

## DEPARTMENT OF ENVIRONMENT AND LEISURE

ORIGINATING SECTION: PUBLIC PROTECTION SERVICE

REPORT TO: LICENSING COMMITTEE

13:03:2018

TITLE : PROPOSED REVIEW OF STREET TRADING POLICY IN BLACKBURN WITH DARWEN

### 1. PURPOSE

- 1.1 To inform members of a proposal to review and consult on the Council's Street Trading procedures and policy.
- 1.2 To consider options for inclusion in a draft Street Trading Consent Policy.

### 2. RECOMMENDATIONS

That Members note the report and make recommendations for a draft street trading consent policy for consultation.

### 3. KEY ISSUES

The controls relating to Street Trading are governed by Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982. Paragraph 4 to schedule 4 defines street trading as the selling or exposing or offering for sale any article (including a living thing) in a street. There are however exclusions to this schedule, these are: trading as a Pedlar under the authority of a "Pedlars Certificate", anything sold or offered for sale in a market or fair, trading in a trunk road "picnic area", trading as a news vendor, trading at a petrol station or selling things as a roundsman.

The term "street" includes any road, footway or other area to which the public have access without payment. The holder of a street trading consent or licence may require the permission of the landowner or other person to trade on any private land which constitutes a street for these purposes. In particular the grant of a consent or licence does not confer the right to trade on any land owned or controlled by the Council without the specific permission of the Council.

Blackburn with Darwen Council issue Street Trading Consents which are site specific. Consents will not be issued within a 100 metre radius of another trader or a like business (this distance is reduced to a 50 metre radius in the streets surrounding Ewood Park). "Roaming consents" are issued to ice cream vendors.

Councils are under no duty to grant a street trading consent and do not need to specify statutory grounds for refusal. There is no statutory limitation on a council's power to revoke or refuse to renew a street trading consent. There is no right of appeal against refusal to grant or renew consent or against the revocation or variation of a consent. However, for reasons of fairness Councils should specify reasons for refusal and having an internal appeal system would satisfy the human right elements in relation to the consent scheme.

The revision of a street trading policy would provide guidance to applicants on how to apply, inform how applications are determined and detail the enforcement procedure and complaints investigations.

It is envisaged that a draft policy will be prepared and brought before the next Licensing Committee in June 2018 for approval to enter the public consultation.

#### 4. RATIONALE

The Council need to be assured of the suitability of an applicant to hold a street trading consent and of any persons working on the trading units. The Council is therefore permitted to require applicants to provide information in support of their application for a street trading consent to allow their suitability to be assessed. Currently the suitability criterion are focused primarily on food hygiene and health and safety. For example the applicant must submit evidence that suitable food hygiene training has been undertaken by themselves and any staff employed; gas and electrical safety certificates are required and evidence that public liability insurance is in place.

The legality and safety of the vehicle to be used is also considered with the following information being required:

- a) Insurance – a current insurance certificate which must cover street trading
- b) Road Tax- details of the vehicles current road tax
- c) A valid MOT for the vehicle
- d) The Log book (V5) for the vehicle
- e) Consent to access DVLA driving licence records to check for entitlement to drive and any endorsements on the licence. This includes the correct entitlement for towing vehicles.

To improve and promote public safety Public Protection Service staff have looked at the policies of some other local authorities. The following options are available to consider for inclusion in the draft revised Blackburn with Darwen Borough Council Street Trading Consent Policy.

1. Submission of a Basic DBS disclosure certificate to allow for identification of any convictions held by the applicant and any staff to be employed.

If any convictions are disclosed on the certificate the application would be referred to the General Licensing Sub Committee for determination. To provide guidance and allow transparency in making decisions guidelines would be needed identifying how the authority will take into account the nature and seriousness of a conviction, the number of convictions, when it was committed, the age of the applicant and all other relevant factors. Each case would be considered on its own merits.

- 2) Consent holders who employ members of staff have a duty to ensure that they hold the correct immigration status which entitles them to work in the UK. Some authorities require applicants to demonstrate that they have fulfilled this duty.

- 3) With the Council's commitment to the Food Standards Agency's Food Hygiene Rating Scheme (FHRS) applicants could be required to display their FHRS sticker. Consideration could be given to only issuing street trading consents where the business has a score of 3 or above on the FHRS.

- 4). Some authorities have introduced restrictions on trading within a set radius of a school or other educational establishment.

- 5). Roaming consent holders (primarily ice cream sellers) could have a standard condition prohibiting trading within 50 meters direct sight of each other.

Review of the street trading consent policy is an opportunity to review geographical areas of the Borough where street trading is prohibited. For example, town centre areas and on Council owned parks and open spaces.

## **POLICY IMPLICATIONS**

The expertise of the Licensing Committee in this area of work is recognised. The Licensing Committee is asked to consider the options available. The recommendations will be drafted into a revised policy for public consultation.

## **6. FINANCIAL IMPLICATIONS**

At this time there are no perceived financial implications for the Council.

## **7. LEGAL IMPLICATIONS**

None.

## **8. RESOURCE IMPLICATIONS**

None

## **9. CONSULTATIONS**

Prior to any changes to the street trading policy a consultation will be undertaken with the existing street traders and stakeholders including; Highways, Lancashire Constabulary, the town centre management team and the environment team. The results of the consultation and draft policy will be placed before the Licensing Committee for comments and recommendations which will be forwarded to the Executive Member for consideration.

## **10 . CONTACT OFFICER**

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