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HART DISTRICT COUNCIL

STREET TRADING POLICY

This policy shall come into effect on 5 February 2019 and will last for 5 years unless revised or updated.

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INTRODUCTION

Hart District Council is the Licensing Authority responsible for considering applications for a range of activities that require a street trading consent under schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.

This policy sets out the council's position in respect of the administration of applications for street trading consents and the monitoring of such consents following grant.

The document is not a full and authoritative statement of the law or statutory guidance and does not constitute professional or legal advice. The council welcomes comments and observations on this policy.

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Review

The policy will be kept under review and where any significant amendments are considered necessary these will only be made by the Licensing Committee after appropriate and relevant consultations have taken place. Minor amendments that do not impact on the aims and objectives of the policy, for example due to changes in legislation, will be made with the approval of the Regulatory Services Manager.

1. Aim of Policy

- 1.2 The council recognises the importance of street trading businesses and value their contribution towards to the local economy.
- 1.3 The aim of the Street Trading Policy (hereafter referred to as ‘the policy’) is to create a street trading environment which:
- ensures fair trading between mobile premises in the District;
 - protects the amenity of the residents by ensuring that licenced traders do not cause nuisance, damage, disturbance or annoyance;
 - ensures the safety of the people using them;
 - promotes diversity and consumer choice;
 - provides applicants with advice and guidance on the council’s approach to the administration of applications for street trading consents.
- 1.4 The licensing authority aims to avoid duplication with other statutory provisions and works in partnership with other enforcement agencies. Where applicants need to have regard to other legal requirements, the Licensing Authority will signpost applicants to the relevant organisation.

2. Guidance for Applicants

2.1 Exemptions

2.1.1 The following do not require street trading consents:

- Pedlars (see definition in Appendix C). To operate as a pedlar, a pedlar’s certificate must be obtained through the local Police Authority, who can provide advice on the application and the conditions of the certificate.
- Markets/Parks – see section 10.1.
- News Vendors selling newspapers or periodicals
- Shop forecourts selling good associated with the shop
- Trading as a Roundsman. Anyone trading as a roundsman has defined customers and defined routes. There is no statutory definition of a roundsman, however for the purposes of the Policy the Licensing Authority considers a roundsman to be anyone who goes the round of his customers for orders and the delivery of goods, generally trading door to door rather than from the street.

2.1.2 The licensing authority does not authorise consent to trade from privately owned land such as the Harlington Centre (this is not an exhaustive list of all privately owned land in Hart District Council). Any traders interested in applying to trade from privately owned land must contact the managing agent or owner to enquire about pitch availability and trading conditions and to obtain the necessary permission to trade before making an application to the council for a consent.

2.2 **Choosing a Trading Location/Pitch**

2.2.1 Before applying for a street trading consent, applicants must first identify a suitable trading pitch. It is for the applicant/trader to identify a suitable pitch having regard to the requirements laid out in the policy and their business needs. The licensing authority does not hold a list of available trading pitches or a waiting list for existing pitches.

2.2.2 It is for the applicant to determine a business viability or any pitch. A pitch must satisfy a number of criteria before being considered suitable to trade from. The applicant is expected to conduct this research themselves and provide the information to the licensing authority before submitting a full application. Any pitch in use before the approval of this policy may remain under grandfather rights until the consent is renewed, however any new pitches must meet all of the following criteria:

- Safe for public access by foot or by vehicle
- Has suitable parking spaces for customers and trading vehicle
- Is suitably lit (if trading after dark) to promote safe access and egress for customers and for visibility by other road users.
- Is more than 800m from another street trader selling similar types of goods and trading at the same time.
- Does not breach highway regulations or make hazardous the passage of the public, including people with disabilities, over the highway or otherwise cause a traffic hazard.
- Does not impede the passage of emergency vehicle access.
- Where adjacent to a highway there must be a safety barrier or a verge or footpath between the proposed trading location and the carriageway.
- Does not cause the loss of parking spaces to residents or businesses.
- Will not cause a disturbance, damage, interference, annoyance, inconvenience (e.g. noise nuisance, litter, odour etc.) to local residents or businesses.

2.2.3 In order for the licensing authority to assess the potential trading pitch, the application will be required to submit a map of the location with the potential

pitch marked out, along with photographs of the pitch site showing exactly where the vehicle is proposed to be sighted, including a grid reference. If the pitch is on private land, to which the public have access without paying, written evidence of the landowner's permission to use that site will also be required for the application. The applicant or landowner must determine if there is appropriate or necessary planning permission to sell goods from the proposed location. If there is no necessary planning permission in place then advice must be obtained through the HDC planning department prior to making an application for consent. If the site is on HDC land then permission will be needed from the council's Property Services team.

- 2.2.4 If a pitch of interest is already occupied, or is of interest to two street traders, then a pitch can be shared by splitting either the times or the days on which the traders wish to operate. The street traders must have a written mutual agreement between them, approved by the licensing authority, detailing when the pitch is going to be occupied by both traders. The individual traders will need their own consents for the location.
- 2.2.5 The licensing authority will inform applicants if a pitch is unlikely to meet the criteria. However, advice from the licensing authority does not guarantee that a proposed pitch will not be subject to relevant objections during the consultation process, following an official application, and therefore be deemed unsuitable.

2.3 **Trading vehicle**

- 2.3.1 The trading and/or towing vehicle used must be compliant with DVSA MOT standards. The trading and/or towing vehicle must be maintained in a roadworthy condition, taxed, insured and have an MoT certificate at all times. The type, colour and dimensions of any trading vehicles to be used will be submitted to the Licensing Authority with colour photos for approval. Details of where the Trading vehicle is to be kept overnight must also be submitted. The Trading vehicle must not be set up as a permanent structure and must be removed from the trading pitch within 30 minutes of the end of the consented hours and upon any reasonable request made by the emergency services, Highways or similar authority.
- 2.3.2 Maintenance logs must be kept for the trading vehicle and made available for inspection when requested by the responsible authorities (see paragraph 4.2).
- 2.3.3 If a trailer is going to be used as the trading vehicle, it must comply with the relevant laws around maximum weight that can be towed, height restrictions etc. The driver of the vehicle towing the trailer to and from the location must have the appropriate B3 driving category included on their DVLA driving licence.

2.4 **Employees**

2.4.1 Under the Immigration Act, introduced in 2016, the Home Office granted new duties for local authorities to deal with illegal workers and those who employ them. Anyone employing illegal workers, (those without the right to be working in the UK) can be fined up to £20,000 per illegal worker. The wages of the illegal workers can also be seized as proceeds of crime. The applicant is required to check the residency status and right to work of anyone who is employed to trade under the street trading consent before including their names on an application form. For more information on the Immigration Act, and the duties of employers to check the rights of their employees to work, please review the Home Office guidance. Any trader found to allow an illegal worker to work as part of their trading activities is likely to have their street trading consent revoked.

2.5 **Goods for Sale**

2.5.1 Traders wishing to sell food items must be registered as a food business with the Environmental Health team in whose area the trading vehicle is stored and where any off site food preparation takes place. A complete list of the food and beverages available for purchase must be provided to the licensing authority with the application form.

2.6 **Advertising**

2.6.1 There must be no available means of attracting attention for the purposes of trading or any stands or signs away from the consented pitch. Any trader wishing to display advertising, such as A-boards, will require the approval of the highways authority. Any unauthorised advertising will be removed. Advertising on the trading vehicle must be approved by the licensing authority.

2.7 **Waste**

2.7.1 The trader must provide at least one suitably sized waste container by the trading vehicle with signage requesting the customers to use it. The Consent holder is responsible for disposal of refuse and must not use council, highway or other waste bins. The consent holder has a duty of care to dispose of the commercial waste lawfully. Advice can be sought from the Environment Agency through the Environment Agency Website

2.7.2 There must be no disposal of liquid waste down the drains or onto the pavement, road or grassland. This includes waste cooking oil as it leads to blockages, odour, vermin problems and can pollute watercourses. Such action could result in prosecution. Waste oils should also not be disposed of with the rest of the catering or kitchen waste.

2.7.3 Section 111 of the Water Industry Act 1991 makes it illegal to permit any substance, which may interfere with the free flow of the sewerage system, to pass down any sewer or drain connecting to a public sewer. This is enforced by Thames Water. Further information about disposal of waste oils from catering premises can be found on the Food Standards Agency website. All waste water from the trading vans sinks must be collected and disposed of correctly.

2.7.4 Officers of the responsible authorities will take the steps they consider appropriate if traders are found to be disposing of oils, waste water etc. in an unlawful or unacceptable manner. Consent holders must also organise adequate sanitation provision for themselves and their employees.

2.8 **Opening/Trading hours**

2.8.1 Any applicant who wishes to trade after 23:00 hours will also require a premises licence issued under the Licensing Act 2003 authorising the sale of hot food and drink after 23:00. Where a premises licence has not been granted, any consent will restrict trading hours to 23:00. To apply for a premises licence applicants will need to refer to the relevant pages on the HDC Licensing web page. This licence is subject to a separate application, consultation process and annual fee.

2.8.2 The consent holder will be allowed 30 minute preparation time prior to the start of their consented hours in order to set up their trading vehicle, and there will be a 30 minute closing time to allow the trader to tidy and pack up. Consent holders are not permitted to trade during the preparation or closing times.

2.8.3 If a pitch is shared between two consent holders who will be operating on the same day, there will be an hour between the end time of the first consent and the start time of the other consent to allow for the respective closing and preparation time. If the location is shared (for example a layby), and not the exact pitch, then the preparation and closing times may overlap, requiring a 30 minute gap between trading times.

3. How to Apply for a Street Trading Consent

3.1 All street trading applications must be made in writing or online via the appropriate forms to the Licensing Authority¹. The consent may be granted for up to 12 months.

3.2 The consultation process may take as long as 3 months. The application must include the following supporting documents:

- Completed application form
- Details of all individuals working on the trading vehicle
- Evidence of deposit payment
- Evidence of Public Liability Insurance to the value of £10 million
- A map, graphical drawings and/or photographs of the proposed trading pitch
- Photos and specifications of the trading vehicle
- Evidence of registration of the food business with the appropriate Local Authority
- The Consent Holder shall provide photographic ID and evidence of their right to reside and work in the UK.
- Commercial waste removal contract, including oil if relevant.
- MOT for trading vehicle/towing vehicle
- Copy of driving licence for proposed applicants/employees who may drive or tow the trading vehicle. A print out from the DVLA website dated within the previous 14 days is preferred.

3.3 An application without all the relevant evidence will be returned and not processed. In such circumstances the Licensing Authority will inform the applicant within ten working days and will return the application. The deposit fee will be held for 14 days pending the receipt of a complete application. If no replacement application is received a refund will be issued.

¹ Section 7 of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982

4. Consultation

4.1 Responsible Authorities

4.2 Each new application will be referred to some or all of the following Responsible Authorities for consultation and comments:

- Hampshire Highways
- Ward Councillor(s)
- Parish/Town Council(s)
- Hampshire Constabulary
- Hampshire County Council's Trading Standards Team
- HDC's Planning and Development Team
- HDC's Street Scene and Parks Team
- HDC's Environmental Health Team
- Immigration Enforcement
- Local residents and businesses.
- Any other person or body the Licensing Authority may consider appropriate depending on the type of application e.g. Property Services team.

4.3 Renewal applications will be referred to any additional responsible authorities/consultees at the discretion of the Licensing Team Leader.

4.4 The consultation period for street trading applications is 21 days. This allows time for members of the public and the responsible authorities to consider the application and respond to the consultation.

4.5 A new application may take up to 28 days after the consultation period to be processed, depending upon comments/objections received during the consultation period.

4.6 The deposit fee covers the initial processing of the application and the cost of consultation. Should the application be refused after the consultation, the deposit will not be refunded.

5. Determining Applications

5.1 If there are no objections to the application, the consent will be granted and will be active from the date issued. Each consent may be granted for a

maximum period of twelve months. Applicants will be issued with a laminated copy of the consent, which must be displayed in the trading vehicle at all times. The consent will be issued subject to conditions which set out the permissions and requirements for compliance with the consent during the consent period (see Appendix A). Additional conditions may be added by the licensing authority if required.

5.2 If objections are received then the decision on whether to grant the consent will be made with in accordance with the councils' scheme of delegation by the relevant officer. The applicant will be given the opportunity to make submissions regarding any objection prior to any final decision.

5.3 The full cost of the consent must be paid before the consent is issued.

6. Renewals/Refusals/Appeals

6.1 The licensing authority will remind the named holder of the consent prior to the existing consent expiring. This is a courtesy and it is the Street Traders responsibility to be aware of when the consent is about to expire and provide the renewal paperwork in time for it to be processed. Applications for a renewal consent must be sent as soon as possible and received by the licensing authority before the expiry of the consent. Applications to renew are subject to a 10 working day consultation period in which Ward Councillors will be contacted regarding the renewal. Further responsible authorities may also be contacted regarding the renewal at the discretion of the Licensing Team Leader, depending on the history of compliance with the consent.

6.2 Where a renewal application is not received prior to the expiry date of an existing consent, all trading must cease until a new consent application has been received and processed.

6.3 If the licensing authority receive valid and relevant objections from any of the consultees the application may be refused. Valid objections can relate to any matters pertaining to the list in paragraph 2.2.2.

6.4 There is no formal right of appeal against the refusal of a street trading application; however should the consent be refused, either at first application or at renewal, then the applicant or consent holder has 14 days to informally appeal in writing to the Regulatory Services Manager stating the reasons why the consent should be granted.

7. Transfer

7.1 There is no provision in the legislation to transfer a street trading consent. Should someone wish to take over a pitch or business, the current consent must be surrendered and the applicant must apply for a new consent.

8. Enforcement Procedure and Complaints Investigation process

- 8.1 HDC's Enforcement Policy sets out the council's general approach to enforcement. Licensing Officers will conduct compliance visits to check that street traders are complying with the consent conditions. These visits will not always be announced and may be in conjunction with other responsible authorities such as DVSA, Police or Environmental Health. During these visits the Licensing Officer, or any responsible authority, have the authority to request any documentation relating to the trading vehicle and the running of the business.
- 8.2 Should the licensing authority receive complaints about a street trader, the Licensing Officer will investigate according to the seriousness and potential risks to public safety or the level of breach of conditions under which the consent was granted. Any investigation and subsequent enforcement action will be to ensure compliance with the relevant requirements, and this can often be achieved through advice or warnings in the first instance, and before other options, such as revocation, are considered. Where complaints relate to food hygiene or health and safety on the trading vehicle, these will be investigated by the council's Environmental Health team.

9. Fees and Payments

- 9.1 The fees are set annually on a cost recovery basis. All fees will include all of the allowable charges to cover the cost of administering an application and any inspection or compliance checks costs. The fees are set annually by the Licensing Committee and the current fees can be found on the Street Trading pages on the HDC website.

10. Other Useful Information

10.1 Markets and Parks

- 10.2 Anyone wishing to trade with a stall or pitch as part of a market in HDC will need to contact the market organiser to obtain permission to trade.

- 10.3 Trading in the parks during events is arranged and managed through event organisers. Should an applicant wish to trade in conjunction with an event, the organiser of the event should be contacted.

10.4 Selling goods for 'Charitable donations'

- 10.5 Collections for charity on public land will need to apply for a street collection permit. Information is available from the council's web site. Anyone wishing

to collect on private land will need to contact those organisations separately for their permission.

10.6 Ice cream vans

10.7 Ice cream vendors undertaking regular rounds to sell ice cream from vans on designated consent streets require a street trading consent. Ice cream vans are generally granted consent to trade on all streets in the District. The council will not intervene in any disputes that may arise between traders over trading locations. Under Section 62 of the Control of Pollution Act 1974, chimes must not be sounded before 12:00 or after 19:00 as it is an offence. In addition it is also an offence to permit the operation of any loudspeaker of the ice cream van chimes in the street when there is reasonable chance that playing the chimes may cause annoyance to persons in the vicinity. There is a code of practice available from DEFRA which provides more guidance.

10.8 Ice cream vendors with more than one trading vehicle are required pay an additional fee to cover the administration of the consent for each vehicle. Please refer to the HDC Street Trading pages for the fees chart.

10.9 Christmas Trees

10.10 To sell christmas trees, or other seasonal goods on a street, a consent must be obtained. Short term consents may be granted for seasonal sellers subject to a complete and valid application and the receipt of no objections.

10.11 In order to process the consent and observe the full consultation period, the consent will need to be applied for at least 28 days before the trader wished to start trading. Consents received with less than 28 days before the requested start date may lead to a delay in commencing trading.

10.12 Mobile Catering Units

10.13 Traders who wish to provide a mobile catering unit which has a dedicated list of customers, not serving the general public, parked on private land and which parks up at a location for 10 – 15 minutes to make a sale, such as a sandwich van which caters to a list of specific businesses in a set area, is a roundsman (see Appendix C for definition) and will not require a street trading consent. This type of business will however need to register with the Environmental Health team in whose area the unit is stored. It is recommended that advice is obtained from the licensing authority regarding mobile catering units to determine if a street trading consent is required.

10.14 **Busking**

10.15 Busking does not involve a formal sales transaction because donations are given to buskers by members of the public on a voluntary basis. Buskers wishing to trade, i.e. sell CD's, posters etc. for a fixed price, will require a street trading consent.

10.16 For the sale of any item associated with the busking performance to be outside the scope of street trading, it must be offered on a voluntary basis/for a donation and this must be made clear to members of the public. In addition, all buskers must comply with the relevant Local byelaws.

10.17 **Vehicles for sale on the Road**

10.18 All streets in HDC are consent streets, which means consent must be given by the local authority for goods to be sold. Vehicles for sale on the road (including verge or pavement) can also cause a parking hazard, be an obstruction on the highway or cause pollution.

10.19 Under Part 2 Section 3 Clean Neighbourhoods and Environment Act 2005 , a person commits an offence if they: a) leaves two or more motor vehicles parked within 500m of each other on a road or roads where they are exposed or advertised for sale. A person guilty of an offence under this legislation is liable on summary conviction to a fine. The other legislation relating to this is:

- Section 137 , Section 147A, Section 148 and Section 149 The Highways Act 1980
- The Town and Country Planning Act 1990, aimed at those running a business from home or potentially causing a change of use to the highway.
- Section 4 Local Government (Miscellaneous Provisions) Act 1982 and Section 7(1) Local Government (Miscellaneous Provisions) Act 1976.

10.20 Where vehicles are exposed for sale on the street, officers may record vendor and vehicle details and conduct registration checks with the DVLA to establish the vehicle owner and whether sales are being conducted as part of a business. This information could be shared with other enforcement agencies including Hampshire Police and other relevant council departments. Vehicles which have no registered keeper, or whose keeper sold it on to a third party will be treated as a commercial sale. Vehicles for commercial sale on private land will require the necessary planning permission.

10.21 Enforcement concerning selling vehicles from the highway will only be pursued as an offence where it is conducted by people who run a business, selling motor vehicles or make a profit from selling motor vehicles and use the road as a mock showroom. Enforcement will not be pursued against legitimate individual private sellers of single vehicles, however they will be given relevant advice about selling. Licensing Officers will monitor locations from where vehicles are regularly exposed for sale and liaise with the Hampshire Highways and other council departments (e.g. Planning and Community Safety) about activities from these locations to enable them to investigate the best course of action to remedy any ongoing problems.

10.22 **Safeguarding**

10.23 A Street Trading Consent will only be issued to those aged 18 years or older. Further, only those aged 18 years or older may be allowed to work on the trading vehicle and all employees must be covered by the appropriate employment law.

10.24 There have recently been well-publicised issues relating to Child Sexual Exploitation (CSE) and human trafficking. As a Licensing Authority, HDC has a duty to assist consent holders and the public in tackling these issues, to protect the vulnerable and those at risk of, or who are, being exploited.

10.25 If you have concerns that a child or adult you are serving, or who is working for you, may be vulnerable and/or the victim of exploitation then please contact the police on 101, or 999 if an emergency, or contact the Safeguarding Services at HDC.

Appendix A

Consent Conditions

The licensing authority will attach the following conditions to all street trading consents. The licensing authority reserves the right to change all or part of these conditions without notice, and may add additional conditions on consent grant and renewal if considered necessary. Failure to comply with the conditions may lead to the revocation of the consent or prosecution.

1. The trader shall display the issued street trading consent and nameplate at all times whilst trading. This must be in a prominent position and visible to members of the public.
2. Current public liability insurance cover of £10 million will be maintained at all times, and available for inspection on site.
3. The trader must work only within the operating hours and days of trading authorised by their consent (subject to the permitted 30 minute start up/clear up period)
4. The trader may only sell goods which are applied for at the time of the application.
5. Traders must provide refuse bins or make arrangements a licensed waste collection contractor for disposal of all waste produced from trading in accordance with the duty of care regulations.
6. No cooking oil or liquid waste may be disposed of down drains, on grassland or placed in roadside or other waste bins.
7. Traders must ensure that all litter associated with the business is picked up at regular intervals throughout trading hours within a radius of 100 metres and that the pitch is left tidy and litter free at the end of business.
8. The trader must use the exact pitch nominated in the consent application.
9. Upon request by an officer of the council or the Police the trader must provide any documentation relevant to the trading vehicle.
10. Traders shall ensure that no nuisance to residents or businesses arises from their trading activity or customers.
11. Traders must comply with all relevant legislation.

Appendix B

Relevant Offences

From Schedule 4 Section 10 of the Local Government (Miscellaneous Provisions) Act 1982:

(1) A person who –

- a. Engages in street trading in a prohibited street; or
- b. Engages in street trading in a licence street or a consent street without being authorised to do so under this Schedule; or
- c. Contravenes any of the principal terms of a street trading licence; or
- d. 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 by the council; or

- e. Contravenes a condition imposed by the council shall be guilty of an offence.

- 1) It shall be a defence for a person charged with an offence under subparagraph (1) above to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence.
- 2) Any person who, in connection with an application for a street trading licence or 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.
- 3) A person guilty of an offence under this paragraph shall be liable on summary conviction to a fine not exceeding level three on the standard scale (currently £1,000).

A person convicted of contravening conditions relating to the times of trading shall be liable on summary conviction to a fine not exceeding level three on the standard scale (currently £1,000).

Appendix C

Definitions

HDC	Hart District Council
Consent Street	All streets in Hart district where consent from the Council is required before any trading may take place.
Pedlars	<p>Are defined under The Pedlars Act 1871 as “...<i>any hawker, pedlar, petty chapman, tinker, caster of metals, ...or other person who, ...travels and trades on foot and goes from Town to Town or to other men’s houses, carrying to sell or exposing for sales any goods, wares or merchandise, or procuring orders for goods, wares, or merchandise immediately to be delivered.</i>”</p> <p>Pedlars may only trade on foot, door to door, place to place or town to town. Pedlars are expected to either carry their goods to their customers or hold them in a small easily moved trailer and not to remain stationary for a reasonable amount of time.</p>
Prohibited Street	No trading is permitted at any time.
Street Trading	Means the selling, exposing or offering for sale any article in a street. The term 'street' includes any road, footway or other area to which the public have access without payment (this can include private land).