

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

LICENSING COMMITTEE – 21 FEBRUARY 2018

Title of report	REVIEW OF STREET TRADING POLICY
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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.