

# **Pendle Borough Council**

## **Street Trading Policy**

January 2019

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# 1. Introduction

- 1.1 The Council is the Licensing Authority for the purposes of street trading legislation.
- 1.2 The aim of the Council's Street Trading Policy is to create a street trading environment which complements premises-based trading, is sensitive to the needs of residents, provides diversity and consumer choice, and seeks to enhance the character, ambience and safety of local environments. The Policy also seeks to ensure that activities do not cause nuisance or annoyance to the people of the borough.
- 1.3 This Policy relates to all street trading activities on the streets within the Borough of Pendle listed in this Policy.
- 1.4 While each application will be dealt with on its own merits, this Policy gives prospective applicants an early indication as to whether their application is likely to be granted or not. It also provides prospective applicants with details of what is expected of them should an application be granted.
- 1.5 Throughout this Policy any reference to 'the Council' means Pendle Borough Council.

# 2 Overview of Legislation

- 2.1 The controls relating to street trading are governed by Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
- 2.2 The Act states that the Council can designate its streets in three ways, these are:
  - a) a 'Consent Street' which is a street in which street trading is prohibited without the consent of the Council;
  - b) a 'Licence Street' which is a street in which street trading is prohibited without a license granted by the Council;
  - c) a 'Prohibited Street' which is a street in which street trading is prohibited.
- 2.3 A 'Street' is defined as any road, footway, beach or other area to which the public has access without payment.

# 3. Designation of Streets

## 3.1 Prohibited Streets

- 3.1.1 No streets in Pendle are designated as Prohibited Streets

## 3.2 Consent Streets

- 3.2.1 For the purpose for this Policy, the Council have designated all "streets" (as defined in Paragraph 1(1) of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982) in the Borough of Pendle, or parts thereof, as CONSENT STREETS.
- 3.2.2 The Council is under no duty to grant a Street Trading Consent and need not specify any statutory grounds for refusal.

3.2.3 There is no statutory limitation on the Council's power to revoke or refuse to renew a Street Trading Consent.

3.2.4 There is no right of appeal against the refusal to grant or renew a Consent or against the revocation or variation of a Consent.

### 3.3 **Licence Streets**

3.3.1 No streets in Pendle are designated as Licence Streets.

## 4. **Sale of Alcohol**

4.1 In order for a street trader to sell alcohol, an authorisation under the Licensing Act 2003 would be required, in addition to a Street Trading Consent. Where an authorisation is granted under the Licensing Act 2003, additional conditions may be attached to the Street Trading Consent. These conditions may include but are not restricted to:-

- a) the Trader must adopt a Challenge 25 Policy;
- b) restrictions on the sale of alcohol in open containers;
- c) times at which alcohol may be sold.

4.2 Any street trader wishing to sell alcohol should contact the Council's Licensing Section for further information.

## 5. **Application Process**

5.1 In accordance with section 7 (2) of the Local Government (Miscellaneous Provisions) Act 1982 a Council may grant a Consent if they think fit. In order to apply for a Street Trading Consent:

- a) the applicant must be over 17 years of age;
- b) the application must be submitted to the Council's Licensing Section on the prescribed form;
- c) a basic DBS Disclosure not less than one calendar month old must accompany any new or renewal application. If the applicant intends to employ any other person in the course of the business in respect of which the application for the Consent is made, then a further separate such basic DBS Disclosure shall be submitted in respect of each such employee initially and on renewal;
- d) if a vehicle is to be used, the applicant must submit their driving licence details, insurance covering the vehicle for Street Trading and an MOT (if appropriate);
  - i. the driving licence details, valid insurance and MOT must also be submitted at any subsequent renewal applications.
- e) the applicant must provide an up to date passport sized photo;
- f) the relevant fee will be payable upon grant of the Consent;
- g) the name of the business must not be the same or similar to that of an existing static retail business or another street trader;
- h) street traders selling food must be registered as a food business with their home Authority, and show confirmation of this when applying.

- i) New applicants will be expected to undergo CSE (Child Sexual Exploitation) safeguarding training before a Consent will be granted;
  - i. Renewal applicants will also be expected to undergo this training, but will be able to continue to trade whilst awaiting a training place;
  - ii. Training will be provided by the Council at no charge to the applicant.

5.2 In considering applications for the grant or renewal of a street trading consent the following factors will be considered by the Council:

5.2.1 Public Safety

Whether the location of the trading activity represents, or is likely to represent, a substantial risk to the public from the point of view of obstruction, fire hazard, unhygienic conditions or danger that may occur when a trader is accessing the site.

5.2.2 Public Order

Whether the street trading activity represents, or is likely to represent, a substantial risk to public order.

5.2.3 The Avoidance of Public Nuisance

Whether the street trading activity represents, or is likely to represent, a substantial risk of nuisance to the public from noise or misbehaviour, particularly in residential areas.

5.2.4 Needs of the Area

(The demand for the articles for sale, and the geographical location of the proposed site).

The Council will always consider the sufficiency of other trading outlets to serve the needs of the area. A new Consent is unlikely to be granted where the Council consider that adequate like provision already exists. All Consents will be granted subject to a condition that the trader will not trade within 100 metres of a shop or other static trader selling the same or similar goods as those allowed to be sold under the Street Trading Consent concerned.

5.3 On receipt of a valid application, the Council's Licensing Section will consult with the Ward Councillors for the Ward within which the street or streets are situated and those Councillors may make written representations to the Licensing Committee about the application if they so wish.

5.4 If the application is made in accordance with the criteria in Paragraph 5.1 above, and Paragraph 5.2 above, then the Council's Licensing Section will deal with the granting of the application.

5.5 If:

5.5.1 The application is not made in accordance with the criteria in Paragraph 5.1 above or appears not to comply with any of the criteria in Paragraph 5.2 above, and/or

5.5.2 The DBS Disclosure referred to in Paragraph 5.1 (c) above reveals any adverse entries in respect of the applicant or any employee, then the Council's Licensing Committee will meet to determine the application, taking into account the responses to those entries. The Committee will then either grant or refuse the application.

- i. Certain 'lesser' offences may be dealt with at Manager level. A list of offences and guidance will be kept and can be referred to by applicants (Appendix A).

5.5.3 NB: Council officers will be allowed to add, to any Consent, employees (minimum age of 15 years) who have presented a relevant DBS Disclosure which shows no convictions, without an appearance before Committee.

- 5.6 As stated above, the power to grant a street trading consent is a discretionary one and the Council may refuse to grant consent if they think fit.
- 5.7 If the consent is granted then the Council will send out the relevant certificate.
- 5.8 If the consent is refused then the Council will write to the applicant informing him of the decision.
- 5.9 **EXEMPTIONS**

Street trading at the following events are exempt from payment of fees:

- annually held festivals operated by the Council, any Parish or Town Council or similar bodies;
- fetes, carnivals or similar community based and run events, such as community car boot sales and Christmas lights switch on events;
- non-commercial or charitable events where the profits are wholly passed to a charity;
- trading on private land (including land owned, leased or maintained by a town/parish council) where this is not a road, street, car-park or industrial estate with public access or within 20 metres of any road, street, car-park or industrial estate with public access;
- sales of articles by householders on land within the boundary of their home, for example garage sales;
- goods from working farms sold at the premises where they were produced.

## **6. Review of a Street Trading Consent**

- 6.1 Where the need arises the Council may review a Street Trading Consent, and any such decision will be made in accordance with the Council's scheme of delegation.
- 6.2 Holders of Consents which are revoked shall be prevented from making a new application until after a period of twelve months, since revocation, has elapsed.

## **7. General**

- 7.1 The holder of the Consent may apply for a variation in respect of the site. Such application for variation must be in writing and give details of the proposed relocation. Ward Councilors would also be consulted prior to such a variation being approved, with the application being determined before Committee, if appropriate.
- 7.2 It is the applicant's responsibility to ensure that the site they are applying for is suitable and they have a legal right to trade. No responsibility will be accepted by the Council for persons found trading from unsuitable or illegal sites.
- 7.3 The Council may forfeit the Consent if the Consent holder shall, without good cause, fail to comply with any condition of the Consent.
- 7.4 The current fee can be found on the Council's website.

## **8. Conditions**

- 8.1 The Consent granted by the Council may be revoke at any time, should one or more of the conditions be breached. Dependent on the type of trading activity the following conditions will normally be attached to a Street Trading Consent:-

(1) A Consent will not be granted if it is considered that one or more of the conditions of the

Consent will be breached;

- (2) The Consent granted by the Council is personal to the consent holder and is not transferable. Where the holder of the Consent is an employer, this Consent will apply to named employees who have been previously notified to and approved by the Council. The Consent may only be transferred to another vehicle, container or stall with the prior consent in writing of the Council;
- (3) The holder of the Consent shall trade only on the site as specified in the Consent and will not trade within 100 metres of a shop or other static trader selling the same or similar goods as those allowed to be sold under the Consent;
- (4) Only goods specified in the consent may be sold from the vehicle, container or stall specified in the Consent;
- (5) Nuisance or annoyance shall not be caused by the holder of the Consent or any of his / her employees to persons using the street or otherwise. The holder of the Consent shall not permit any nuisance, obstruction or annoyance to be caused by the presence of his / her trading activities to persons occupying nearby residential or commercial premises;
- (6) No obstruction of any street or right of way or danger to the public shall be caused by the holder of the Consent or any employee of him / her;
- (7) The holder of the Consent shall comply with all legislation relevant to the conduct of the business in which he / she is engaged;
- (8) The holder of the Consent shall ensure that any vehicle used by him / her in connection therewith is in a roadworthy condition and where necessary taxed and insured;
- (9) The holder of the Consent or any person employed by him / her shall not use any loudspeaker, whistle, horn, bell or their audible method to attract custom; excepting ice-cream vans;
- (10) The following special conditions apply to consents issued in relation to ice-cream sales:
  - a) chimes should not be sounded before 12noon or after 7pm;
  - b) chimes should not give reasonable cause for annoyance;
  - c) chimes should not be sounded:
    - (i) for longer than 12 seconds at a time;
    - (ii) more often than once every 2 minutes;
    - (iii) more than once when the vehicle is stationary at a selling point;
    - (iv) except when on approach to or at a selling point;
    - (v) when in sight of another vehicle which is trading;
    - (vi) when within 50 metres of schools (during school hours), hospitals and places of worship (on Sundays or other recognised days of worship);
    - (vii) more often than once every 2 hours in the same length of street;
    - (viii) louder than  $L_{Amax}$  80db at 7.5 metres;
    - (ix) as loudly in areas of low background noise or narrow streets as elsewhere\*.

\* From: DEFRA – Code of Practice on Noise from Ice-Cream Van Chimes etc. in England 2013.

- (11) The holder of the Consent shall provide adequate receptacles for rubbish and shall after trading has ceased, remove all rubbish and litter from the site;
- (12) The holder of the Consent shall comply with any reasonable requirements of the Council or any of its officers or of any Police Officer in relation to the siting or operation of his / her street trading business;
- (13) Any Consent issued will only be valid in relation to a single vehicle, container or stall;

- a) Except where there is adequate proof provided to the Authority by the Consent holder that there is need for other vehicles, containers or stalls;
  - (i) In this case, proof of ownership (and insurance and MOT, as appropriate) by the Consent holder of any subsequent vehicle, container or stall will be required;
- (14) A Consent will be granted for the period of 12 months minus one day, from the date of the decision (assuming the application procedure has been complied with). Should a Consent be surrendered or revoked, fees will be refunded proportionally, less an administration charge.

N.B. The Law provides that any person who trades in a "Consent Street" without having obtained the consent of the Council shall be guilty of an offence.

## **9. Offences**

9.1 A person commits an offence if they:-

- a) sell or expose for sale goods in a prohibited street;
- b) sell or expose for sale goods in a consent street without first obtaining authorisation from the Council;

9.2 A Consent holder commits an offence if they:-

- a) sell or expose for sale goods in a street from a stationary van, cart, barrow, portable stall, or other vehicle without being granted permission to do so.