to recommend to Full Council that the revised Street Trading Policy be adopted.

ADOPTION OF BRAINTREE DISTRICT COUNCIL STREET TRADING POLICY

1.BACKGROUND

- 1.1 Street Trading is controlled in accordance with the provisions contained in Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982. The Council adopted this schedule on 15th March 1984. As a result, **all streets** within Braintree District are designated as Consent Streets. This means that anyone who wishes to trade on a street, highway or other area to which the public have access without payment must hold Street Trading Consent.
- 1.2 A Draft, Street Trading Policy, was presented to members on the 15th March 2007 for consideration and was issued for public consultation with local additions.

2.CONULTATIONS/RESPONSE

- 2.1 During the period from 20th March 2007 and 21st May 2007 the Street Trading Policy was made available for public consultation.
- 2.2 Letters advising of the consultation were sent to Members, Local Trade Associations, existing consent holders and other persons who would have an interest in the Policy.
- 2.3 The Policy was made available for viewing via the Council's website.
- 2.4 Only one written response was received: (Appendix 2). This response has been reviewed and considered. In addition an email response from Cllr Larger was received concerning the wording of the policy and his suggestions have been incorporated in to the revised policy.
- 2.5 Further legal advice has been sought and a few minor alterations have been made to clarify a number of points.
- 2.6 All alterations to the policy since it was presented to the committee on the 15th of March 2007 have been highlighted.
- 2.5 Members are requested to consider the above and further amended the policy where members may feel appropriate.

Licensing Policy

Appendix 1

Street Trading and Collections Policy

(AUGUST 2007)

Date of Next Review August 2010

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Introduction

General Information

(1) The aim of this policy is to prevent obstruction of the streets of Braintree District and ensure the safety of persons using them. In doing so, it recognises the importance of licensed businesses to the local economy and the character of the area whilst trying to ensure that the activities do not cause nuisance or annoyance to the people of the area.

(2) This policy will guide the licensing team/Committee when it needs to consider applications. such as:

- Street Trading
- Charitable Collections
- House to House Collections

Consultation

(1) In determining this licensing policy, the Council has consulted the following people and bodies:

- Essex Police
- Town Centre Strategy Groups
- Town & Parish Councils
- Charitable Organisations
- Existing Consent Holders
- Essex County Council Highways
- Highways Agency
- Local Chamber of Commerce (Witham Braintree & Halstead)

(2) Various other stakeholders within the council have been included as part of this consultation. These include:

- Environmental Health
- Legal Services
- Members of the Council
- Chair of Licensing Committee
- Cabinet Member for Public Protection & Healthy Living

Review of the Policy

(1) This policy will be reviewed every three years. At the time of the review, we will again consult all interested parties. As well as the three yearly reviews, we will continue to evaluate the policy and may update it at any time.

Part 1 – Street Trading

Introduction

This part of the Licensing Policy sets out how the council will deal with applications for Street Trading Consents in Braintree District.

It also highlights the council's undertaking to avoid duplication with other statutory provisions and our commitment to work in partnership with other enforcement agencies.

The Council aims to provide a clear, consistent licensing service-to-service users. At the same time, it aims to protect the safety of highway users and to prevent nuisance or annoyance.

1. General Policy

Each application for grant or renewal of street trading consent will be considered on its merits.

For every such application, or renewal, Braintree District Council may impose such conditions as may be reasonable, having regard to all the circumstances to prevent:-

- (a) Obstruction of the street or danger to persons using it; or
 - (b) Nuisance or annoyance (whether to persons using the street or otherwise).
- Standard conditions will be imposed unless circumstances dictate otherwise.

Where the imposition of conditions is not adequate to control potential problems, applications will be refused. Refusal or withdrawal of street trading consents will be normal in the following circumstances:-

- (a) Where the granting of the application is likely to give rise to nuisances or loss of amenity caused by noise, mal-odour, litter, disturbance or anti social behaviour.
- (b) In respect of applications for hot, mal-odorous food where granting the application is likely to give rise to mal-odour, litter, disturbance or anti social behaviour.
- (c) Where there is not enough space in the street for the applicant to engage in the trading in which he/she desires without causing undue interference or inconvenience to persons using the street.
- (d) Where granting of a consent for the sale of goods or services would conflict with those provided by nearby shops.
- (e) Where the applicant is unsuitable to hold a consent by reason of having been convicted of an offence, or for any other reason.
- (f) Where the applicant has at any time been granted a Street Trading Consent by the Council, and has persistently refused or neglected to pay fees due to them for it or charges due to them for services rendered.

- (g) Where applicant or operator of the stall is under the age of 17 years.
- (h) Where a trader has failed to comply with the conditions attached to the Consent.
- (i) Where street trading in a particular location will conflict with concessions granted to traders.
- (j) Where the street trading may damage the structure or surface of the street.
- (k) Where the appearance of the trading equipment or structure is in use is not compatible with the character of the area in which it is proposed to be situated.
- (l) Where the quality of stall and the impact of its activities may be detrimental to the character and appearance of the area in which it is proposed to trade.

The Council may at any time revoke a Consent or vary the conditions of an existing consent where there are reasonable grounds for so doing.

2. Legislation

(1) Street Trading is controlled in accordance with the provisions contained in Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.

(2) The Council adopted this schedule on 15th March 1984. As a result, **all streets** within Braintree District are designated as Consent Streets. This means that anyone who wishes to trade on a street, highway or other area to which the public have access without payment must hold a Street Trading Consent.

(3) In addition, anyone trading on adjacent private land within **7 metres** of the highway is required to hold a street trading consent.

(4) There are additional requirements where a trader is conducting their business from private land. Please refer to paragraph 16.

(5) The Act defines street trading as “the selling or exposing or offering for sale of any article (including a living thing) in a street.

(6) There are exemptions from requiring a consent to trade on a street. Please refer to paragraph 7.

3. Licensing Process & Delegation of Functions

(1) Applications for street trading consents are delegated to either the Licensing Committee or to the Licensing Officer.

(2) The delegation will be as follows:

Matter to be dealt with	Full Council	Licensing Committee	Officers
Grant or renewal for a Street trading Consent		If a representation is made.	If no representation is made
Grant or renewal for a Street Trading Consent in the Pedestrian Area		All Cases	
Grant or renewal for a Street Trading Consent for a Special Event		If a representation is made	If no representation is made
Grant or renewal for a second Street Trading Consent in one location		All Cases	
Grant or renewal for a Street Trading Consent prohibited by other legislation			Refused delegated to Officer and Committee Advised
Review of policy & Conditions	In all cases		
Grant or renewal for a Street Trading Consent in same area		All Cases	

(3) Where an application is referred to the Licensing Committee, it will determine each application on its own merit. Members of the Committee will consider all information attached to the application, and the contents of this policy.

4. Consultation on Applications for Consents

When we receive an application for a Street Trading Consent the council will seek the advice of:

- Essex Police,
- Essex County Council Highways or Highways Agency if A12 or A120
- The local ward Members.
- Braintree District Council – Planning
- Braintree District Council – Environmental Health
- Parish / Town Council
- Relevant local traders selling similar commodities within 500 m radius of the proposed site.

5. Renewals

(1) Street Trading Consents are issued for a period of up to one year.

(2) Applicants should then re-submit their application if they wish to continue to trade at least one month before the expiry of their current consent. **At this renewal time, the Licensing Officer will undertake a full consultation exercise as before to determine if the street trader is a cause for concern.**

6. Decisions

(1) Following the determination of an application by the Committee, the applicant and any objectors will be notified of the decision at the end of the hearing. The Licensing Team will then send confirmation in writing, as soon as possible after the decision, or in any case within seven days of the meeting.

(2) There is **no right of appeal against refusal** to issue consent, **therefore any applicant that is aggrieved by the council's decision has an option to seek a Judicial Review. Where an application is refused, payment of the application fee shall be refunded.**

7. Exemptions

(1) The Act makes certain activities exempt from the requirement to hold a consent. These are:

- Pedlars acting under the Pedlars Act 1871.
- Anything done within a market or fair – please refer to paragraph 14.
- Trading on a trunk road picnic area under Section 112 of the Highways Act 1980
- News vendors selling only newspapers or periodicals
- Petrol filling stations
- Shops forecourts
- Roundsmen (as they have defined customers, defined routes)- The Council will refer to recent case law in their interpretation (Kempin v Brighton & Hove – where in the absence of a statutory definition, the court defined a roundsman to be one who goes round a defined list of customers for orders and the delivery of goods).
- Objects or structures placed on, in or over a highway under Part VIIIA of the Highways Act 1980 – table & chairs on the highway
- Operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980
- Street collections

8. Hours of Trading

Trading within the Braintree District will cease at the following hours;

Sunday to Thursday (inclusive)	until Midnight
Friday & Saturday	until 01:00 am the following morning

9. Trading on Market Days

Street Trading will not be permitted on the respective market days in each of the three towns within the district.

10. More Than One Trader in a Location

- (1) The Council will normally only allow one trader to hold a consent in a specific location, unless the second applicant wishes to trade in a different commodity.
- (2) The exceptions to this rule are:
 - (a) Where a special event is arranged and there will be more than one trader covered by the event consent.
 - (b) In the case of “Mobile Traders” – where a vehicle is stationary for less than 15 minutes in one location and doesn’t return to area within 2 hours.
- (3) Where a new applicant wishes to trade in a location where an existing trader already holds a consent to trade in the same commodity the application will be presented before the Licensing Committee for determination.

11. Special Events

(1) At special events, we will issue one consent to the person organising the event, rather than to each individual trader. This policy is aimed at promoting events and encouraging more traders to attend them.

(2) We will issue a single consent, which will cover a number of traders. The number of traders covered is as follows:

Category 1 – Up to 10 traders

Category 2 – Between 11 and 19 traders

Category 3 – Over 20 traders

NOTE :* If the event is being held on behalf of raising funds for a charity etc the fee will be waived.*

(3) Traders wishing to sell hot or cold food are not covered by a consent issued for a special event. Each trader wishing to sell food is required to apply for an individual consent. The reason that traders for food are not included is due to the potential risk to public safety. Each trader will need to be visited by an Environmental Health Officer, who will inspect before consent is issued.

12. Trading on Pedestrian Areas

(1) It is the council’s policy to discourage applications where a trader wishes to trade in a pedestrian area of a town centre..

(2) All applications to trade in these areas will be presented before the Licensing Committee for determination.

13. Trading on Clearways

- (1) Essex County Council have specific orders which prohibit trading on any Clearway within the Braintree District. The following roads are classed as Clearways:

- A131
- B1018 (Braintree to Witham Road)
- Millennium Way (Approach Road to Freeport Shopping Village)

13a Trading on Trunk roads

Any trader operating from a pitch situated on the **A12** or the **A120** must be mindful that the Highways agency have the powers to move on any trader that is causing;

- A general Nuisance
- Displaying illegal signage
- Causing litter
- Causing a distraction to motorists

It is highly unlikely that the Highways Agency will give permission trade on these roads.

14. Markets

(1) Statutory markets, or markets granted by charter, are exempt from requiring a consent.

15. Conditions

(1) The council have adopted conditions relating to Street Trading. These conditions are attached to this policy as **Appendix A**.

16. Planning Permission

(1) Where a person wishes to trade on private land, other than land situated within **7 metres of the highway**, there is no requirement to have a street trading consent. In such cases the applicant must make enquiries with regard to planning permission and to seek the landowners permission to trade.

(2) If a consent is required, the onus is on the applicant to obtain both planning permission and permission to trade from the landowner prior to making an application for street trading consent. It is not the responsibility of the issuing Authority to investigate and obtain this information.

17. Licensing Act 2003

(1) In addition to the requirement of having a street trading consent, applicants who sell hot food or drink between 11.00 pm and 01.00 am will need a premises licence under the Licensing Act 2003.

Part 2 – Charitable Collections

1 Introduction

This part of the Policy sets out how the council will deal with charitable organisations that wish to collect monies and/or goods for charity.

2 Legislation

(1) Street Collections are covered by regulations made under the Police, Factories, etc (Miscellaneous Provisions) Act 1916 as amended by section 251, schedule 29 of the Local Government Act 1972. Anyone wishing to collect money on a street or public place as defined in the Act must obtain a permit from the Council.

(2) House to House Collections require to be licensed by the Council under the House to House Collections Act 1939. This Act only covers Charitable Collections and not companies collecting for profit. Companies collecting for profit should identify that they are not charitable on their bags or leaflets.

3 Consultation on Applications

(1) The Council will record all street collections and house to house collections in an electronic diary to avoid two organisations collecting on the same day in the same locality.

(2) The Licensing Officer will consult Essex County Council Highways where the application for a street collection includes placing a structure or vehicle on the street/highway.

4 Number of Permitted Collections

(1) The Council will have a co-ordinated approach to how many street collections and other such activities we will allow in any one area. We will only permit one collections in any one town or village per day.

(2) The Council do not allow direct debit collections.

Part 3 – Other Activities

Introduction

There are a number of other activities that take place in the streets of the Braintree District that cannot be controlled by licence.

These activities are listed below.

Petitions

People or organisations asking members of the public to support their cause, such as political groups, welfare or ecological groups.

Awareness

People, groups or organisations such as radio stations, television stations or the armed forces may wish to raise awareness by handing out leaflets or undertaking promotional activities.

Market Research

This type of activity includes mail order companies, insurance companies and national questionnaires.

Pedlars

They are required to hold a certificate issued by the Police Force in the area that they reside. They are able to travel to trade within the area. They must only stop to trade when approached by a customer. They must not remain stationary after the sale has been made.

Markets

Please refer to paragraph 14 of this Policy

Busking

(1) If a group of buskers gather, so as to cause a nuisance to passers by or by local traders, then the council will ask them to cease and leave the area.

(2) We may call for assistance from Essex Police when dealing with such issues.

Part 4 – Enforcement

Introduction

This section of the Licensing Policy details the council's commitment to enforcing the provisions contained within the appropriate legislation. It also highlights the council's commitment to work in partnership with all enforcement agencies, to provide consistent enforcement on licensing issues.

The Licensing officers aims to work closely with other enforcement authorities when dealing with issues on the street.

Where licensable activities are conducted without the benefit of a licence, will look to gather evidence and take enforcement action as appropriate.

We may call for assistance from Essex Police when dealing with such issues.

We will enforce the provisions of all appropriate legislation and will ask persons causing a nuisance to cease the activity that they are conducting and leave the area.

Appendix A.

The Following conditions be attached to all street trading consents:

- This street trading consent does not convey any other approvals that may be necessary under the Food Hygiene regulations, Planning legislation or other appropriate legislation.
- The holder of a street Trading consent shall take all reasonable precautions to prevent obstruction of the street or danger to persons using the street and to prevent nuisance or annoyance, whether to persons using the street or otherwise.
- The Holder of a street trading consent shall ensure that suitable arrangements are made for the disposal of any litter that may be caused in connection with the trading permitted under this consent.
- The Holder of a street trading consent shall be required to seek the approval of the Council to any proposed change to the mode of trading permitted under the consent.
- The name of the holder of a street trading consent trading with a vehicle shall be displayed on the vehicle used in connection with the trading.
- This street trading consent does not convey any right to trade on privately owned property.