

**REPORT FROM: PLANNING, BUILDING CONTROL AND LICENSING SERVICES MANAGER**

**TO: COUNCIL**

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## **STREET TRADING – PROPOSED AMENDMENTS TO THE COUNCIL’S POLICY**

### **PURPOSE OF REPORT**

To consider the attachments indicating proposed changes to the Council’s Street Trading Policy, and, if agreed confirm an implementation date.

### **RECOMMENDATIONS**

- (1) Following reconsideration in light of case law, the Policy should not be amended to impose any restriction of trade around schools or other educational establishments.
- (2) The Policy should be amended to include the other proposed measures, as detailed at 11(b).

### **REASONS FOR RECOMMENDATIONS**

- (1) Council is advised that restricting trade may be regarded as unlawful, and could now leave it open to a judicial review of the Policy.
- (2) These measures are believed to improve the application and renewal procedures for Street Trading Consents.

## **ISSUE**

### **A. The Policy**

1. The Council operates a Street Trading Consent system under and in accordance with Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982. Under the policy all streets are designated consent streets and the Council only issues Street Trading Consents.
2. The Council currently licences eight holders of Street Trading Consents. The consents cover such things as the provision of hot food and drink from a static location, to ice cream vans and also mobile fruit and vegetable vendors.

3. The Council's current Street Trading Policy dates back to June 2012. This is attached as Appendix 1.
4. It is proposed to amend the policy to tighten up the existing wording and deal with a modernizing marketplace. The proposed amendments seek to tighten up provisions in relation to trading in moving vehicles and also seek to deal with more recent national concerns regarding child sexual exploitation. The amendments seek to amend the policy so, for the first time, there is guidance for applicants with convictions. Finally, the amendments sought to ensure the Council's commitment to its Strategic Plan to reduce obesity in children and young people is adhered to. The amendments are attached as Appendix 2.
5. At the meeting of the Taxi and Other Licensing Committee on 2<sup>nd</sup> November 2017 it was agreed to put the amendments out to six week consultation in early 2018. This consultation period lasted from 8<sup>th</sup> January to 16<sup>th</sup> February 2018.
6. Details of the consultation were sent to all Consent Holders (with a valid Consent in force on 1<sup>st</sup> January 2018), schools and educational establishments in the Borough of Pendle (as listed by Lancashire County Council), Lancashire County Council Highways and Lancashire Constabulary. Details were also posted on the Council's website and a notice was placed in the local press.

## **B. Details**

7. The consultation received eleven responses. A response document highlighting the details of the responses is attached as Appendix 3.
8. Four of the responses were from current street traders. Other responses were received from schools and other educational establishments.
9. No concerns were raised regarding the following issues:
  - a. Submission of further documents and records (e.g. insurance, MOT, driving licence) for traders using moving vehicles;
  - b. Child Sexual Exploitation (CSE) training for consent holders;
  - c. Confirmation of registration as a food business;
  - d. Alteration of conditions relating to ice cream van chimes; in line with DEFRA's Code of Practice;
  - e. The new application form.
10. One or more concerns were raised regarding the following issues:
  - a. The guidance document on convictions for applicants; namely sexual offences (section 4) (Appendix 4);
  - b. The Basic DBS disclosure at every renewal for all workers;
  - c. The imposition of restriction of trading around schools and other educational establishments.
    - i. This point sought replies asking at what distance there should be a restriction of trade around a school or other educational establishment, and if so, where this restriction should be calculated from.
11. At the meeting of the Taxi and Other Licensing Committee on 21<sup>st</sup> March 2018 the responses to the consultation were considered and the following agreed:
  - a. That a distance of 50 metres from the main school gate be used for the restriction of trade around schools and other educational establishments;

- b. That, subject to 11a, the other proposed amendments to the new policy be agreed. These were:
  - i. Submission of further documents and records (e.g. insurance, MOT, driving licence) for traders using moving vehicles;
  - ii. Child Sexual Exploitation (CSE) training for consent holders;
  - iii. Confirmation of registration as a food business;
  - iv. Alteration of conditions relating to ice cream van chimes; in line with DEFRA's Code of Practice;
  - v. A new application form (Appendix 5);
  - vi. A guidance document on convictions for applicants (*see Appendix 4*);
  - vii. A Basic DBS disclosure at every renewal for all workers;
- c. That the Council be recommended to approve the new policy and agree an implementation date.

12. Following this meeting, case law emerged from Scotland, where an Authority had attempted to limit the distance street traders can trade around schools and that that Authority had been defeated. In *McCluskey v North Lanarkshire Council 2016 SLT (Sh. Ct.) 31*, the Sheriff, whilst respective of the Council's aim to help reduce instances of childhood obesity, noted that the condition was not for a licensing purpose and was therefore outside the scope of the legislation. In reaching the judgement the Sheriff acknowledged that the intentions of the policy were laudable but nevertheless he could only make judgements based on sound law. The licensing purposes in Scotland are the same as England. Council is advised that to place minimum distances in the policy would fall foul of that judgement and would risk the policy being judicially reviewed.

13. Licensing Committee at their meeting on 13<sup>th</sup> November 2018 voted to reinstate the 50 metre restriction around schools, despite advice to the contrary. Council is advised that ratifying this course of action may be regarded as unlawful, and could leave the Council open to a judicial review of the Policy.

### **C. Considerations**

15. Council is now requested to discuss and agree the proposed amendments.

16. Following this, the proposed amendments should be implemented on 1<sup>st</sup> January 2019.

- a. Existing Consents expiring after this date will become subject to the new Policy upon renewal, on a gradual basis.

### **IMPLICATIONS**

**Policy:** This report details proposed amendments to policy.

**Financial:** None arising directly from the report.

**Legal:** None arising directly from the report.

**Risk Management:** None arising directly from the report.

**Health and Safety:** None arising directly from the report.

**Sustainability:** None arising directly from the report.

**Community Safety:** None arising directly from the report.

**Equality and Diversity:** None arising directly from the report.

## **APPENDICES**

1. Existing Council Street Trading Policy – June 2012
2. Proposed Amendments – 2018
3. Response Document
4. Guidance on convictions for applicants (Appendix A)
5. Newly proposed application form

## **LIST OF BACKGROUND PAPERS**

None