

Meeting	LICENSING COMMITTEE
Time/Day/Date	6.30 pm on Wednesday, 21 February 2018
Location	Council Chamber, Council Offices, Coalville
Officer to contact	Democratic Services (01530 454512)

All persons present are reminded that the meeting may be recorded and by attending this meeting you are giving your consent to being filmed and your image being used. You are kindly requested to make it known to the Chairman if you intend to film or record this meeting.

The Monitoring Officer would like to remind members that when they are considering whether the following items are exempt information under the relevant paragraph under part 1 of Schedule 12A of the Local Government Act 1972 they must have regard to the public interest test. This means that members must consider, for each item, whether the public interest in maintaining the exemption from disclosure outweighs the public interest in making the item available to the public.

AGENDA

Item	Pages
1. APOLOGIES FOR ABSENCE	
2. DECLARATIONS OF INTEREST	
Under the Code of Conduct members are reminded that in declaring disclosable interests you should make clear the nature of that interest and whether it is 'Pecuniary' or 'Non-Pecuniary'.	
3. MINUTES OF PREVIOUS MEETING	
To confirm and sign the minutes of the meeting held on 4 October 2017.	3 - 6
4. REVIEW OF STREET TRADING POLICY	
Report of the Environmental Health Team Manager	7 - 36

Circulation:

Councillor G A Allman
Councillor R Ashman
Councillor J Clarke
Councillor N Clarke
Councillor J Cotterill
Councillor D Everitt
Councillor T Eynon
Councillor G Hout
Councillor J Hout
Councillor G Jones
Councillor P Purver
Councillor V Richichi (Deputy Chairman)
Councillor A C Saffell
Councillor S Sheahan
Councillor N Smith (Chairman)
Councillor M Specht
Councillor M B Wyatt

MINUTES of a meeting of the LICENSING COMMITTEE held in the Council Chamber, Council Offices, Coalville on WEDNESDAY, 4 OCTOBER 2017

Present: Councillor N Smith (Chairman)

Councillors G A Allman, R Ashman, J Clarke, N Clarke, J Cotterill, D Everitt, T Eynon, G Hoult, J Hoult, G Jones, P Purver, V Richichi, A C Saffell, S Sheahan, M Specht and M B Wyatt

In Attendance: Councillors J Legrys (Observer) and A V Smith (Portfolio Holder)

Officers: Mr A Cooper, Mr D Gill, Mr L Mansfield and Mrs M Meredith

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors N Clarke, J Hoult and G Jones

2. DECLARATIONS OF INTEREST

There were no interests declared.

3. MINUTES OF PREVIOUS MEETING

Consideration was given to the minutes of meeting held on 22 February 2017.

Councillor G A Allman requested that his apologies for the previous meeting be included in the minutes.

It was moved by Councillor M Specht, seconded by Councillor J Cotterill and

RESOLVED THAT:

Subject to the above amendment, the minutes of the meeting held on 22 February 2017 be approved and signed by the Chairman as a correct record.

4. REVIEW OF STREET TRADING POLICY

The Environmental Health Team Manager presented the report to members. He highlighted that the current policy was reviewed in 2014 and approved by Council in 2015. He explained that the purpose of the review was to remove processes where they added little or no value and to simplify the policy for applicants, licence holders and the administration. He advised that following the comments made by members, the final draft of the policy would be circulated for consultation before being brought back to the Licensing Committee. He outlined the proposed changes to the policy. He explained that the new policy was much shorter than the existing policy as a lot of the process had been removed and the information had been split into two documents; the policy itself and some supporting guidance, which was provided for information. He sought comments from members on the proposed policy changes.

Councillor N Smith sought clarification in respect of consideration of further applications following a revocation. He asked whether the 3 year period was proportionate, whether there should be a sliding scale and how the three year period had been arrived at.

The Environmental Health Team Manager explained that there was currently no guidance and the aim of this was to prevent someone who had had their licence revoked from submitting a further application immediately.

The Legal Advisor explained that currently the grant of a trading consent was in the absolute gift of the authority and there was no right of appeal. He advised that the purpose of including a time limit was to provide an indication to someone who had had their licence revoked when they could apply again.

The Chairman had asked the Legal Advisor whether such matters could be put to a Licensing Sub Committee. The Legal Advisor's strong view was that this was not appropriate as this would enable an appeal process where there was no such process in law and any decision of the Licensing Sub Committee would also become subject to a judicial review.

The Chairman asked whether other local authorities included a time limit and what their experience was of this.

The Legal Advisor explained that strictly speaking, there was no requirement in law to have a policy whatsoever. He stated that lots of authorities had a policy and its purpose was to be a strategic high level document to provide an indication of the sort of tests that the authority would apply when considering a street trading consent. He advised that some local authorities did include a time limit, however there was no requirement to include one and it was entirely a matter for members to take a view on whether this would be in the interests of openness, transparency and consistency in determining applications.

Councillor R Ashman stated that he was not comfortable with setting an arbitrary time limit as this was likely to be challenged on whether or not it was proportionate. He added that he would prefer to remove the time limit from the policy and include this in the guidance only.

Councillor S Sheahan expressed concerns in respect of ensuring any time limit was appropriate and ensuring a consistent approach.

It was agreed that reference to time limits be retained in the guidance only, with the addition of suggested timescales relative to certain types of offences. This would be circulated to members before the next meeting.

A discussion took place on the consultation process and concerns were raised that ward members would not be consulted under the revised policy. Some members expressed a clear preference to receive a direct personal communication relating to street trading consent applications.

The Environmental Health Team Manager advised that ward members would continue to be notified when a licence was issued.

The Legal Advisor suggested that street trading consent applications could be included on the weekly list of applications to provide members an opportunity to make representations.

It was suggested that street trading consent applications be included in the weekly list. It was also agreed that the ward member would receive a direct communication, however this may need to be reassessed in future if resources became a concern.

Councillor M B Wyatt stated that he was very unhappy about the 3 year exclusion period as he felt this was far too harsh. He expressed concerns about the lack of member involvement in these decisions and that this could be questioned. He also sought clarification on the application on revocations in respect of companies.

The Legal Advisor explained that for the purposes of the law, a limited company was treated as a person and the disqualification period would apply to the company as the

consent holder was ultimately responsible. It was agreed that this would be further clarified in the policy.

Councillor M Specht sought clarification on what would happen if a trader had their permit revoked and there was a subsequent application from another person relating to the same site.

The Environmental Health Team Manager advised that a consent to trade from a location did not give the trader any rights to that pitch. If a piece of land was currently not being utilised and an application was received relating to that land, it would be determined on its own merits.

In respect of the human rights issues raised, the Legal Advisor explained that article 1 of the Act did not give traders an absolute right to continue indefinitely with a licence. He added that licences were terminable and the courts were satisfied that terminating a licence was not a breach of human rights.

In response to a question from Councillor V Richichi, the Legal Advisor explained that certain convictions were never spent and there were certain occupations where spent convictions could still be considered. He advised that in respect of a street trading consent, the authority was not in a position to consider spent convictions, or require a DBS check; however any convictions that came to the attention of officers would be taken into consideration.

It was moved by Councillor M Specht, seconded by Councillor J Cotterill and

RESOLVED THAT:

The comments of the Licensing Committee on the Draft Street Trading Policy be taken into consideration prior to wider consultation.

The Chairman advised that the meeting in November had been cancelled due to lack of business.

The meeting commenced at 6.30 pm

The Chairman closed the meeting at 7.31 pm

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NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

LICENSING COMMITTEE – 21 FEBRUARY 2018

Title of report	REVIEW OF STREET TRADING POLICY
Contacts	<p>Portfolio Holder - Councillor Alison Smith MBE 01530 835668 alison.smith@nwleicestershire.gov.uk</p> <p>Lee Mansfield Environmental Health Team Manager 01530 454610 lee.mansfield@nwleicestershire.gov.uk</p> <p>Andy Cooper Licensing Team Leader 01530 454844 andy.cooper@nwleicestershire.gov.uk</p>
Purpose of report	To consult with Licensing Committee on a draft Street Trading Policy
Council Priorities	Business & Jobs Homes and communities
<p>Implications:</p> <p>Financial/Staff</p> <p>Link to relevant CAT</p> <p>Risk Management</p> <p>Equalities Impact Assessment</p> <p>Human Rights</p> <p>Transformational Government</p>	<p>All staffing costs associated with the preparation, consultation, adoption and enforcement of the Street Trading policy can be met by the existing level of staff.</p> <p>Not applicable</p> <p>No significant risks identified. Legal advice has been sought in its preparation to mitigate the risk of challenge. The current street trading policy has not been challenged</p> <p>Not applicable</p> <p>Any interference with property rights protected by Article 8 and Protocol 1 Article 1 of the Human Rights Act must be legitimate, necessary and proportionate</p> <p>None</p>

Comments of Head of Paid Service	Report is satisfactory
Comments of Section 151 Officer	Report is satisfactory
Comments of Monitoring Officer	Report is satisfactory
Consultees	NWLDC Elected Members, NWLDC (Environmental Health, Licensing, Community Safety, Waste, Environmental Protection Teams), Leicestershire County Council Highways, Leicestershire Police, current consent holders, Parish Councils, Ashby de la Zouch Town Council, Leicestershire Fire & Rescue Service, NWL Chamber of Commerce, Federation of Small Businesses, secondary schools
Background papers	NWLDC Street Trading Policy – Issue 3 Local Government (Miscellaneous Provisions) Act 1982 http://www.legislation.gov.uk/ukpga/1982/30 Review of Street Trading Policy - 4 October Licensing Committee
Recommendations	THAT LICENSING COMMITTEE CONSIDER AND COMMENT ON THE DRAFT STREET TRADING POLICY PRIOR TO CONSIDERATION AND ADOPTION BY COUNCIL ON 20 MARCH 2018

1.0 BACKGROUND

- 1.1 The council's street trading policy was approved by Council on 24 February 2015 and came into force on 25 February 2015. The policy aims to create a street environment which compliments premises-based trading, to provide diversity and consumer choice and to enhance the character and safety of the local environment.
- 1.2 A draft policy was presented to and considered by Licensing Committee on 4 October 2017. A copy of the Licensing Committee report and appendices is included as a background paper (above).
- 1.3 Comments made by Licensing Committee on 4 October were acted upon and influenced the content of the draft policy published for consultation.
- 1.4 The draft policy presented to Licensing Committee stated that the council will not normally consider a further application for a consent from an individual that has had a consent revoked, for a period of 3 years. Licensing Committee requested further detail relating to the proposal, which is contained within this report.

2.0 CONSULTATION PROCESS

- 2.1 The procedure for implementing a street trading scheme is set down by legislation and requires a specific period for representations before the scheme can be implemented. This statutory process was followed following a council meeting on 21 January 2014 when council adopted a resolution designating the whole area within the District as consent streets for the purpose of street trading. This review does not propose a change to the current street trading scheme in that the whole area within the District will be considered to be consent streets. The review has focussed on proposing changes to the way in which the street trading scheme is operated, through policies and procedures. The proposed changes to the policy and procedures do not require a statutory consultation process to be carried out.
- 2.2 The Council has conducted its own non-statutory consultation to ensure all opinions and comments are taken into consideration when writing the final policy. A non-statutory consultation process commenced on 12 October 2017 and ended on 8 December 2017. This consultation focussed on the following key stakeholders:

NWLDC Elected Members, NWLDC (Environmental Health, Licensing, Community Safety, Waste, Environmental Protection Teams), Leicestershire County Council Highways, Leicestershire Police, current consent holders, Parish Councils, Ashby de la Zouch Town Council, Leicestershire Fire & Rescue Service, NWL Chamber of Commerce, Federation of Small Businesses and secondary schools

3.0 PROPOSED CHANGES CONTAINED WITHIN THE CONSULTATION PAPER

Proposed changes to the policy contained within a consultation document detailed the following:

- The application process and guidance has been removed from the policy document and will form a separate document;
- Introduction of definitions for consent holder and nominated person;
- Removal of the requirement for a concessionary consent;
- Removal of the requirement to consult on renewal applications where no issues have been reported during the previous 12 months;
- Replace the current formal mandatory process of consultation with all consultees with a process where consultees are split into 2 groups. Consultees in group 1 will be consulted on all applications. The council may choose to seek the views of those in group 2 before determining the application;
- To add Leicestershire police and fire service to the list of consultees;
- Minor changes to the wording of the policy objectives;
- Compliance with other legal requirements introduced as a new policy objective;
- To simplify the process of determining applications where objections are received by removing the requirement for an officer panel. An application of this nature would be

determined by an Authorised officer in consultation with the Licensing Team Leader or Environmental Health Team Manager;

- To allow a trader to trade from more than one trading location on a single consent. For example a trader trading in different pub carparks on different days. The fee for new and renewal consents where more than one trading location is permitted will reflect the additional resourcing required in determining the consent application and monitoring the term of the consent;
- To introduce a policy whereby an application for a consent from a person that has had a consent revoked will not normally be considered for a period of up to 3 years;
- The consent variation process has been further defined within the guidance document. A variation fee of £36 is proposed.

4.0 REVOCATION OF A CONSENT

4.1 It is proposed to introduce a policy whereby an application for a consent from a person that has had a consent revoked will not normally be considered for a period of up to 3 years.

4.2 In order to promote fairness through consistency and proportionality the following guidance has been devised:

- Each application will be treated on its own merits.
- The Licensing Officer must obtain legal advice before making a decision.
- The reasons behind the decision to revoke the consent must be obtained and understood.
- The length of time should meet, in a fair and proportionate way, the objectives of the punishment, deterrence and the removal of gain derived through the non-compliance, it should not be cheaper to offend than to comply with the street trading consent conditions.
- The following will be used as a guide when determining the length of time before which the Licensing team will consider an application.

	Up to 1 year	2 to 3 Years
Seriousness of failings	Failings were minor and occurred as an isolated incident	Deliberate breach of or flagrant disregard for the law Concerns raised by customers and/or employees were ignored
Impact of failings	No harm or injury resulted from the failings	Harm or injury resulted from failings
Attitude / co-operation of consent holder	Some efforts were made to address the risk although they were inadequate	Failed to make appropriate changes following prior incident(s) exposing a public safety risk

5.0 REPRESENTATIONS

- 5.1 The Licensing Authority has received comments from 12 consultees during the targeted non-statutory consultation.
- 5.2 Consultees generally supported each of the proposals. A summary of the analysis of all consultee comments is provided at Appendix 1.
- 5.3 The following changes have been made to the draft policy following consultee comments:
- Town and Parish Councils have been listed as a group 1 (mandatory) consultee. NWLDC District Councillors and Town/Parish Councils will be consulted on all new applications.
 - Guidance relating to considering applications from individuals that have previously had a consent revoked has been added.
 - A trader is permitted to trade from more than one location on a single consent. A maximum of three trading locations has been added to the policy.
- 5.4 A draft policy taking into account all comments made by consultees is at Appendix 2.

6.0 NEXT STEPS

- 6.1 All comments made by Licensing Committee will be collated and used to devise a final draft which will be submitted to Council on 20 March 2018 for consideration and adoption.
- 6.2 The commencement day for the revised policy will be 1 April 2018.

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Analysis of consultee comments

1. Proposal to add Leicestershire police and Leicestershire fire and rescue service to the list of consultees

The proposal was supported by all consultees

2. Proposal to remove the requirement to consult on renewal applications where no issues or concerns have been reported during the previous 12 months

3. Proposal to amend the consultation process for new applications. To consult NWLDC District Councillors on all applications and all other consultees where the licensing officer considers it relevant to do so

10 of the 12 consultees supported these proposals.

The two Town/Parishes that disagreed with the proposal wish to be consulted on all applications, both new and renewal.

Response to consultee comments:

All Town/Parish Councils will be consulted on new consent applications and all renewals where complaints or concerns have been reported to the licensing team during the term of the previous consent.

4. Proposal to introduce a policy whereby an application for a consent from a person that has had a consent revoked will not normally be considered for a period of up to 3 years.

10 of the 12 consultees supported this proposal.

The two remaining consultees felt the policy required further clarity to reduce ambiguity and ensure consistency.

Response to consultee comments:

Guidance has been devised in response to comments made by Licensing Committee and other consultees.

5. Proposal to simplify the process of determining an application where objections are received by removing the requirement for an officer panel and replacing it with delegation for an officer decision in consultation with the Licensing Team Leader or Environmental Health Team Manager.

9 of the 12 consultees supported this proposal.

Those that did not support the proposal felt that 2 officers discussing the objections together in a hearing environment would be more robust.

One consultee felt that one officer making a decision would be unfair.

Response to consultee comments:

The proposal is to retain the requirement for 2 officers to be involved in the decision making. All decisions will require a recommendation from an officer and approval from a second officer.

6. Proposal to make the following changes to the policy criteria:

- Detection and prevention of public nuisance and anti-social behaviour removed and replaced with two criteria, avoidance of nuisance and prevention and detection of street crime and anti-social behaviour
- Promotion of environmental improvement and regeneration replaced with needs of the area
- To ensure food safety and public safety removed and replaced with compliance with legal requirements

All 12 consultees supported the proposal

STREET TRADING POLICY

Approved by Council on

ISSUE 4 DRAFT

Foreword

As a licensing authority, we are keen to support Street Traders, as they are a sector of our business community that provides a valuable service to consumers across the district.

This policy, which covers the whole district, is designed to ensure that all street traders operate from a level playing field – making things fair for all traders and safer for customers.

First of all, we will make sure that areas are not saturated by street traders, giving businesses a fair chance of making a living.

Secondly, our Environmental Health Officers now know the exact locations of all traders. This will make it much easier to make sure traders are complying with the law, protecting consumers from unsafe practices and maintaining environmental standards.

We are keen to bring more order to Street Trading and to drive up standards within North West Leicestershire for the benefit of traders and consumers. This policy is key to that ambition.



Councillor Alison Smith MBE
Deputy Leader and Portfolio Holder for Community Services

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1 Introduction

- 1.1 District Councils have the power to adopt Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 enabling them to control Street Trading within their district. Once this schedule is adopted a District Council may choose to designate any street within its area as a prohibited, licence or consent street.

North West Leicestershire District Council adopted Schedule 4 on 1st January 1983.

A Consent Scheme has been adopted in North West Leicestershire. This policy details this scheme

~~4.1 This policy was approved by Council on DATE24 February 2015 and came into force on DATE25 February 2015.~~

~~4.2 Within North West Leicestershire consents are required if a trader wishes to trade on a street anywhere within the district.~~

2 Definitions

1. 'Consent' means a consent to trade granted by North West Leicestershire District Council under powers conferred by the Local Government (Miscellaneous Provisions) Act 1982.
2. 'Consent Street' means a street in which street trading is prohibited without the consent of the district council.
3. 'Council' means North West Leicestershire District Council.
4. 'District' means the area within the boundaries of North West Leicestershire District Council.
5. 'Street trading' means the selling or exposing or offering for sale of any article (including a living thing) in a street.

~~The following street trading activities are **exempt from the requirement to obtain a consent from the council** ~~not street trading~~ for the purposes of this policy:-~~

- (a) trading by a person acting as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871;
- (b) anything done in a market or fair the right to hold which was acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of an enactment or order;
- (c) trading in a trunk road picnic area provided by the Secretary of State under section 112 of the Highways Act 1980;
- (d) trading as a news vendor;
- (e) trading which –
 - (i) is carried on at premises used as a petrol filling station; or

- (ii) is carried on at premises used as a shop or in a street adjoining premises so used and as part of the business of the shop;
 - (f) selling things, or offering or exposing them for sale, as a roundsman. A roundsman does not include ice cream sellers (Kempin v Brighton and Hove Council) and mobile catering vehicles;
 - (g) the use for trading under Part VIIA of the Highways Act 1980 of an object or structure placed on, in or over a highway;
 - (h) the operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980;
 - (j) the doing of anything authorised by regulations made under section 5 of the Police, Factories, etc (Miscellaneous Provisions) Act 1916.
 - (k) Residents wishing to sell items from the pavement outside their home address on a temporary basis may be granted a concessionary consent.
 - (l) 'Markets' The legislation specifically provides that anything done in a market or fair which is held by virtue of a Charter, a presumed grant of a charter or a statutory provision is not street trading for the purposes of the legislation.
 - (m) Trading in a market run by a town/parish council. This policy will not impact on Coalville, Ashby or Castle Donington Markets.
 - (n) Fetes, carnivals or similar community based and run events, for example Christmas lights switch-on events, Christmas Fair, special markets.
6. 'Street' means any road, footway, or other area to which the public have access without payment or any part of a street. For the purposes of this policy, street includes
- All forecourts, roads, footways or other areas adjacent to the streets as defined in the order.
 - A service area as defined in section 329 of the Highways Act 1980
7. Premises means any barrow, stall, unit, vehicle, trailer or other premises from which street trading will take place.
8. Persons means a natural person or a body corporate.
9. 'Consent Holder' means the person or body body corporate to whom the consent to trade has been granted by North West Leicestershire District Council. 'Trader' means not only the consent holder but also his or her assistants.
10. 'Nominated Person' means the person nominated by the consent holder to undertake day to day management of the business carried out under the consent.
9. 'Vicinity' means within 10 metres on trunk roads and lay-bys and 5 metres in all other locations.

3. Relevant Authorities

New Applications:

Before a new application for a street trading consent is determined by the council the following people will be consulted:

Group 1:

All District Council Ward Members
Town or Parish Council – where located

Before determining a new application the council may seek the views of the following authorities:

Group 2:

North West Leicestershire District Council – Environmental Health (Safety)
North West Leicestershire District Council – Environmental Health (Licensing)
North West Leicestershire District Council – Environmental Protection (Public Nuisance)
North West Leicestershire District Council – Waste (littering, street cleansing)
North West Leicestershire District Council – Planning (appearance – loss of amenity, planning consent)
North West Leicestershire District Council – Community Safety
Relevant Highways Authority (Leicestershire County Council / Highways England)
Leicestershire Police
Leicestershire Fire & Rescue Service

Renewal applications:

The council will not normally seek the views of others for renewal applications, unless there have been issues raised during the term of the previous consent.

We may take up to 28 days to seek the views of other in relation to an application.

4. Site Assessment

The suitability of the proposed site will be assessed.

Where the licensing team consider the proposed site to be unsuitable the applicant will be informed and the application will be rejected.

Where the licensing team consider the proposed site to be suitable, the application will proceed to the next stage.

5. Inspection of the Street Trading Unit

The vehicle, van, trailer, stall or other device to be used for the proposed street trading activity will be inspected by an Authorised Officer of the council prior to the issue of any street trading consent, where this is reasonably practicable.

The appearance of the unit will not present a loss or be detrimental to the needs of the area. At this stage the external colour decoration and appearance of the premises will be discussed and agreed.

The unit to be used for the street trading activity shall comply with the legal requirements relating to the type of street trading activity proposed. In particular the unit to be used shall comply with food hygiene, health and safety and environmental protection legislation.

6. Criteria for determining an application

You must be over 17 years of age to hold a consent.

The council may refuse an application to trade on a consent street on any grounds they think fit. There are no specific grounds stipulated in the legislation, however the council will use the criteria listed below in the determination of street trading consents. All the criteria should normally be satisfied, and equal weight will be applied to the criteria listed. Each application will be assessed on its own merits and individual circumstances

- Public Safety
The street trading activity (location and trading activity) should not present a substantial risk to the public in terms of road safety, obstruction and fire hazard.
- Prevention of street crime (public order) and anti-social behaviour.
The street trading activity should not present a risk to good public order or be the cause of anti-social behaviour in the locality in which it is situated.
- Public Health
The street trading activity (or range of goods sold) should not have a detrimental impact on public health, given the location of the trading site in terms of its proximity to a local school or college.
- Avoidance of Nuisance
The street trading activity should not present a substantial risk of nuisance from noise, light, litter, smells or fumes to households and businesses in the vicinity of the trading site.
- Needs of the Area
The street trading unit should not present a loss of amenity in terms of its appearance;
The council will have regard to whether there is already adequate like provision in the immediate vicinity of the site to be used for street trading purposes;
The council will have regard to the number, nature and type of traders already present in a particular area.
- Compliance with Legal Requirements
The street trading activity should not present an unacceptable risk to the public in terms of food hygiene/safety. The street trading unit should comply with the relevant legislation.

Street trading consents from static locations will not normally be granted where:

1. There is not enough space for the applicant to trade in the manner proposed without obstructing the safe passage of users of the footway or carriageway, or
2. The site or pitch obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use for street trading purposes, or
3. There is a conflict with Traffic Orders such as waiting restrictions, or
4. The pitch interferes with sight lines for any road users such as road junctions, or pedestrian crossings, or

5. The site does not allow the Consent Holder, staff and customers to park in a safe manner, or
6. There would be a significant loss of amenity caused by the appearance of the unit, or
7. The range of goods in which the applicant desires to trade is likely to have a detrimental impact on public health, given the proposed location in terms of its proximity to a local school or college.
8. The consent, if granted, is likely to result in nuisance to members of the public, residents and local businesses due to the likely noise, smell, litter, disturbance or other problems which will be caused by granting the consent.
9. The structure / equipment / appliances / layout / location of the proposed premises (barrow, stall, unit, vehicle, trailer or other) presents an unacceptable public safety risk.
10. There is already adequate like provision in the immediate vicinity of the site to be used for street trading purposes, or
11. Any other reason (relevant to the street trading policy criteria).

The application will either be:

- 1) Granted and a trading consent will be issued with conditions attached, or
- 2) Refused and a proportion of the fee will be refunded as appropriate to the applicant.

The grant or refusal of an application is a matter for the District Council to determine having had regard to any views from relevant persons/organisations and any other relevant considerations.

7. Objections or concerns relating to an application

In the event that the licensing team receive comments from organisations / persons opposing or expressing concerns relating to the application, the officer may choose to discuss these concerns with the applicant.

An Authorised Officer will devise a report detailing a recommendation. A second Authorised Officer will consider the recommendation report and determine the application.

8. Approval of Application

Upon approving the application the council will issue a street trading consent to which conditions will be attached. The consent will contain specific terms such as days and hours when street trading is permitted, the location from which trading will take place and the goods that may be sold.

A consent may permit a street trader to trade from up to 3 specified locations. All trading locations must be detailed on the consent.

The conditions attached to the consent form part of the approval to carry out street trading in North West Leicestershire. They MUST be complied with at all times and failure to do so could lead to the consent being either revoked, or not renewed.

9. Issue of Street Trading Consents

Street trading consents will be issued by the Licensing Team at North West Leicestershire District Council.

There are two types of consent, annual and occasional.

10. Refusal of applications

Where the council refuses an application the applicant will be informed in writing of the reasons for not granting the application.

In the event that an application is refused the fee, minus an administration fee will be refunded.

11. Revocation of a Trading Consent

If an Authorised Officer of the council is of the opinion that the holder of the trading consent has contravened the conditions attached to the consent a revocation of the consent may be sought.

If an Authorised Officer of the council is of the opinion that the operation of a street trader undermines one of the policy criteria, firstly consideration will be given to adding to or amending consent conditions. If the concern cannot be mitigated through consent conditions revocation of a consent will be considered.

Fixed cabins used by consent holders to trade will not remain closed for longer than 4 months unless agreed with the council. The council reserve the right to revoke a consent in the event that a trader does not trade for a period of longer than 4 months.

The Officer will present a report to the Licensing Team Leader detailing the reasons for recommending revocation. Comments from the consent holder would be invited to accompany the report.

In the event of a consent holder having a consent revoked by the council a further application from that person will not normally be considered within a period of up to 3 years from the date of revocation. In order to promote fairness through consistency and proportionality the following guidance has been devised:

- Each application will be treated on its own merits.
- The Licensing Officer must obtain legal advice before making a decision.
- The reasons behind the decision to revoke the consent must be obtained and understood.
- The length of time should meet, in a fair and proportionate way, the objectives of the punishment, deterrence and the removal of gain derived through the non-compliance, it should not be cheaper to offend than to comply with the street trading consent conditions.
- The following will be used as a guide when determining the length of time before which the Licensing team will consider an application.

	<u>Up to 1 year</u>	<u>2 to 3 Years</u>
<u>Seriousness of failings</u>	<u>Failings were minor and occurred as an isolated incident</u>	<u>Deliberate breach of or flagrant disregard for the law</u>

		<u>Concerns raised by customers, employees were ignored</u>
<u>Impact of failings</u>	<u>No harm or injury resulted from the failings</u>	<u>Harm or injury resulted from failings</u>
<u>Attitude / co-operation of consent holder</u>	<u>Some efforts were made to address the risk although they were inadequate</u>	<u>Failed to make appropriate changes following prior incident(s) exposing a public safety risk</u>

Where a trading consent is revoked by the council there will be no refund of the application fee.

There is no right of appeal against the council's decision to revoke a consent.

12. Minor Variations to Trading Consents

A consent holder is able to apply to vary a consent. Further details of this process can be found within the guidance.

All applications to vary an existing consent must be made in writing. All applications will be considered by the Licensing Officer.

The Licensing Officer is not required to seek the views of others prior to making a decision, however they may choose to.

There is no right of appeal against the council's decision to refuse to vary a consent.

A variation fee must be submitted with the application.

Document History

Issue 1 - 6 April 2009 – 31 March 2014 (Agreed by the Council on 26 February 2009)

Issue 2 - 1 April 2014 – 23 February 2015 (Agreed by the Council on 21 January 2014)

Issue 3 - 25 February 2015 (Agreed by the Council on 24 February 2015)

Issue 4

3. Fundamental Principles

3.1 Background

All decisions relating to consents will be made on the merits of the individual case, having regard to this policy as part of the decision making process.

Applicants are required to consider carefully this policy when drafting their applications.

3.2 The Policy Objectives

~~The Council will carry out its functions with a view to promoting the objectives. The objectives, which carry equal importance, are:~~

- ~~—To protect public health;~~
- ~~—To ensure food safety and public safety (including road safety);~~
- ~~—To detect and prevent public nuisance and anti-social behaviour;~~
- ~~—To promote environmental improvement and regeneration.~~

~~3.3 Balance~~

~~The Council will seek to achieve a balance between leisure/entertainment and the needs of residents and other businesses for an acceptable environment and quality of life.~~

~~This Policy will not undermine the right of any individual to apply for a variety of permissions and to have any such application considered on its individual merits.~~

~~4 The Policy~~

~~4.1 This policy was approved by Council on 24 February 2015 and came into force on 25 February 2015.~~

~~4.2 Within North West Leicestershire consents are required if a trader wishes to trade on a street anywhere within the district.~~

~~4.3 Legislation including that relating to food safety, health and safety, environmental protection and planning will continue to apply to traders granted a street trading consent.~~

~~4.4 There are two types of street trading consent, an annual consent and a daily consent. Any application for a daily consent can include up to 5 days trading in a 12 month period.~~

~~4.5 A consent to trade within close proximity to a secondary school or college during term time will only be granted where an applicant can demonstrate that all policy objectives will be upheld.~~

~~5 Fees~~

~~5.1 The fees charged by the Council for consents to trade will cover the cost of administering the service.~~

~~5.2 The fees will be reviewed annually.~~

~~5.3 If the ownership of a business changes a new consent is required.~~

~~5.4 Where a trading consent is surrendered during the life of the consent the Council will refund the fee paid on an appropriate pro rata basis. An administration fee will also apply to the surrender of a consent.~~

~~5.5 The current scale of fees can be found on the Council's web site.~~

~~5.6 The full fee is required at the time of application. However in exceptional circumstances a fee can be paid in instalments. The non-payment of any application fees will be grounds for the immediate revocation of a consent.~~

~~5.7 In the event that an application is refused the fee, minus an administration fee will be refunded.~~

6 — Consent Conditions – General Principles

6.1 — Conditions on a consent are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. Consent conditions:

- Must be appropriate for the promotion of the policy objectives;
- Must be precise and enforceable;
- Must be unambiguous and clear in what they intend to achieve;
- Should not duplicate other statutory requirements;
- Must be tailored to the individual type, location and characteristics of the premises;
- Should be proportionate, justifiable and be capable of being met;
- Cannot seek to manage the behaviour of customers once they are beyond the direct management of the consent holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- Should be written in a prescriptive format.

6.2 — When granting or renewing a trading consent the Council may attach such conditions as are considered appropriate for the promotion of the policy objectives. A pool of conditions has been produced and will be further developed over time relating to each of the policy objectives. These can be found on the licensing pages of the Council website. A list of mandatory conditions will be applied to all consents. These can be found at Appendix 1.

6.3 — Each set of conditions will be specific to the trading consent issued. The Council may add to/amend the conditions of a street trading consent at the time of renewal.

6.4 — The consent / conditions will specify the exact trading location (pitch) and the times of trading.

6.5 — A maximum of 1 food business will be consented to trade in a lay-by. Where a lay-by is considered suitable to accommodate a second trader, a consent may be issued to a non-food trader.

7 — Street Trading Consent – Application Process & Determination

7.1 — An application for a street trading consent must be made in writing using the Councils’ prescribed application form to the Environmental Health Licensing Team. Application forms and information packs are available from the Council or downloadable from its website. The appropriate fee and the necessary supporting documentation must accompany the application form.

7.2 — In the event that an enquiry or application is received requesting to trade from a site never previously used for street trading, confirmation that the site is considered appropriate for street trading must be obtained before the application and fee is accepted and the formal 28 day consultation period is commenced.

Where the licensing team consider the proposed site to be unsuitable the applicant will be informed and the enquiry will not proceed any further.

~~Where the licensing team consider the proposed site to be suitable, the licensing team will seek the views of the Highways Department at Leicestershire County Council if the proposed site is on the public highway.~~

~~If the location is considered to be suitable, the application and fee will be accepted and the consultation process will commence.~~

~~7.3 On receipt of a completed application form and fee the licensing team will send a copy of the application to each of the following consultees:~~

- ~~• Environmental Health (Safety) – NWLDC~~
- ~~• Environmental Health (Public nuisance) – NWLDC (Street Action Team)~~
- ~~• Waste Team – NWLDC~~
- ~~• Planning Team – NWLDC~~
- ~~• Community Safety Team – NWLDC~~
- ~~• Licensing Team – NWLDC~~
- ~~• Highways Department – Leicestershire County Council~~
- ~~• Town or Parish Council – where located~~
- ~~• All District Council Ward Members~~

~~7.4 All applications for new consents need to be supported by an operating schedule. The schedule must specify (amongst other things) the steps which the applicant proposes to take to promote each of the four policy objectives. Applicants are advised to discuss their application with a member of the licensing team and to have regard to the list of consent conditions appended to this policy. A pool of additional conditions are available to view on the Council web pages.~~

~~7.5 The application will be determined following the 28 day consultation period, unless an objection is received from a consultee.~~

~~7.6 In the event that all consultees confirm that they do not wish to object to an application, the application may be determined before the end of the 28 day consultation period.~~

~~7.7 In the event that a relevant objection is received the Licensing Officer will negotiate with the applicant on behalf of the objector. If an agreement is reached any objection should then be withdrawn. The application will then be determined by the Licensing Officer.~~

~~7.8 In the event that an objection is not withdrawn the application will be determined by a panel of two Officers within 28 days of the consultation period ending. One of the two Officers will be the Environmental Health Team Manager or Licensing Team Leader.~~

~~7.9 The application will either be;~~

- ~~1) Granted and a trading consent will be issued with conditions attached, or~~
- ~~2) Refused and a proportion of the fee will be refunded as appropriate to the applicant.~~

~~The grant or refusal of an application is a matter for the District Council to determine having had regard to any consultation responses and any other relevant considerations.~~

~~7.10 Consideration of Applications~~

~~The Council will consider each individual application on its merits and will normally grant a street trading consent unless, in its opinion:~~

- ~~1. There is not enough space for the applicant to trade in the manner proposed without causing undue interference or inconvenience to persons using the street.~~
- ~~2. There are already enough traders trading in the vicinity (from shops or other stalls) in the goods in which the applicant desires to trade.~~
- ~~3. The range of goods in which the applicant desires to trade is likely to have a detrimental impact on public health, given the proposed location in terms of its proximity to a local school or college.~~
- ~~4. There is undue concentration of traders trading in the street/area in which the applicant desires to trade.~~
- ~~5. The consent, if granted, is likely to result in nuisance to members of the public, residents and local businesses due to the likely noise, smell, litter, disturbance or other problems which will be caused by granting the consent.~~
- ~~6. The size, nature or appearance of the proposed premises (barrow, stall, unit, vehicle, trailer or other) (and any associated equipment) is inappropriate for the proposed location in terms of amenity or public or highway safety.~~
- ~~7. The consent, if granted will present an unacceptable risk to health resulting from non compliance with food hygiene regulations.~~
- ~~8. The structure / equipment / appliances / layout / location of the proposed premises (barrow, stall, unit, vehicle, trailer or other) presents an unacceptable public safety risk.~~
- ~~9. The proposed trading hours are outside the usual business hours of shops in the vicinity (except in relation to a trader wishing to sell hot food, which will be considered on a site by site basis).~~
- ~~10. Any other reason (relevant to the street trading policy objectives).~~

~~7.11 There is no right of appeal against a variation of a condition, or refusal to grant or renew a trading consent. The reasons for any variation or refusal will be communicated to the applicant.~~

~~7.12 An officer may visit the applicant and inspect the premises from which the applicant intends to trade. At this stage the external colour decoration and appearance of the premises will be agreed.~~

~~7.13 Until the application has been determined it is an offence to trade without a consent.~~

~~7.14 In considering an application for a consent, the Council will have regard to the number, nature and type of traders already present in a particular area.~~

~~7.15 Visits may be made to holders of trading consents throughout the consent period to assess compliance with the conditions or to undertake any other duty that the Council has, such as food hygiene inspections.~~

~~7.16 Although the consent holder may employ any other person to assist them in their trading the consent holder is expected to be present during the majority of their trading hours.~~

~~7.17 A pre-requisite to being granted a consent to trade will be that street traders can demonstrate they have a contract with an appropriate waste collection operator.~~

~~7.18 A consent holder may hold more than one consent for different premises and the application process will be the same for each premises. Each application will be accompanied by the correct fee.~~

~~7.19 Persons wishing to sell items from the pavement in front of their home address on a temporary basis should contact the Licensing Team to enquire about Concessionary Consents.~~

~~7.20 The EU Services Directive provides a mechanism for its citizens to apply for street trading consents in other member states. That mechanism allows an applicant to make an application, electronically, through the Council's web site. Payments can also be made electronically.~~

~~7.21 The Council's EU Services Directive web pages can be found at www.nwleics.gov.uk/pages/licences_and_street_trading.~~

~~7.22 Consent holders selling hot food or beverages between 23:00 hours and 05:00 hours must be in possession of a suitable authorisation issued under the Licensing Act 2003.~~

~~8 Renewal of Trading Consents~~

~~8.1 The Council advises consent holders that there is a 28 day consultation period for determining renewal applications. In the event that the licensing team receives a relevant objection, the application must be referred to a panel of two Officers for determination within 14 days of the consultation period ending. One of the two Officers will be the Environmental Health Team Manager or Licensing Team Leader.~~

~~8.2 Given the time periods explained at 8.1 the Council recommends applications to renew a trading consent must be received by the Council at least 42 days before the expiry of an existing consent. (28 day consultation period and 14 day hearing period)~~

~~8.3 Renewal applications must be accompanied by the appropriate fee and relevant documentation.~~

~~8.4 There is no right of appeal against the decision to refuse to renew a street trading consent.~~

~~9 Revocation of a Trading Consent~~

~~9.1 If an Authorised Officer of the Council is of the opinion that the holder of the trading consent has contravened the conditions attached to the consent a revocation of the consent may be sought. When considering contravention of a condition Officers will have regard to the Council's enforcement policy.~~

~~9.2 If an Authorised Officer of the Council is of the opinion that the operation of a street trader undermines one of the policy objectives, firstly consideration will be given to adding to or amending consent conditions. If the concern cannot be mitigated through consent conditions revocation of a consent will be considered.~~

~~9.3 Fixed cabins used by consent holders to trade will not remain closed for longer than 4 months unless agreed with the Council. The Council reserve the right to revoke a consent in the event that a trader does not trade for a period of longer than 4 months.~~

~~9.4 The Officer will present a report to the Licensing Team Leader detailing the reasons for recommending revocation. Comments from the consent holder would be invited to accompany the report.~~

~~9.5 There is no right of appeal against the decision to revoke a trading consent.~~

~~9.6 Where a trading consent is revoked by the Council there will be no refund of the application fee.~~

~~10 Variations to Trading Consents~~

~~10.1 All applications to vary an existing consent must be made in writing. All applications will be considered by the Licensing Officer.~~

~~10.2 The Licensing Officer is not required to consult prior to making a decision, however they may choose to consult.~~

~~10.3 There is no right of appeal against the Council's decision to refuse to vary a consent.~~

~~10.4 A consent holder is able to apply to vary a consent in the following circumstances:~~

- ~~• To add, amend or vary the range of goods for sale;~~
- ~~• To replace an existing premises with a like for like premises.~~

~~10.5 The following changes in circumstances require an application for a new consent. They cannot be dealt with using the variation process:~~

- ~~• Should a consent holder wish to relocate to a new trading location;~~
- ~~• Should a non-food consent holder wish to retail or cater food;~~
- ~~• Should a consent holder wish to purchase a new premises (stall, van, vehicle etc) which is different in size, nature to the existing premises. The 'like for like' assessment will be made by the Licensing Officer.~~

~~11 Complaints~~

~~11.1 All complaints received relating to street trading will be investigated. The outcome of a complaint investigation may result in:~~

- ~~• No action being taken;~~
- ~~• Additional conditions being placed on the consent;~~
- ~~• An existing condition being amended / removed;~~
- ~~• A change to the designated trading area;~~
- ~~• Revocation of the consent;~~
- ~~• Prosecution / caution.~~

~~12 Offences~~

~~12.1 Under the Local Government (Miscellaneous Provisions) Act 1982, a person who;~~

~~— Engages in street trading in a consent street without being authorised to do so;~~

~~— Being authorised by a street trading consent to trade in a consent street, trades in that street –~~

- ~~(i) from a stationary van, cart, barrow or other vehicle; or~~
- ~~(ii) from a portable stall;~~

~~without first having been granted permission to do so; or~~

~~— Contravenes a condition imposed in agreeing to permit street trading~~

~~shall be guilty of an offence~~

~~— It shall be a defence for a person charged with any of the offences above to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence.~~

~~Any person who, in connection with an application for a street trading consent, makes a false statement which he knows to be false, in any material respect, or which he does not believe to be true, shall be guilty of an offence.~~

~~12.2 Any action taken by the Council with regard to the above offences will have regard to the Council's enforcement policy~~

13 Further Information

~~For further information in relation to street trading please contact:~~

~~Environmental Health – Licensing
North West Leicestershire District Council
Council Offices
Coalville
Leicestershire
LE67 3FJ~~

~~Tel: 01530 454545
Fax: 01530 454574~~

~~Email: licensing@nwleicestershire.gov.uk~~

**~~NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL
STREET TRADING
MANDATORY CONSENT CONDITIONS~~**

~~The grant of a Street Trading Consent shall not be deemed to give any approval or consent which may be needed under any By-law, enactment or regulation other than Part 3, Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.~~

General

- ~~1. The consent holder will notify the Council of any change of home or operating address.~~
- ~~2. No person under 17 years of age will be granted a Consent to Trade.~~
- ~~3. The Consent to Trade will be valid for 12 months.~~
- ~~4. Should a consent holder commit a breach of any relevant regulations the Council may revoke his/her Consent to Trade. Any breach of these conditions may also lead to revocation.~~
- ~~5. The consent holder's premises will be fit for purpose and will conform, where appropriate, to road vehicles construction and use legislation.~~
- ~~6. The premises will be maintained in good condition and kept in a clean and tidy condition.~~
- ~~7. An Employers Liability Certificate must be displayed as necessary.~~
- ~~8. The consent holder shall at all times maintain a valid insurance policy covering street trading activity for third party and public liability risks up to £5 million. The consent holder must produce a valid certificate for this insurance at any time on the request of an authorised council officer.~~
- ~~9. The consent holder must have written permission from the owner of the land to trade on private land which is not part of the public highway.~~
- ~~10. Consent holders shall not trade outside of the designated trading area.~~
- ~~11. The consent holder will allow authorised officers of the Council to inspect his/her premises at any reasonable time.~~
- ~~12. The consent holder will prominently display their Consent in their vehicle etc. whilst trading.~~
- ~~13. The consent holder will prominently display their sales prices whilst trading.~~
- ~~14. The consent holder will comply with any reasonable request made by a duly authorised officer of the Council or by a Police Constable.~~
- ~~15. The consent holder will vacate the pitch upon request, and for as long as necessary, to enable highway inspections, repairs, street works and highway improvements to be undertaken, the locating of temporary street furniture (e.g. Christmas tree) or if the pitch~~

is required to facilitate temporary traffic and/ or pedestrian management arrangements.
No compensation will be paid to the consent holder for lost trading days as a result of the above or for any loss of business as a result of unforeseen occurrences on the highway network.

16. Where a motor vehicle will be used for street trading valid MOT and insurance certificates will be produced with the application form.
17. A street trading consent does not relieve the consent holder, or any person employed to work on the stall, of any obligation to comply with all other general or local legislation, such as the Road Traffic Act, Highways Act 1980, the Food Safety Act 1990, the Town and Country Planning Acts, the Control of Pollution Act 1974, the Environmental Protection Act 1990, the Licensing Act 2003. It is the obligation of the consent holder to familiarise themselves and their employees with this legislation. The Council may revoke a street trading consent for any failure to comply with general or local legislation.
18. A consent holder shall not assign, underlet or part with his interest or possession of a street trading consent.

Objective 1 – To protect public health

1. No smoking is permitted inside or within 2 metres of the premises.
2. The premises shall be kept free from rats and mice.

Objective 2 – To ensure food safety (food traders only) and public safety

1. Only one sign or 'A' board will be allowed on the approach to each location. It will be placed within 200 metres of premises and not be a danger to motorists or pedestrians. All boards will be removed after the hours of business.
2. The premises must be clean and must be so placed, constructed and in such a condition to protect food from the risk of contamination.
3. All food handlers must wear clean and washable over-clothing.
4. All food handlers must keep themselves and their over-clothing clean. Smoking and spitting must be prohibited on or about the vehicle.
5. With the exception of assistance dogs, no live animals, which could contaminate the food, are permitted within the premises.
6. The premises must have a sufficient supply of clean and wholesome cold water.
7. A wash hand basin with an adequate supply of hot water at a suitably controlled temperature must be provided with soap and clean towels to be used only for hand washing. The wash hand basin must be clean and in efficient working order.
8. Suitable and sufficient sinks complete with an adequate supply of hot and cold water; detergents and drying facilities must be provided and maintained in a clean and efficient working order.
9. The premises must not be used as a sleeping place.

~~10. The consent holder shall comply with the Health and Safety at Work etc. Act 1974 and Regulations made there under.~~

Objective 3 – To detect and prevent public nuisance and anti social behaviour

- ~~1. The consent holder will take all reasonable measures to prevent anti-social behaviour in the vicinity of their vehicle/premises.~~
- ~~2. The consent holder will not cause any obstruction, statutory nuisance or danger, in any street, any adjacent premises or to either passers-by, immediate neighbours or the community at large.~~
- ~~3. The consent holder will have the appropriate contracts in place with a waste collection and disposal operator to comply with legal and environmental requirements under the Environmental Health Protection Act 1990.~~
- ~~4. The consent holder will provide a litter receptacle, for use by customers, on or near the trading site where goods are sold that are for immediate use of consumption and will empty it and dispose of the contents appropriately. Waste must not be placed in litter bins provided for public use.~~
- ~~5. Trading may only take place on the days and during the times specified on the street trading consent.~~

Objective 4 – To promote environmental improvement and regeneration

- ~~1. Should a consent holder wish to add, alter, amend or extend the range of goods for sale they will first notify and obtain agreement from the Council.~~
- ~~2. The exterior of all premises (vehicles, stalls, barrows and lay-by cafes) shall be well maintained, clean and free from defects. The exterior colour of the premises will be agreed with the Council.~~
- ~~3. Consent holders will maintain the area within the vicinity of the vehicle. Maintenance will include litter picking, mowing and grass cutting and paving and pathway where appropriate. Vicinity means within 10 metres within lay-bys and trunk roads and 5 metres at all other trading locations.~~
- ~~4. Third party advertisements or other notices must not be placed outside of the trading area unless permission has been specifically granted by an authorised council officer.~~

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~~Issue 1 — 6 April 2009 — 31 March 2014 (Agreed by the Council on 26 February 2009)~~
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