

STREET TRADING POLICY

Approved by Council on DATE

ISSUE 3

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

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 are **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.
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.
 7. Premises means any barrow, stall, unit, vehicle, trailer or other premises from which street trading will take place.
 8. '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. This policy will not impact on Coalville, Ashby or Castle Donington Markets. Special 'Market' events do not require a street trading consent e.g. the French Market, Ibstock Christmas Fair, the turning on of the Christmas Lights in Coalville and Ashby
 9. 'Trader' means not only the consent holder but also his or her assistants.
 10. 'Vicinity' means within 10 metres on trunk roads and laybys and 5 metres in all other locations.

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;
- 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 *INSERT DATE* and came into force on *INSERT DATE*

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 The duration of each consent will be for a maximum 12 months. The Council will usually grant a consent for 12 months, but will consider granting a one day consent for special occasions.

4.5 A consent to trade within close proximity to a secondary school or college 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.

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 and the times of trading.

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 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 consultation period is commenced. The licensing team will seek the views of the Highways Department at Leicestershire County Council when determining the suitability of the proposed trading site. 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 Team
- Street Action Team
- Waste Team
- Planning Team
- Community Safety Team
- Licensing Team
- Highways Department – Leicestershire County Council
- Town or Parish Council – where located

- 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 conditions are available to view on the Council web pages.
- 7.5 The application will be determined within 28 days of receipt, 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 Licensing Sub-Committee within 28 days of the consultation period ending.
- 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.

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 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 structure of the proposed premises (barrow, stall, unit, vehicle, trailer or other) does not comply with the food hygiene regulations.
8. The structure 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 Licensing Sub-Committee for determination within 28 days of the consultation period ending.
- 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.

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 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.

9.3 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.

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

9.5 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 Offences

11.1 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.

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

12 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

The consent holder will notify the Council of any change of home or operating address.

No person under 17 years of age will be granted a Consent to Trade.

The Consent to Trade will be valid for 12 months.

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.

The consent holder's premises will be fit for purpose and will conform, where appropriate, to road vehicles construction and use legislation. It will be maintained in good condition and kept in a clean and tidy condition.

An Employers Liability Certificate must be displayed as necessary.

The consent holder will allow authorised officers of the Council to inspect his/her premises at any reasonable time.

The consent holder will prominently display their Consent in their vehicle etc. whilst trading.

The consent holder will prominently display their sales prices whilst trading.

The consent holder will comply with any reasonable request made by a duly authorised officer of the Council or by a Police Constable.

Where a motor vehicle will be used for street trading valid MOT and insurance certificates will be produced with the application form.

Objective 1 – To protect public health

No smoking is permitted inside or within 2 metres of the premises.

The premises shall be kept free from rats and mice.

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

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.

The following conditions will be added to all food traders

The premises must be clean and must be so placed, constructed and in such a condition to protect food from the risk of contamination.

All food handlers must wear clean and washable over-clothing.

All food handlers must keep themselves and their over-clothing clean. Smoking and spitting must be prohibited on or about the vehicle.

With the exception of Guide/hearing dogs, no live animals, which could contaminate the food, are permitted within the premises.

High-risk foods must be kept at or below a temperature of 8 °c or, if to be served hot, kept at a temperature of 63 °c or higher for no longer than 4 hours.

Every vehicle must have a sufficient supply of clean and wholesome cold water.

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.

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.

The premises must not be used as a sleeping place.

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

The consent holder will take all reasonable measures to prevent anti-social behaviour in the vicinity of their vehicle/premises.

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.

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.

The consent holder will provide a litter receptacle, for use by customers, on or near the trading site and will empty it and dispose of the contents appropriately.

Objective 4 – To promote environmental improvement and regeneration

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.

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.

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.

Document History

Issue 1	6 April 2009 – 31 March 2014 (Agreed by the Council on 26 February 2009)
Issue 2	1 April 2014 – To date (Agreed by the Council on 21 January 2014)
Issue 3	Draft