

Subject:	Proposed amendments to the current Street Trading Policy	Status:	For Publication
Report to:	Policy Overview and Scrutiny	Date:	Wednesday 20 th July 2011
Report of:	Director of Business	Portfolio Holder:	Environmental Services
Key Decision:	<input type="checkbox"/> Forward Plan <input checked="" type="checkbox"/>	General Exception <input type="checkbox"/>	Special Urgency <input type="checkbox"/>
Community Impact Assessment:	Required:	Yes	Attached: No
Biodiversity Impact Assessment	Required:	No	Attached: No
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1.	RECOMMENDATION(S)
1.1	<p>That the Council resolves the following proposed amendments:</p> <ol style="list-style-type: none"> 1. Amend Condition 21 to read “<i>Consents will be granted for a period of either 12 months or 14 days from the date of grant.</i>” 2. Amend Condition 4 to read “<i>Applications for a street trading consent, other than ice cream vendors, must state the site from which they wish to trade. Ice cream vendors must not allow their vehicle to remain stationary in any one place for a period exceeding 30 minutes, without written consent of the Licensing Authority.</i>” 3. Agree that Consent may be granted for a period of fourteen days for a fee of £75. 4. Agree that delegated authority is given to the Public Protection Manager to <ol style="list-style-type: none"> a) Refuse the application when a valid objection is deemed to have been received. b) Grant an application where no objections are received. c) Decide the extent of consultation for each application. d) Issue Consent to the Organiser of an event which is run on a non-profit making basis to enable the Organiser in turn to allow trading on a specific site. 5. Amend the special conditions which apply to ice cream vans Code of Practice to replace “<i>for longer than 4 seconds at a time</i>” and “<i>more often than once every 3 minutes</i>” to read “<i>more often or for longer than is reasonably necessary.</i>”
1.2	That the Council resolves to adopt the amendments to the street trading conditions and procedure.
1.3	That Council resolves to delegate any further amendments of the street trading conditions and procedure to the Licensing Committee.
1.4	All future minor amendments to the street trading conditions and procedure to be delegated to the <i>Director of Business</i> in consultation with the Portfolio Holder.

2. PURPOSE OF REPORT

- 2.1 To outline the issues that has arisen regarding the current street trading policy since its adoption in 2009 and to propose amendments to the Policy

3. CORPORATE PRIORITIES

- 3.1 The matters discussed in this report impact directly on the following corporate priorities:
- **A clean and green Rossendale** – creating a better environment for all.
 - **A healthy and successful Rossendale** – supporting vibrant communities and a strong economy.
 - **Responsive and value for money local services** – responding to and meeting the different needs of customers and improving the cost effectiveness of services.

4. RISK ASSESSMENT IMPLICATIONS

- 4.1 All the issues raised and the recommendation(s) in this report involve risk considerations as set out below:
- Whilst the grant or otherwise of a street trading Consent is not able to be appealed, it would be open for the applicant to seek Judicial review of a decision not to grant a Consent.

5. BACKGROUND AND OPTIONS

- 5.1 Rossendale Borough Council adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 on the 7th October 2009. This gave the Council the means to regulate street trading within the Borough. Since that time some administrative and practical issues have been highlighted that need to be considered and addressed
- 5.2 In order to obtain a wide range of views, a consultation exercise was carried out between the 1st February and the 14th March 2011. The responses are appended at [Appendix C](#). All have been considered and some incorporated within the recommendations of this report.
- 5.3 The Act defines the term ‘street’ as “any road, footway, beach or other area to which the public have access without payment, and a service area is defined in Section 329 of the Highways Act 1980.” This Authority is not able to change that definition and it is clear that the legislation enables a Council to control street trading in a fairly broad sense.
- 5.4 The adoption of the legislation enables the Council control of street trading by nominating certain streets for which no Consent to trade will be given as a ‘Prohibited Street’. Every other street in the Borough is a ‘Consent’ street for which an application must be made to the Council. For each application, consultation is carried out with the Police and the Highway Department and, if appropriate, Whitworth Town Council.
- 5.5 The Council also adopted ‘street trading conditions’, which are appended at [Appendix A](#). These conditions govern the way that street traders carry out their business and a breach of any condition may lead to the revocation of the Consent.
- 5.6 There have been a very small number of occasions when the Highways Department have raised objections to the application from a street trader to trade from a site on the highway and this has resulted in the Licensing Committee considering the application. Irrespective of the resultant decision of the Committee, the Highways Department could take independent action to remove the trader if they so wished, under highways legislation. It would therefore seem sensible to give delegated authority to officer level to reject an application for a Street Trading Consent when the officer considers that a valid objection has been received from the Highways Department.
- 5.7 In addition, in those cases where consent is applied for at locations that are not actually on a highway, (for example Lee Bank Quarry), or are ‘mobile consents, it would also seem appropriate for the decision to be made at officer level that consultation with the Highways Department is not necessary and thus expedite the application process.
- 5.8 This Authority has granted Consents to a number of street traders. In respect of ice cream vendors, there is an assumption that those vendors will travel around the area, stopping in streets for a few minutes and then moving on. In fact, there is nothing currently to stop them from trading from one particular place and it would now be of benefit to consider an alteration in the type of Consent given.

- 5.9 It would be prudent to have two different Consents. One for ‘mobile trading’ at non-specific sites which would limit the amount of time that a vehicle may remain stationary at any one location to 30 minutes, and which would cater for ice cream sales. This can be accomplished by amending the current Condition 4. The second type would be for site-specific trading which would require the same considerations and consent as current practice,
- 5.10 The Conditions already in force would be sufficient to regulate both types of Consent.
- 5.11 Additionally, at present Condition 21 states “*Consents will be granted for a period of 12 months from the date of the application.*”
- 5.12 The cost of this annual Consent is £350. This condition does not consider the trader who may wish to trade for a much shorter period of time.
- 5.13 It is proposed that an applicant should be able to apply for a Consent lasting 14 days for a specific site, at a fee of £75. This would enable catering vehicles to apply for Consents at one-off events at a cost that would be viable to them to trade. It would also cater for seasonal applications.
- 5.14 There are also a number of non-profit making events which take place throughout the year run by local organisations on behalf of the community. Typically, they hold a fete or carnival. It would be helpful to the community if, at the discretion of the Unit Manager, Consent could be granted to the organisers of the event for the site. The organiser would then be able to allow traders onto the site at their discretion. Enforcement outside the boundaries would remain the responsibility of the Public Protection Unit.
- 5.15 The current conditions contain mention of the Code of Practice on noise from ice cream van chimes. Whilst these are in line with model conditions suggested by Central Government, it would be prudent to amend them to read “*more often or for longer than is reasonably necessary.*”
- 5.16 Council are requested to consider the recommended amendments of Policy Overview and Scrutiny Committee at 9.3 of this report during their deliberations.
- 5.17 If Council determines that community events are exempt from payment for Consent as per the recommendation of Policy Overview and Scrutiny Committee, Council is requested to delegate the definition and conditions to Sian Roxborough, Head of Legal and Democratic Services in consultation with the portfolio holder.
- 5.18 Council are also requested to consider the recommended amendments of the Governance Working Group at 9.4 of this report

COMMENTS FROM STATUTORY OFFICERS:

6. SECTION 151 OFFICER

- 6.1 There are no specific financial implications.

7. MONITORING OFFICER

- 7.1 The Council must make a decision based on all relevant information and following consideration of all relevant Council policies.

8. HEAD OF PEOPLE AND POLICY (ON BEHALF OF THE HEAD OF PAID SERVICE)

- 8.1 There are no specific human resources implications.

9. CONSULTATION CARRIED OUT

- 9.1 The Public Protection Unit has consulted widely with all Councillors, Whitworth Town Council, Lancashire Constabulary, LCC Highways, current holders of a Consent, local businesses through the Chamber of Commerce, Trading Standards, relevant officers of the Council and BASCO. The consultation was also published on the Council website.

- 9.2 On Tuesday 12th April 2011, the Licensing Committee resolved:
That the Committee recommend the proposed amendments to the Street Trading Policy to Council.

- 9.3 On Monday 13th June 2011, the Policy Overview and Scrutiny Committee resolved:
1. Condition 21 to read “Consent will be granted for a period of either 12 months or 14 days from the date of the application.
 2. Condition 4 to read “Applications for a street trading consent, other than ice cream vendors, must state the site from which they wish to trade. Ice cream vendors must not allow their vehicle to remain stationary in any one place for a period exceeding 30 minutes, without written consent of the Licensing Authority”.
 3. That Consent be granted for a period of 14 days for a fee of £75, but be exempt from payment for community events.
 4. That delegated Authority be given to the Public Protection Manager to:
 - a. Refuse the application when a valid objection is deemed to have been received.
 - b. Grant an application where no objections are received.
 - c. Decide the extent of consultation for each application.
 - d. Issue Consent to the Organiser of an event which is run on a non-profit making basis to enable the Organiser in turn to allow trading on a specific site.
 5. Amend the special conditions which apply to ice cream vans Code of Practice to replace “for longer than 4 seconds at a time” and “more often than once every 3 minutes” to read “more often or for longer than is reasonably necessary”.
 6. That the Policy Overview and Scrutiny Committee recommend that Council adopt the amendments to the street trading conditions and procedure, which should include the suggestion by the Committee to waive the £75 fee for community events.
 7. That Policy Overview and Scrutiny Committee recommend that Council delegates any further amendments of the street trading conditions and procedures to the Licensing Committee.
 8. That Policy Overview and Scrutiny Committee recommend to Council that any future minor amendments to the street trading conditions and procedures to be delegated to the Director of Business in consultation with the Portfolio Holder.

- 9.4 On Wednesday 6th July 2011, the Governance Working Group resolved:

That the Governance Working Group recommend Council to accept the changes to the Constitution with the additional wording as follows:

Agree that delegated authority is given to the Public Protection Manager to:

- Refuse an application for a street trading consent when a valid objection is deemed to have been received, *in consultation with the Chair of Licensing*.
- Grant an application for a street trading consent where no objections are received.
- Decide the extent of consultation for each application for a street trading consent.
- Issue a street traders Consent to the Organiser of an event which is run on a non-profit making basis to enable the Organiser in turn to allow trading on a specific site.
- *That Ward Councillors will be consulted on static consent and they must respond within 3 working days.*

- 9.5 Consultation is currently taking place with various Councillors and personnel on the definition of a community event and proposed conditions attached to such Consents should Council determine that community events are exempt from payment for Consent as per the recommendation of Policy Overview and Scrutiny Committee on 13th June 2011.

10. CONCLUSION

- 10.1 In 2009, Rossendale Borough Council moved from a position of not regulating street trading to that of regulation, using conditions that are common across the country. Experience gained over the past 12 months has led to the need for a change to the conditions and processes to enable a better, speedier service to be provided to applicants and the public.
- 10.2 The overall aim of regulating street trading is not to stifle traders but to maintain free passage of the highways, prevent nuisance to residents and businesses and to protect shops and

businesses throughout the Borough from casual or itinerant traders taking unfair advantage.

- 10.3 This report was deliberated by the Licensing Committee on Tuesday 12th April 2011; the Licensing Committee recommended the proposed amendments to the Street Trading Policy to Council.
- 10.4 This report was deliberated by the Policy Overview and Scrutiny Committee on Tuesday 12th April 2011; their resolution which includes further recommendations is at 9.3 of this report.
- 10.5 This report was deliberated at the Governance Working Group on Wednesday 6th July 2011; their resolution which includes further recommendations is at 9.3 of this report.

There are no background papers

Appendices	
Document	Appendix Number
Current Street Trading Conditions	Appendix A
Proposed amended Policy for Street Trading including Street Trading Conditions	Appendix B
Responses to consultation document	Appendix C

Street Trading Conditions

Local Government (Miscellaneous Provisions) Act 1982
Schedule 4

Street trading in the Borough of Rossendale requires a Consent from the Council. Street trading is only allowed on certain streets between the hours of 9am to 10pm Monday to Sunday inclusive and is subject to the following conditions. The provision of hot food and drink between the hours of 11pm and 5am is a licensable activity under the Licensing Act 2003 and will therefore require a premises licence under that Act.

Definition of Street Trading

The Local Government (Miscellaneous Provisions) Act 1982, defines street trading, as the selling or offering for sale any article (including a living thing) in a "street". Anyone wishing to trade in a street within the Borough will be affected, with the following exceptions;

- ✓ A pedlar holding a current Pedlar's certificate and acting as a Pedlar under the authority of the Pedlar's Act 1871.
- ✓ A trader as part of an authorised market or fair.
- ✓ A trader at a petrol station.
- ✓ A person trading in association with an adjoining shop premises.
- ✓ Trading in a trunk road picnic area provided under Section 112 of the Highways Act 1980.
- ✓ Trading as a news vendor, where the only articles sold or offered for sale are newspapers and periodicals.

Definition of Consent Street

Street means a street in which street trading is prohibited without the consent of the council.

Prohibited Street means a street on which trading is prohibited.

Conditions:

1. Consent will not be granted if it is considered that one or more of the conditions of the consent will be breached.
2. The consent granted by the Council is personal to the consent holder and is not transferable. Where the consent holder is an employer, this consent will apply to named employees who have been previously notified to and approved by the Council. The consent may only be transferred to another vehicle, container or stall with the prior consent in writing of the Council.
3. The consent granted by the Council may be revoked at any time should one or more of the conditions be breached.

4. Applications for a street trading consent, other than ice-cream vendors, must state the site from which they wish to trade.
5. The consent holder shall trade only on the site as specified in the consent.
6. The holder may apply for a variation in respect of the site. Such application for variation must be in writing and give details of the proposed relocation.
7. It is the applicant's responsibility to ensure that the site they are applying for is suitable and they have a legal right to trade. No responsibility will be accepted by Rossendale Borough Council for persons found to be trading from unsuitable or illegal sites.
8. Only goods specified in the consent may be sold from the vehicle, container or stall specified in the consent.
9. Nuisance or annoyance shall not be caused by the consent holder or any of his/her employees to persons using the street or otherwise.
10. No obstruction of any street or right of way or danger to the public shall be caused by the consent holder or any of his/her employees.
11. The consent holder shall not permit any nuisance, obstruction or annoyance to be caused by the presence of his/her trading activities to persons occupying nearby residential or commercial premises.
12. The name and address of the consent holder shall be displayed conspicuously on the vehicle, container or stall used by him/her.
13. The consent holder shall comply with all legislation relevant to the conduct of the business in which he/she is engaged and ensure that any vehicle used by him in connection therewith is in a roadworthy condition and where necessary taxed and insured.
14. The consent holder or any person employed by him/her shall not use any loudspeaker, whistle, horn, bell or their audible method to attract custom, provided that this shall not apply to the chimes of an ice cream van during the permitted hours of 12 noon to 7:00pm.
15. The consent holder shall provide adequate receptacles for rubbish and shall after trading has ceased, remove all rubbish and litter from the site.
16. The consent holder shall comply with any reasonable requirements of the Council or any of its officers or of any police officer in relation to the siting or operation of his/her street trading business.
17. The Council may forfeit this consent if consent holders shall without good cause fail to comply with any condition herein.
18. Any consent issued will only be valid in relation to a single vehicle, container or stall.
19. The consent holder shall at the request of the Council present the vehicle, container or stall for inspection at such time and place as required by the Council.
20. Consents will not be granted to persons under the age of 17 years.
21. Consents will be granted for the period of 12 months from the date of the application.
22. The fee which must accompany the application can be found on our website.

The Law provides that any person who trades in a “consent Street” without having obtained the consent of the Council shall be guilty of an offence.

The following special conditions will only apply to ice cream van permits.

Summary of the Code of Practice on Noise from Ice Cream Van Chimes etc.

It is an offence to sound your chimes before 12 noon or after 7.00 p.m. It is also an offence to sound your chimes in such a way as to give reasonable cause for annoyance. A code of practice approved by the Government gives guidance on methods of minimising annoyance caused by your chimes. The main points of the code of practice are as follows.

Do Not Sound Chimes:

1. for longer than 4 second at a time;
2. more often than once every 3 minutes;
3. when the vehicle is stationary;
4. when in sight of another vehicle which is trading;
5. when within 50 metres of schools (during school hours), hospitals and places of worship (on Sundays and other recognised days of worship);
6. more often than once every 2 hours in the same length of street;
7. louder than 80 dB(A) at 7.5 metres;
8. as loudly in quiet areas or narrow streets as elsewhere.

Policy for Street Trading

Including Street Trading Conditions

Draft March 2011

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Introduction

Street Trading

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3. The consent granted by the Council may be revoked at any time should one or more of the conditions be breached.
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13. The consent holder shall comply with all legislation relevant to the conduct of the business in which he/she is engaged and ensure that any vehicle used by him in connection therewith is in a roadworthy condition and where necessary taxed and insured.

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5. more often than once every 2 hours in the same length of street;
6. louder than 80 dB(A) at 7.5 metres;
7. as loudly in quiet areas or narrow streets as elsewhere.

Responses to Street Trading Consultation

Responses received during consultation on the proposed changes to street conditions are listed below. Where considered appropriate, the conditions have been amended.

- Removal of specific time limits for ice cream vans sounding their chimes.
- Consideration to granting one Consent to organisations to enable them to regulate street trading at their event.
- Confirmation that traders are registered with a local authority in respect of food sales.
- Change the proposed 7 day Consent to 14 or 21 days to incorporate seasonal trading.
- Mention to prospective traders that they require permission from the landowner, including Rossendale Borough Council, to trade from land not forming part of the adopted highway.
- Consultation should take place with ward councillors and town councillors to ensure that the best local knowledge contributes to the decision.