

STROUD DISTRICT COUNCIL

COMMUNITY SERVICES AND LICENSING COMMITTEE

THURSDAY, 23 MARCH 2023

Report Title	REVIEW OF STREET TRADING POLICY			
Purpose of Report	Consider a revised street trading policy and agree a draft for consultation. The main proposed change is a new decision making process for contentious applications, or cases where a consent may be revoked, to enable them to be considered by a licensing hearing panel.			
Decision(s)	The Committee RESOLVES to agree a draft revised street trading policy for consultation.			
Consultation and Feedback	No consultation yet			
Report Author	Rachel Andrew, Licensing Manager Tel: 01453 754440 Email: rachel.andrew@stroud.gov.uk			
Options	None			
Background Papers	Stroud District Council's Street Trading Resolution Stroud District Council's current Street Trading Policy			
Appendices	Appendix A – Draft Street Trading Policy for consultation			
Implications (further details at the end of the report)	Financial	Legal	Equality	Environmental
	Yes	Yes	No	No

1. INTRODUCTION / BACKGROUND

- 1.1 Street trading is the selling or exposing or offering for sale any article in a street.
- 1.2 It is regulated under The Local Government (Miscellaneous Provisions) Act 1982 which states that a 'street' includes any road, footway, beach, or other area to which the public have access without payment.
- 1.3 Stroud District Council has for many years designated that all land within Stroud district, that falls within the above definition of 'street', are consent streets. This means that any person who wishes to trade on any street or land, that the public have free access to, must apply for street trading consent from Stroud District Council. The Council's designation is laid out in a resolution which was reviewed in 2020. It was amended to continue to include all highways land and private land that the public have access to without payment; but to exclude any land in the ownership and control of a public authority or a registered charity.
- 1.4 Stroud District Council has a street trading policy which lays out the application criteria, procedures, and conditions for street trading consents. This was last reviewed in 2020.
- 1.5 The numbers of consents issued by Stroud District Council are:

Type of Consent	Example	Current number issued
Static traders	Kebab vans that regularly trade in laybys or private car parks open to the public	14
Mobile traders	Ice-cream vans and fish and chip vans that move around the district	5
Markets	Weekly town markets	2

- 1.6 The licensing team also process a number of short-term consents which are for traders, or events with stalls, for up to 7 days

Type of Consent	Example	Number issued during 2022
Community or charitable events	Village charity event held in the street or a privately owned field	17
Commercial traders or commercial events	Christmas tree sellers or a commercial food and drink festival	12

2. MAIN POINTS

- 2.1 The policy is being reviewed primarily to consider the Council's processes for determining contentious applications or when considering revocation of a consent. The objective of the review is to ensure that the decision making is clear, transparent, and fair.
- 2.2 All applications have a consultation process that includes the various agencies such as Highways, Ward Councillors, Town and Parish Councils, Police, Environmental Health and neighbours where relevant.
- 2.3 The current policy delegates all decision making to the Head of Environmental Health.
- 2.4 The Street Trading legislation does not give any provision for applicants or any other parties to appeal to the Courts against the Council's decisions.
- 2.5 Stroud District Council's current policy gives a provision that applicants or other parties, that wish to make representation against a decision by the Head of Environmental Health, can put this in writing to the Strategic Director for Place who will review the decision.
- 2.6 The current process does not give applicants, consent holders, or other parties the opportunity to put their case forward in an open forum. A hearing process would allow all parties to be together in a formal setting so that all sides can feel that the matter is being considered fairly, impartially, and openly. This is particularly important as there is no right of appeal to the Magistrates Court which means applicants, consent holder or parties objecting have no further course of redress on decisions made by the Council.
- 2.7 The proposed revised policy introduces a process whereby if there are objections to an application, which cannot be resolved through mediation by Officers, it will go before a hearing panel for a decision. The proposal excludes cases where the objections are from the Police or Highways on the grounds of public safety; in these cases, the applications can be refused by Officers. This is because Highways and the Police are experts, and it would be expected that if they raise concerns then it means that the site or applicant are not suitable. The proposal also excludes short term consents as they have a much shorter

application process which would not give time for a hearing. Therefore, it is proposed that Officers retain the delegation to make all decisions in relation to short term consents.

2.8 Section 6.4 of the draft policy lays out the proposed new delegations for decision making for **new and variation applications**. In summary the proposal is that:

- Officers can issue, add conditions or refuse all short-term consent applications.
- Officers can issue or add conditions to all other applications where there are no valid objections or objections are withdrawn.
- Officers can issue, add conditions or refuse all consent applications where there are valid objections are from Highways or the Police on the grounds of public safety.
- A hearing panel will consider static, mobile and market consent applications where there are any other valid objections and can grant, add conditions or refuse the application.

2.9 Section 13 of the draft policy lays out the proposed new delegations for **reviews and revocation**. In summary the proposal is that:

- Decisions to revoke a consent will be referred to a Licensing Hearing panel for a review of the consent.
- Officers can revoke a consent with immediate effect if the matter of concern has impact on the safety of the public.

2.10 Section 14 of the draft policy lays out an **appeal** process. In summary the proposal is that:

- An applicant can appeal to a Licensing Panel against conditions attached to a consent by an Officer.
- An applicant can appeal to a Licensing Panel against a refusal by an Officer to issue a consent on the grounds of an objection by Highways or the Police relating to public safety.
- A consent holder can appeal to a Licensing Panel against an immediate revocation by an Officer.

NB – an appeal process is not included for short term consents as these are normally submitted only a short time before the proposed trading takes place which does not give enough time to arrange a hearing.

2.11 Annex C of the draft Policy lays out a **hearing procedure**. This is based on the Council's current hearing procedures for Licensing Act 2003 and taxi and private hire hearings.

2.12 The proposed change in the delegation will impact on members of the Committee who sit on the hearing panels. However, it is expected that the proposal will only result in a small number of extra hearings and based on previous year this is likely to be approximately two street trading hearings a year. During 2022 there were five new/variation street trading applications for a static, mobile or market street trading consent and this is a consistent yearly average. Over the past two years there have been four applications that have received objections from the public. In two of these cases the Head of Environment Health made the decision to refuse, or part refuse an application based on recommendations by Licensing Officers. One of those refusals was then referred to the Director of Place for a review of the initial decision.

2.13 The draft policy also recommends a couple of other minor changes:

2.14 There is clarification on the policy regarding DBS checks for assistants running units. It is important that checks are imposed not only on the applicant but also on persons that

operate the unit unsupervised to ensure their suitability and that the public are always protected.

- 2.15 There is also a proposed reduction in the expected level of public liability insurance cover from £10 million to £5 million. £5 million is nationally an accepted level of cover and is a lower premium than £10 million.
- 2.16 There is clarification on the conditions attached to Market Consents which are currently not specified in the policy, but which are based on the standard conditions for static consents.
- 2.17 If Committee approves the draft proposed revised policy, then a formal consultation will take place as follows:

Action	Date
Formal Consultation including consent holders, relevant agencies and the public.	27 th March to 19 th May 2022
Consideration by Committee for adoption	June 2023

3 CONCLUSION

- 3.1 The proposed draft policy introduces a new decision-making procedure for contentious new and variation applications, revocations and appeals, by allowing them to be considered by a licensing hearing panel. This will enable the applicant and parties who have concerns to put their case forward in an open forum in a transparent, impartial, and fair way. This will give a right to be heard to all parties taking account of the fact that street trading legislation does not permit a right of appeal to the Courts.
- 3.2 In addition, a few other minor changes suggested will update and improve the policy.
- 3.3 A formal consultation will give all consent holders, relevant agencies and the public opportunity to make comment before Committee make any final decisions on a revised policy.

4. IMPLICATIONS

4.1 Financial Implications

There are no direct financial implications within this report as it is to agree a new procedure. If this decision is approved, then any future costs associated with a Licence hearing panel will have to be met within the current budget.

Adele Rudkin, Accountant

Tel: 01453 754109 Email: adele.rudkin@stroud.gov.uk

4.2 Legal Implications

There are no significant implications within this category. Should the suggested policy changes be approved for implementation, further legal implications shall be provided at that time.

Consultation should be carried out in accordance with applicable legislation and public law principles, including but not limited to publication and notification to relevant parties and allowing adequate time for parties to respond.

Tel: 01684 272 691

Email: legalservices@onelegal.org.uk

4.3 **Equality Implications**

There are not any specific changes to service delivery proposed within this decision.

4.4 **Environmental Implications**

There are no significant implications within this category.