

APPENDIX B

Draft Street Trading Policy

The Policy

1. Introduction

This Policy has been devised to provide a decision making framework for the consideration of street trading applications, whilst creating a street trading environment which is sensitive to the needs of both residents and traders.

Street trading can improve customer choice and enhance the character of town centres; whether provided on a regular basis or as part of community based events.

The Authority has adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 to control street trading for the whole of its area and, with the exception of a relatively small number of "Prohibited Streets" has designated all streets as "Consent Streets" for street trading purposes. The effect of this is that street trading in any consent street is not permitted without first obtaining consent to trade from the Authority.

For mainly safety reasons some areas are defined as "prohibited streets" where no trading will be allowed, A full list can be found at **Appendix *** of this Policy.

2. Aims

The Authority will apply this Policy to street trading activities to ensure consistency of decision-making. Whilst each application or contravention will be considered on its own merits, the individual circumstances will be taken into account. The Authority will carry out its functions in respect of controlling street trading activities in its area to protect the public, by promoting the following Aims (each of which is of equal importance):

- (a) Promoting and encouraging a positive street experience for both traders and public;
- (b) Promoting that traders operate within the law and act fairly in their dealings with the public;
- (c) Promoting the image of Denbighshire;
- (d) Promoting, Protecting and improving standards of food safety, health and safety, environmental management;
- (e) Preventing and detecting statutory nuisances, unsafe practices and anti-social behaviour,
- (f) Promoting Public order, Preventing public nuisance, Protecting Public safety, and
- (g) Preventing Crime and Disorder

In so doing, we will promote a safe and fair trading environment for residents and businesses.

3 Definitions

3.1 Street Trading Definition

Street trading is defined as the selling, exposing or offering articles for sale in a street, except:

- (a) trading as a pedlar under the authority of a “Pedlars Certificate”
- (b) anything done in a market or fair the right to hold which was acquired by virtue of a grant enactment or order
- (c) trading in a trunk road “Picnic Area”
- (d) trading as a petrol filling station or shop
- (e) selling things as a “roundsman” for example, a milkman
- (f) trading as a news vendor, which means that the only articles sold or exposed or offered for sale are newspapers or periodicals; and they are sold or exposed or offered for sale without a stall or receptacle for them or with a stall or receptacle for them which does not :
 - exceed 1meter in length or width or 2meters in height.
 - occupy a ground area exceeding 0.25 square meters.
 - stand on the carriageway of a street.

When applying to Trade from private land the applicant will require written permission from the owner, who may need planning consent, before any application can be considered and from the Property Section if the land is owned by the Authority. The Policy will also cover traders who move from street to street and are often referred to as Mobile Traders.

Consent Street: is defined as a street in which street trading is prohibited without the consent of the County Council. Therefore a Consent will be required from the Council before Street Trading can take place in any street other than those specified as Prohibited Streets.

Prohibited Street: is defined as a street on which street trading is prohibited.

Street: The definition of “street” is defined under the Local Government (Miscellaneous Provisions) as including:

“Any road, footway, beach or other area to which the public have access without payment, and service areas as defined under Section 329 of the Highways Act 1980”.

4 Principles of Street Trading

In line with the Aims highlighted above, the Authority is committed to administering the street trading function in accordance with the following key principles:

- (a) the Authority will consider each application on its own merits
- (b) the Authority will encourage local traders selling local produce or products
- (c) the Authority will encourage traders offering healthy food options in order to support customers in making healthy food choices
- (d) the Authority will not permit street trading in the vicinity of schools during school hours
- (e) the Authority will support street trading which enhances the vitality and vibrancy of a location
- (g) the Authority will not permit street trading which might compromise public safety on the highway
- (h) the Authority will not permit street trading where there is loss of amenity caused by noise, obstruction, odour, litter or any other public nuisance including adding to any current traffic congestion issues.

- (i) the Authority will regulate street trading to ensure equity and fairness for existing business proprietors and to prevent direct competition to existing produce or products in a location
- (j) the Authority will work in partnership with the Police and other organisations to ensure that street trading does not encourage or facilitate unlawful activity
- (k) the Authority will not discriminate against any applicant on the grounds of race, gender,
- (l) sexuality or disability
- (m) the Authority will set a fee for the issue of a street trading consents in order to cover the
- (n) cost of providing and enforcing the regulatory system
- (o) the Authority will expect all applicants to conform with the necessary legal obligations
- (p) and current legislation such as; planning permissions, late night refreshments licences,
- (q) Licensing Act 2003 and food premises registration.
- (r) the Authority will normally only allow one trader to hold consent in a specific location,
- (s) unless the second applicant wishes to trade in a different commodity or when a special
- (t) event is arranged and possibly when a “mobile trader” is stationary for less than 15 minutes and does not return to the area for at least a two hour minimum.
- (v) the Authority will not grant a street licence/consent to a person under the age of 17 years.

5 Submission of the Application

All applicants must complete the Authority's Street Trading Consent Application and in addition provide the following:

5.1 A basic DBS disclosure certificate, not less than six months old for all employees. Any convictions or proven criminal behaviour will be assessed against the Street Trading convictions policy.

5.2 An initial application fee (to be determined). Upon grant of the consent, before it is issued, the balance of the fee must be paid,

5.3 Where the proposed street trading activity is from a fixed position, a site plan (to scale) showing the precise trading position and its proximity to other similar retail outlets within a 100 metre radius.

5.4. One colour photograph of any stall, van, barrow, cart etc that will be used for the street trading activity.

5.5. One recent colour passport size photograph of the applicant or the expected unit operator.

5.6. An original certificate of insurance that covers the street trading activity for third party and public liability risks up to a maximum of £5,000,000.

5.7. Written permission from a landowner if the street trading activity is to be carried out on land in private ownership. If the land is in the ownership of the Authority written permission from the Property Services Section and Highways.

5.8. Any permissions or consents already granted with regard to the proposed operation, e.g. planning consent, late night refreshment premises licence, and/or waste disposal agreement.

5.9 A full and comprehensive list of goods to be sold or traded

5.10 An applicant for the grant, variation or renewal of a Street Trading Consent should apply, either online to: www.licensing@denbighshire.gov.uk, or direct to:

The Licensing Section, Planning and Public Protection, Caledfyn, Smithfield Road, Denbigh, Denbighshire LL16 3RJ.

5.11 An application for Street Trading Consent is not one that can be given tacit approval, as it is in the public interest that this authority must process an application before it can be granted. We aim to process applications within 28 days.

5.12 A Street Trading Consent is not transferable. Any proposed change to the type of vehicle or stall to be used, the goods to be sold, the times and days of operation, or the exact location of the trading site, requires an application for variation of the street consent.

5.13 Before a Street Trading Consent is granted, the Authority will carry out a consultation process with relevant authorities and interested parties.

5.14 A Street Trading Consent will be issued for a maximum period of 12 months and must be renewed prior to the date of expiry. NOTE:

Renewals will normally be processed without consultation unless there is a change of circumstance, or issues that have given rise to concern during the term of the consent.

6 Site Assessment

Street Trading Consents from static locations will not normally be granted where any of the following may apply:

- (a) a significant effect on road safety would arise either from the siting of the trading activity, or from customers visiting or leaving the site,
- (b) there are concerns over the recorded level of personal injury accidents in the locality where the street trading activity will be sited,
- (c) there would be any likelihood of nuisance from noise, light, smells, litter or fumes to households and businesses in the vicinity of the proposed street trading site,
- (d) there is a conflict with Traffic Orders such as waiting restrictions,
- (e) the site or pitch obstructs either pedestrian or vehicular access, traffic flows, places pedestrians in danger when in use for street trading purposes,
- (f) trading unit obstructs the safe passage of users of the footway or carriageway,
- (g) the pitch interferes with sight lines for any road users such as at road junctions, or
- (h) pedestrian crossing facilities,
- (i) the site does not allow the Consent Holder, staff and customers to park in a safe manner,

- (j) the street trading activity is carried out after dusk and the site is not adequately lit to allow safe access and egress from the site for both customers and staff.

7 Inspection of the Street Trading Unit

Once a consent has been granted, the vehicle, van, trailer, stall or other device to be used for the proposed street trading activity will be inspected by an Authorised Officer of the Council within the first 14 days of trading.

8 Determination of the Application

The Public Protection Manager, on a delegated basis, will determine each application on its merits but, in particular, will have regard to the following

8.1 Public Safety

The location of the proposed street trading activity should not present a substantial risk to the public in terms of road safety, obstruction and fire hazard. The term “public” refers to both customers frequenting the street trading activity, and other members of the public using the street. In particular reference will be made to the guidelines set out in Section 2 under the Aims of street trading.

8.2 Public Order and Anti-Social Behaviour

The street trading activity should not present a risk to good public order in the locality in which it is situated. Observations from the North Wales Police and Community Safety will be taken into consideration under this heading.

8.3 Prevention of Nuisance

The street trading activity shall not present any likelihood of nuisance from noise, light, smells, litter or fumes to households and businesses in the vicinity of the proposed street trading site. Observations from the Authority Officers shall be taken into consideration under this heading.

8.4 Needs of the Area

The street trading activity shall not be in direct competition, in terms of goods primarily sold, with nearby retail shops, restaurants, hot food takeaways, other street traders or market places and shall not be located within 100 metres of such premises. This may be relaxed for one-off or short-term applications.

8.5 Limits on Numbers

In order to ensure that excessive trading does not take place on any one street, the number of traders will be limited.

Consents will only be granted if authorities or permissions required by any other legislation are already in place for the operation. This includes planning consent, late night refreshment premises licence, food premises registration, waste disposal agreement. Applicants should enquire with the appropriate authority before submitting a street trading application.

8.6 Consultees Observations

In relation to the above points consideration will also be given to written observations from consultees and any objections made to the proposed street trading activity will be considered in terms of relevancy and appropriateness to the application made.

8.7 Permitted Trading Hours

The Authority generally will normally only permit street trading between 6.00 am and 11.00 pm on any one day and between 8.00am and 10.00pm in residential areas. Street Trading outside these hours will be assessed in terms of the public order, public safety, crime and disorder and prevention avoidance of nuisance and the needs of the area criteria detailed above.

If trading includes the supply of hot food or drink after 11pm a late night refreshment premises licence will also be required. The Authority retains the right to specify permitted hours of trading that are less than those specified above, if local circumstances require it.

9. Considerations

The Public Protection Manager on a delegated basis may approve applications meeting the criteria contained within this Policy only after giving full consideration to the observations of relevant authorities, for example:

- The Highways Authority
- Property Services,
- Trading Standards,
- Environmental Health,
- Planning Services, I
- Economic Development,
- North Wales Police
- North Wales Fire and Rescue Service
- The land owner of the proposed street trading site
- Elected Members of the relevant Ward
- Occupiers of property within 100 metres of the proposed site.

10. Approval of Applications

The Public Protection Manager, on a delegated basis, may approve applications meeting the criteria contained within this Policy; when an application either does not meet the requirements of this policy or is considered contentious for other reasons, the matter will be referred to the Head of Planning and Public Protection who, in consultation with the Chair of the Licensing Committee will determine the application.

On approving the application the Authority will issue a Street Trading Consent, to which conditions will be attached, including specific terms such as days and hours when street trading is permitted, and goods that may be sold. The consent will also be subject to the Authority's standard conditions, which will be attached to all Street Trading Consents.

The conditions attached to the Consent form part of the approval to carry out street trading and **MUST** be complied with at all times. Failure to do so could constitute an offence, and/or the Consent could be revoked or not renewed.

11. Issue and Revocation of Street Trading Consents

Street Trading Consents will be issued for a maximum period of 12 months and will be renewable on the date specified in the Consent. Shorter term Consents may also be issued.

- (a) these particular Consents will expire, unless renewed, on the date specified in the Consent.
- (b) in all cases when Consent has expired, and an application has not been submitted to the Council for renewal, a new application will have to be made. In such cases the

application will be required to go through the full consideration process outlined in this Policy.

- (c) if a bank dishonours a cheque, or a monthly payment is unpaid, this will result in the revocation of the Street Trading Consent issued by the Council, unless payment of the outstanding fees is made in cash within 5 working days.
- (d) the Council may revoke the consent where:
- (e) the consent holder is breaching the policy objectives, or
- (f) the consent holder is convicted of an offence or is considered unsuitable for any other reason.
- (g) the Licensing Committee will consider representations and if upheld may add conditions, suspend or revoke the consent.

12. Refusal of Applications and Appeals

Where the Chair of the Licensing Committee and Head of Public Protection are considering refusing an application the applicant will be informed in writing of the reasons and may lodge further information or detail to further support the Application. The Authority will:

1. Consider each case on its own merits.
2. Use this Policy where appropriate to assess applications.
3. Consider any further details in a balanced and impartial manner.
4. Ensure that the rules of natural justice are applied.
5. Give all parties sufficient opportunity to present their case, ask questions and present information for consideration in support of their application or objection.

Once a final decision has been made to refuse, the Legislation does not provide for a statutory right of appeal to the Magistrates Court in respect of any decision made in relation to a street trading consent.

13. General Information on Street Trading Consents

13.1 Surrender or Revocation of Consent

The holder may surrender their Consent at any time, or the Authority may revoke it at any time. In the event of revocation, the Authority shall not in any circumstances whatsoever be liable to pay any compensation to the holder in respect of such revocation.

The holder must return the Street Trading Consent to the Authority immediately on its surrender or revocation.

13.2 Reimbursement of Fees

Fees will be reimbursed to Consent Holders where they cease to trade and surrender their Consent to the Authority. Any fee reimbursement will be based strictly from the date the Consent is surrendered to the Authority, not including the non-refundable application fee, and calculated on the number of complete trading days remaining.

14. Access by Authority and Police Officers

Consent Holders should allow access, to the street trading unit, to Authorised Officers of the Authority and Police Officers at all reasonable times. Authority officers will carry with them and produce on request official identification.

15. Enforcement of Street Trading

The Authority will actively enforce the provisions of the Street Trading Policy within its area in a fair and consistent manner, in particular when:

- a Consent holder is trading outside the terms of the Consent or
- overrides parking restrictions or any other traffic regulations