

STREET TRADING POLICY

DRAFT

2014

Foreword

To be inserted post consultation

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

CONTENTS

	Page No.
1 Introduction	4
2 Definitions	4
3 Fundamental Principles	5
4 The Policy	6
5 Fees	6
6 Consent Conditions – General Principles	6
7 Application Process and Determination	7
8 Renewal of Trading Consents	9
9 Revocation of Trading Consents	9
10 Amendments/Variation to Trading Consents	9
11 Offences	10
12 Further Information	10
Appendix 1 – Consent Conditions	12
Appendix 2 – Mandatory Conditions	14
Document History	15

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 scheme of Consent 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 may fall within the scope of this policy e.g. the French Market, Ibstock Christmas Fair, the turning on of the Christmas Lights in Coalville and Ashby. Where those events have a 'charitable purpose' they will be dealt with under the Police, Factories, Etc (Miscellaneous Provisions) Act 1916 (street collections or sales). A scheme of concessionary consents will operate to support special events where traders fall outside the Police, Factories Etc (Miscellaneous Provisions) Act 1916 and require a street trading consent.
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 21 January 2014 and came into force on 1 April 2014
- 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.
- 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 Should the consent holder wish to add /amend or vary the consent at any time during the life of the consent an administration fee will be charged. A variation of the consent includes the transfer of the consent.
- 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.

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 not be standardised;
- 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 relating to each of the policy objectives. These can be found at Appendix 1. A list of mandatory conditions will be applied to all consents. These can be found at Appendix 2.

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 conditions will specify the exact trading location and the times of trading.

7 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 On receipt of the application form 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

7.3 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 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 will be developed over time and are available to view on the Council web pages.

7.4 The application will be determined within 28 days of receipt, unless an objection is received from a consultee.

7.5 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.

- 7.6 In the event that a relevant objection is received the application will be determined no later than 14 days from the last day of the 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. The application will then be determined by the Licensing Officer.
- 7.8 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.
- 7.9 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.
- 7.10 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.
- 7.11 Until the application has been determined it is an offence to trade without a consent.
- 7.12 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.
- 7.13 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.
- 7.14 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.
- 7.15 A pre-requisite to being granted a consent to trade will be that street traders can demonstrate they have the necessary planning permission where required and have a contract with an appropriate waste collection operator.
- 7.16 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.
- 7.17 Special 'Market' events that require a street trading consent will be considered on an individual basis. Organisers should contact the Licensing Team to enquire about Concessionary Consents.
- 7.18 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.
- 7.19 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.
- 7.20 The Council's EU Services Directive web pages can be found at [www.nwleics.gov.uk/pages/licences and street trading](http://www.nwleics.gov.uk/pages/licences_and_street_trading).

- 7.21 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 determined within 14 days of the end of the consultation period.
- 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.

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 Licensing Authority. The Licensing Authority 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 for consideration. 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.
- 9.6 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.

10 Amendments/Variations to Trading Consents

- 10.1 Should a consent holder wish to add, amend or vary the range of goods for sale they will first notify the Council's licensing team.
- 10.2 Should a consent holder wish to relocate to a new trading location a new consent will be required.
- 10.3 Should a non-food consent holder wish to retail or cater food a new consent will be required.
- 10.4 There is no right of appeal against the Council's decision to refuse or revoke a consent.

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 CONSENT CONDITIONS

Conditions relating on the objectives of the policy at paragraph 3

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.
3. The consent holder shall undertake periodic inspections for rodents and shall ensure that pest treatments are carried out as appropriate.
4. Fixed trading sites that allow customer seating must ensure that WC facilities are provided.

Objective 2 – To ensure food safety and public safety

1. The premises must be clean and must be so placed, constructed and in such a condition to protect food from the risk of contamination.
2. All food handlers must wear clean and washable over-clothing.
3. All food handlers must keep themselves and their over-clothing clean. Smoking and spitting must be prohibited on or about the vehicle.
4. Staff handling open high-risk foods must have training to a level equivalent to the Chartered Institute of Environmental Health (CIEH) Level 2 Award in Food Safety.
5. Any food handler who is suffering from food poisoning or any condition likely to cause food poisoning must notify the Council.
6. With the exception of Guide/hearing dogs, no live animals, which could contaminate the food, are permitted within the premises.
7. All wrapping paper and food containers must be clean and approved for food use.
8. 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.
9. Every vehicle must have a sufficient supply of clean and wholesome cold water.
10. 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.
11. 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.

12. Suitable and sufficient artificial lighting must be provided and maintained within the vehicle.
13. The premises must not be used as a sleeping place.
14. Adequate first aid materials including waterproof dressings must be maintained on the premises.
15. LPG cylinders, regulators or change-over valves must be housed in a separate, ventilated, fire resistant compartment having access only from outside the vehicle. Cylinders must be securely fastened to prevent movement during transit. Rigid piping, either copper or steel should be used within the unit and isolation taps fitted on the supply pipe to each appliance. A competent engineer must regularly maintain the LPG system and appliances.
16. A suitable fire extinguisher and other fire fighting accessories as specified at the time of inspection must be provided.

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

1. A suitable bin with a close fitting lid should be provided for the separation and disposal of food and waste.
2. No refuse or other waste must be allowed to accumulate in or around the vehicle. This includes waste water. A suitable disposal method for waste water must be in place.
3. The consent holder will take all reasonable measures to prevent anti-social behaviour in the vicinity of their vehicle/premises.
4. No tables, chairs, bar stools, other furniture or other items will be sited on land forming part of the street.

Objective 4 – To promote environmental improvement and regeneration

1. Any generators used are to be environmentally friendly as regards to noise and polluting the atmosphere.
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 Licensing Authority.
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.

**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.

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. 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.
6. 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.
7. An Employers Liability Certificate should be displayed as necessary.
8. The consent holder will allow authorised officers of the Council to inspect his/her premises at any reasonable time.
9. The consent holder will prominently display their Consent in their vehicle etc. whilst trading.
10. The consent holder will prominently display their sales prices whilst trading.
11. 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.
12. The consent holder will comply with any reasonable request made by a duly authorised officer of the Council or by a Police Constable.
13. 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.
14. 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.

15. 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.
16. To ensure the amenity is kept as neat and tidy as possible consent holders will litter pick around the vicinity of their premises at the end of the trading day.
17. Where a motor vehicle will be used for street trading valid MOT and insurance certificates will be produced with the application form.

Document History

Issue 1	6 April 2009 – 6 April 2014 (Agreed by the Council on 26 February 2009)
Issue 2	1 April 2014 – To date (If agreed by the Council on 21 January 2014)