

Mid Sussex District Council

Street Trading Consent Policy

DRAFT

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Contents

- 1. Aims and Objectives of the Policy**
- 2. What is Street Trading?**
- 3. Types of Restrictions**
- 4. What is a Consent Street**
- 5. Street Trading in Mid Sussex**
- 6. Right of Appeal**
- 7. Street trading consent considerations**
- 8. Street trading and the Licensing Act 2003**
- 9. Duration of Street Trading Consents and Fees**
- 10. Access to information held by the Council**
- 11. Street trading consent applications**
- 12. Consultation on applications**
- 13. Street trading consent renewals**
- 14. Street trading consent transfers**
- 15. How applications will be determined**
- 16. Refusal to issue a street trading consent**
- 17. Reasonable use of the site**
- 18. Multiple applicants for the same area**
- 19. Temporary closure of a site**
- 20. Street trading consent conditions**
- 21. Complaints**
- 22. Policy Review period**

Appendix 1 - Street trading consent standard conditions

SECTION 1: AIMS AND OBJECTIVES OF THE POLICY

1.0 Introduction

1.1 Mid Sussex District Council's (the Council) statement of main purpose is: -

'Working together for a Better Mid Sussex'

The Council's Environmental Health Service Team has an essential role to play in achieving this aim, as its Licensing services seek to secure healthier and safer places for people to work and live. The Environmental Health Service key objective is to: -

'Proactively promote and enforce good environmental health, housing and licensing standards, in order to maximise the quality of life for those living in, working in, and visiting Mid Sussex'.

1.2 Purpose and scope of this policy

1.3 Through this policy the Council aims to regulate the location of street traders and aims to prevent the obstruction of the streets within Mid Sussex District Council area by street trading activities. In doing so, it recognises the importance of consented businesses to the local economy and the character of the area whilst trying to ensure that the activities do not cause nuisance or annoyance to the people in the area.

1.4 This policy will guide the Council when it considers applications for street trading consents. It will also inform applicants of the parameters in which the Council will make decisions and how their needs will be addressed.

1.5 This policy will be applicable for any new street trading application made after the date of this policy. For current consent holders, this policy will be applicable from the date of renewal.

2 What is street trading?

2.1 For the purposes of this policy, street trading is defined as the selling or exposing or offering for sale of any article (including a living thing) in a street. The term street includes footways, car parks, public house forecourts and generally any area where the public have access without payment.

2.2 Street trading includes, but is not limited to:

- i. trading from mobile and temporary static structures
- ii. the sale of food and drink or the sale of non-food items
- iii. ice-cream vans
- iv. mobile artists and musicians who sell their recorded work on the street
- v. the sale of Christmas trees and other festive items

2.3 Street trading does not include:

- i. a person acting under the authority of a pedlar's certificate

- ii. anything done in a market or fair, the right to hold which having been obtained by a grant, enactment or order
 - ii. trade carried out by a roundsmen e.g. milkmen
 - iii. trading in a trunk road picnic area
 - iv. trading as a news vendor (where the only articles sold or exposed or offered for sale are newspapers or periodicals)
 - v. trading which—
 - is carried on at a premises used as a petrol filling station: or
 - is carried on at a premises used as a shop or in a street adjoining premises so used and as part of the business of the shop (such businesses must not obstruct the highway)
 - vi. selling things, or offering or exposing them for sale, as a roundsman
- 2.4 Further details on the excluded activities mentioned in paragraph 2.3 can be found in Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
- 2.5 For the purposes of this policy and administering street trading consents within Mid Sussex:
- a) static street traders are those who trade from a fixed location such as a layby or area of land and would include stalls or food vans.
 - b) peripatetic street traders are those who remain in location for a limited duration, usually to carry out a transaction, before moving on to another location and would include ice-cream vans.

3.0 Types of Restrictions

- 3.1 There are three types of restrictions in the legislation and they are as follows:

Licensed street

Where street trading is prohibited without a licence granted by the District Council.

The only street currently designated as a Licensed street is Railway Approach, East Grinstead

Prohibited street

Street trading is prohibited in these streets.

Prohibited streets currently are:

Haywards Heath:

- Wivelsfield Road

East Grinstead:

- Station Road

Burgess Hill:

- London Road

- Civic Way
- Queen Elizabeth Avenue

Poynings:

- Land to North and East of the Devils Dyke Inn, Dyke Road

Other:

- Lay-by on A264 Copthorne Way, Copthorne, running West to East

Consent street

Where street trading is prohibited without the consent of the District Council.

4.0 What is a consent street?

- 4.1 For the purposes of this policy, a street is any road, footway or other area to which the public have access without payment.
- 4.2 A consent street is a street in which street trading can only take place if the consent of the local authority has first been obtained.
- 4.3 Street trading consent is therefore required in a number of places other than on a public highway or public land. Within Mid Sussex street trading consent would be needed in the following locations:
 - a) roads and walkways
 - b) lay-bys and verges
 - c) footpaths
 - d) car-parks (both public and private)
 - e) residential streets
 - f) industrial estates
 - g) land accessible to the public within 10 metres of any of the above.
- 4.4 A consent street does not include land to which the public have to pay to access it, such as a music festival where there is an admittance fee or where access is restricted to a particular group of people, such as land within the grounds of a football stadium during a football match.
- 4.5 Street trading in East Grinstead in London Road and High Street are areas administered by East Grinstead Town Council.
- 4.6 If the street is a designated 'consent street' then street trading without consent is a criminal offence.

- 4.7 It is proposed that all streets within the Mid Sussex District Council area, other than the current Prohibited Streets and areas separately administered by Town Councils, be designated as consent streets.

5.0 Street Trading in Mid Sussex

- 5.1 All streets as defined in Section 4.3 above in Mid Sussex have been designated as consent streets namely, streets where consents are required in order to trade. Consents are granted by Mid Sussex District Council and are subject to conditions and the payment of a fee.
- 5.2 It is illegal to trade in a consent street without first obtaining street trading consent from the Council.
- 5.3 In addition to the exempt activities listed in paragraph 2.3 above, Mid Sussex Council will not require street trading consent to be sought for the following activities:
- a) fetes, carnivals or similar community based and run events, for example Christmas lights switch-on events and non-commercial, community or charitable events where the profits are not used for private gain or are wholly passed to a charity and where the event has been notified to the Council's Safety Advisory Group
 - b) sales of articles by householders on land within the curtilage of their property, for example garage sales
 - c) goods from working farms or smallholdings sold at the premises where they were produced
 - d) trading in shopping centres, for example The Orchards in Haywards Heath and The Market Place in Burgess Hill
 - e) handing out promotional literature for goods, services or venues.

6.0 Right of Appeal

- 6.1 There is no statutory right of appeal against refusal to issue a street trading consent however applicants who feel that their application has been dealt with unfairly are able to complain through the Council's corporate complaints procedure which is available via our website www.midsussex.gov.uk.
- 6.2 Street trading consent can be granted for up to 12 months and can be revoked at any time by the Licensing Team. When the Council grants or renews consent for street trading, the Council may attach any reasonable condition. Where a consent is surrendered or revoked, the council shall remit or refund, as they consider appropriate, the whole or a part of any fee paid for the grant or renewal of the consent.

7.0 Street Trading Consent Considerations

7.1 In considering applications for the grant or renewal of a street trading consent the following factors will be considered:

a) Public safety

Whether the street trading activity represents, or is likely to represent, a substantial risk to the public from the point of view of obstruction, fire hazard, unhygienic conditions or danger that may occur when a trader is accessing the site. This would include the consideration of factors such as interference with sight lines for road users and access to pedestrian crossings.

b) Public order

Whether the street trading activity represents, or is likely to represent, a substantial risk to public order. This is likely to be more of an issue in respect of applicants wishing to trade at later hours.

c) Prevention of public nuisance

Whether the street trading activity represents, or is likely to represent, a substantial risk of nuisance to the public from noise or misbehaviour, particularly in residential areas.

d) Appearance of the stall or vehicle

The stall or vehicle must be of smart appearance, clean and maintained in a sound condition.

e) Environmental impact

Static street traders who require their vehicle engines to be running or the use of petrol or diesel generators in order to operate will not be allowed to trade within any of the Council's declared Air Quality Management Areas.

f) Highway safety

There must not be any dangers to those who have a right to use the highway and no obstruction for emergency access. Street trading consent holders are not allowed to drive vehicles on a footpath to access the site.

g) Lay-by Safety

Some lay-bys within the district are deemed to be unsuitable sites due to safety grounds, namely, those where there is no segregation between the lay-by and the live carriageway.

h) Proximity to schools and colleges

Street trading by businesses supplying hot or cold food or confectionary between 07:30-hrs and 18:00-hrs will not be permitted for locations within 100 metres of the boundary of a school, college or other educational establishment.

i) Trading hours

In town centres street trading hours will normally mirror those of shops or restaurants in the immediate vicinity. However, the council will consider each application on its merits before agreeing permitted trading times. The council retains the right to specify permitted trading hours that are less than those applied for.

j) Suitability of the applicant

When determining an application for the grant or renewal of a street trading consent the council will consider all relevant information relating to the suitability of the applicant to hold such a permission including:

- a. relevant complaints received about the applicant's previous street trading activity and any previous revocation or surrender of a street trading consent into account.
- b. any refusal or neglect in paying fees due to the council for a street trading consent or for any other charges due for services rendered by the council to the applicant in his capacity as the holder of a street trading consent. Examples of such services include collection of refuse and cleansing of streets.
- c. previous failures of the applicant, without reasonable excuse, to make use, to a reasonable extent, of a previous street trading consent.
- d. any relevant information brought to the Council's attention by one of the consultees such as previously selling counterfeit, or any prohibited goods mentioned below.

k) Prohibited goods

Street trading consent will not be granted for the sale of the following items:

- a. alcohol except for consumption with a sit down meal at the premises (see Section 8.0 below)
- b. firearms and replica firearms
- c. knives
- d. weapons and replica weapons
- e. tobacco products
- f. fireworks
- g. articles that would typically be sold in sex shops
- h. animals
- i. Training of food traders

Businesses trading in hot or cold food must ensure all food handlers hold at least a Foundation Certificate in Food Safety accredited by the Chartered Institute of Environmental Health, or the Royal Society of Health, or the Royal Institute of Public Health and Hygiene (or equivalent). The certificate must be no more than three years old.

m) Food hygiene rating

Businesses trading in hot or cold food must have a rating of four or more under the Food Standards Agency's Food Hygiene Rating Scheme. New businesses will be given a one-month leeway period to achieve the necessary rating.

n) Sanitary accommodation

Consent holders and their employees must have access to suitable and sufficient sanitary accommodation at all trading times.

o) Waste Disposal

Consent holders must have in place suitable arrangements for the disposal of waste generated by their business. It is the responsibility of each trader to ensure that all refuse generated by or collected upon their pitch is taken away with them or disposed of by suitable waste provision arranged by the trader themselves.

- 7.2 In addition to the considerations listed in paragraph 7.1 above, nothing in this policy or in any street trading consent that has been issued shall relieve the consent holder, or any person employed by them, of any obligation to comply with all other legislation, whether national or local. It is the obligation of the consent holder to familiarise themselves and their employees with this legislation. The Council may revoke a street trading consent for any failure to comply with national or local legislation.
- 7.3 The Council is unable to refuse a street trading consent application on the grounds that it feels there were enough shops or street traders in the area already selling similar products.
- 7.4 The Council cannot issue a street trading consent to a trader for locations and times when a market is operating. Traders wishing to trade within a market should contact the market organiser to discuss trading.
- 7.5 If there were to be multiple applications for a consent where the numbers granted would be limited, the applications will be assessed against the policy criteria and no advantage would be given to a previously authorised trader.

8.0 Street trading and the Licensing Act 2003

- 8.1 Street traders that either serve hot food or drink at any time between 23:00-hrs and 05:00-hrs the following day or sell alcohol will also require a Premises Licence under the Licensing Act 2003.
- 8.2 It is the responsibility of the business operator to ensure they have a Premises Licence where it is needed. Details of the licensing process under the Licensing Act 2003 can be found on the Council's website.
- 8.3 A trader will not be allowed to trade if a Premises Licence is needed but not been issued.

9.0 Duration of street trading consents and fees.

- 9.1 Street trading consents can be issued for the following durations:

Daily

2/3 day event

Weekly

Monthly

Annually

- 9.2 Fees will be set and reviewed annually as part of the Council's fees and charges setting process.
- 9.3 Should the consent holder wish to vary the Consent at any time during the life of the consent, an administration fee will be charged.
- 9.4 Registered charities wishing to apply for a Street Trading Consent will receive a 50% discount on the occasional or annual fee.
- 9.5 Details of the current fees and charges can be found on the Council's website. Details of the fee structure for this new policy can be found in Appendix 2 below.

10.0 Access to information held by the Council

- 10.1 All non-personal information provided as part of the street trading consent process is subject to disclosure by the Council under the Freedom of Information Regulations and the Openness of Local Government Bodies Regulations. These regulations place a duty on the Council to disclose this information; it is not a discretionary power.
- 10.2 To aid the disclosure requirements mentioned in paragraph 10.1 above, the Council will maintain a register of granted street trading consents on its website which will be updated regularly. This will include the name of the business, location of trading and the expiry date of the consent.

11.0 Street trading consent applications

- 11.1 Each static street trading consent application can only relate to one site. Therefore, if a trader wishes to trade from different sites at different times, they must apply for each one separately other than applications for peripatetic street traders.
- 11.2 Each application is subject to fees and charges set out on the Council's website.
- 11.3 A consent will not be granted to any person under the age of 17.
- 11.4 All street trading consent applications and renewal applications must be made in writing and consist of:
 - a) Full name and address of the applicant.
 - a) a map showing all streets and other public areas within a radius of 200 metres from the proposed location of the street trading site, where the trader is static. Maps are not required for peripatetic traders such as ice-cream vans. The map shall be to a scale of 1:2000 and clearly indicate the location of the site in the centre of the map, and the locations of other street traders and outlets trading in the proposed area.
 - b) a letter, where trading is proposed on private land, from the landowner confirming that the applicant has permission to trade from the site. This may be subject to additional fees and charges imposed and collected by the landowner.

- c) a passport-style photograph of the applicant.
 - d) proof of eligibility to work in the UK.
 - e) four colour photographs of the trading unit illustrating the different elevations of the unit.
 - f) evidence that both applicant and assistants have completed the required food hygiene qualification (for food related applications – see paragraph 6.1 above).
 - g) evidence of having a suitable method for waste disposal where applicable.
 - h) Days and times that the applicant wishes to trade.
 - i) Nature of the goods to be sold.
- 11.5 Street trading consent applications must be accompanied by the correct fee before the application will be processed.
- 11.6 Street trading cannot start before the street trading consent has been issued. Trading without consent is illegal and would be subject to enforcement action. All enforcement action will be in line with the Council's published Enforcement Policy which is available on the Council's website.
- 11.7 Either at the time of the application, or once the application has been approved and prior to it being issued, the applicant must provide the Council with the following:
- a) An original copy of a certificate of insurance covering the street trading activity for third party and public liability risks up to £5 million
 - b) A current MOT certificate and insurance documents where a motorised vehicle will be used for street trading
- 11.8 Where appropriate 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, prior to the issue of any issuing any Street Trading Consent.
- 11.9 If there were multiple applications for a consent where numbers granted will be limited due to the location, the applications will be assessed against the policy criteria and that no advantage would be given to a previously authorised applicant.

12.0 Consultation on applications

- 12.1 The Council will carry out a consultation process for all street trading consent applications with relevant interested persons and organisations before a street trading application is considered. These include:
- a) Mid Sussex District Council's internal teams:
 - i. Environmental Health
 - ii. Parking
 - iii. Food Safety Team

- b) Sussex Police
 - c) West Sussex County Council Highways
 - d) the appropriate Town or Parish Council
 - e) the appropriate District Council Ward Councillor(s)
 - f) any other consultee that officers consider appropriate.
- 12.2 Consultees will be provided with a copy of the traders application form to allow them to make an informed decision.
- 12.3 Consultees will be asked to respond in writing (preferably email) within twenty-one days. Observations, recommendations or objections received as a result of the consultation will be taken into consideration when the application is determined. Any objections must be linked to the street trading consent considerations listed in section 7.0 above.
- 12.4 Affected local residents or businesses are able to make representations through their Town or Parish Council or their local District Council Ward Councillor.
- 12.5 Officers will assess the reasonableness and appropriateness of all objections before they are taken into consideration.

13.0 Street trading consent renewals

- 13.1 Existing consent holders should submit their application, if they wish to have continuity of trading, at least six-weeks before the expiry of their current consent. At this time, the Council will consult, as detailed above, to determine if the street trader is a cause for concern or has been the subject of complaints.
- 13.2 If a renewal application is not made at least six-weeks before the expiry of the current licence, the Council will not have sufficient time to process the application before the current consent expires. Where this occurs, the trader will have to stop trading when the current consent expires and will not be allowed to trade until the new consent is issued.
- 13.3 An application to renew an existing street trading consent will not be determined until all fees have been paid and documentation provided to the Council, which will result in the applicant not being permitted to engage in street trading once the previous consent has expired.

14.0 Street trading consent transfers

- 14.1 A street trading consent cannot be transferred or sold to another person except to a member of the consent holder's immediate family in the event of the consent holder's death or incapacity.
- 14.2 All transfers are subject to a fee payment.
- 14.3 The sub-letting of a pitch or consent location is prohibited and will result in revocation of the consent.

15.0 How applications will be determined

- 15.1 All applications will be determined by an officer of the Licensing Team.
- 15.2 The officer will evaluate applications against the criteria set out in this policy and then consider all reasonable and appropriate objections. Reasonable and appropriate objections are those that relate to the criteria set out in Section 7.0 above.
- 15.3 The officer will approve the application if it:
- a) meets the criteria set out in this policy, and
 - b) there are no reasonable and appropriate objections.
- 15.4 If the application:
- a) does not meet the criteria in this policy, or
 - b) there are reasonable and appropriate objections
- the authorised officer may contact the applicant and objectors to attempt to resolve the potential reasons for refusal. The authorised officer, applicant and objectors may discuss:
- a) changes that could be made to the proposed location, goods or trading hours and
 - b) additional conditions that could be introduced to mitigate any concerns.
- 15.5 If the applicant refuses the offer of a meeting, they will either introduce additional conditions or refuse the application.
- 15.6 If the objections and failure to meet the criteria in this policy can be resolved by changing the application and/or introducing additional conditions the officer will approve the application.
- 15.7 If the objections and failure to meet criteria in this policy cannot be resolved by making changes to the application or introducing additional conditions the officer will refuse the application.

16.0 Refusal to issue a street trading consent

- 16.1 Where the council refuses an application the applicant will be informed in writing of the reasons for not granting the application.
- 16.2 There is no statutory right of appeal against refusal to issue a street trading consent however applicants who feel that their application has been dealt with unfairly are able to complain through the Council's corporate complaints procedure
- 16.3 Trading will not be permitted during the appeal period when an application has been refused and can only take place within the conditions of any street trading consent that has already been granted where the appeal relates to conditions that have been imposed.

17.0 Reasonable use of the site

- 17.1 The geography of Mid Sussex means there are limited locations for static street traders to trade. Therefore, to ensure fairness to other potential traders, static street traders are expected to make reasonable use of the site to which their consent applies. Failure to do so is grounds for the Council to withdraw or amend the consent.
- 17.2 Reasonableness will be determined on a case-by-case basis. However, generally the consent trader will be expected to trade within the terms of their consent unless they are on holiday or unwell.
- 17.3 Where a consent holder is not able to trade for a period greater than two- weeks, then the consent holder must notify the Council as to the reasons for this.

18.0 Multiple applicants for the same area

- 18.1 Multiple street trading consents may be granted to different applicants for the same static site provided different trading days/times are applied for. At any one time only one consent holder will be permitted to trade on a site.
- 18.2 For peripatetic traders such as ice-cream vans, the Council will not limit the number of traders in a town or village for the reasons set out in paragraph 7.

19.0 Temporary closure of a site

- 19.1 The consent holder will vacate the pitch upon request, and for as long as necessary, to enable highway inspections, repairs, street works and highway improvements to be undertaken, or if the pitch is required to facilitate temporary traffic and/or pedestrian management arrangements.
- 19.2 No compensation will be paid to the consent holder for lost trading days by Mid Sussex District Council as a result of the above or for any loss of business as a result of unforeseen occurrences on the highway network.

20.0 Street trading consent conditions

- 20.1 All street trading consents will be subject to standard conditions which are set out in Appendix 1 of this policy.
- 20.2 Where it is felt reasonably necessary the officer determining the application may add additional conditions to the street trading consent if they are needed to support the street trading consent considerations in Section 7.0 above.

21.0 Complaints

- 21.1 Legitimate complaints regarding street trading will be fully investigated and consent holders shall be expected to liaise with the Council to resolve them. Substantiated complaints may result in a consent being revoked.

- 21.2 Complaints may also be taken into account when considering an application to renew a street trading consent.

22.0 Review

- 22.1 This policy will be reviewed every five years, but a review can be triggered by a change in legislation or other relevant factors.

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