

BRIDGEND COUNTY BOROUGH COUNCIL

REPORT TO LICENSING COMMITTEE

19 JANUARY 2011

REPORT OF THE ASSISTANT CHIEF EXECUTIVE LEGAL AND REGULATORY SERVICES

**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982
CONTROL OF STREET TRADING**

1. Purpose of Report

- 1.1 To outline proposals to review the current street trading Orders and to revise the policy in respect of the grant of street trading consents.

2. Connection to Corporate Improvement Objectives/Other Corporate Priorities

- 2.1 Street trading controls have an impact on the Council's priority to realise the potential of our major towns and the community strategy of healthy living.

3. Background

- 3.1 At present, only two of the town centres Bridgend and Porthcawl are the subject of street trading control achieved through the designation of streets as consent and prohibited trading streets.
- 3.2 The Chair of Governors, Maesteg Comprehensive School submitted a request on behalf of the school and local residents for street trading controls in the vicinity of Maesteg Comprehensive School. The request led to an informal review of current street trading controls and policies to take account of the need to avoid displacement of the problem to neighbouring areas or other residential areas.
- 3.3 The Council has adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 in order to control street trading within certain streets in Porthcawl and Bridgend.
- 3.3 Street Trading is defined as the selling or exposing or offering for sale of any article (including a living thing) in a street but does not include any activity governed by the Pedlars Act 1871, trading as a news vendor, or trading as a roundsman,
- 3.4 An informal officer consultation has established that there are other areas in the County Borough where street trading is causing a nuisance. In addition, discussions have taken place with the Council's Town Centre Manager regarding a review of current policy relating to the grant of consents to support the future development and management of town centre spaces.

4. Current situation / proposal

- 4.1 It is proposed that the authority adopt a county borough wide approach to street trading by designating all streets and areas to which the public has access without payment as consent streets for the purposes of the Local Government (Miscellaneous Provisions) Act 1982.
- 4.2 This proposal would mean that street trading will be illegal throughout the County Borough unless the trader holds a consent issued by the Council. To ensure that trading does not cause a nuisance and is appropriate to the area, it is proposed that the Licensing Committee adopt a policy governing the criteria for the grant of consents. If the Committee approve this approach, it will be necessary to undertake the following steps to designate the new streets and revoke the existing street trading orders.
- 4.3 The adoption process requires the publication of the intention to pass a resolution in a newspaper, together with formal consultation with the chief officer of police and the highway authority. Other interested parties will also be consulted. The public notice will also seek representations and any received must be considered at a further meeting of the Committee. If the Committee is satisfied that the designations are necessary, it must pass the resolution stating the day the designations come into effect and give public notice of the changes in a local newspaper. The first publication must be no later than 28 days before the date of the coming into force of the designation.
- 4.4 In preparing the policy for the grant of consents regard has been given to the need to promote on street activities, including street trading in the major town centres of Porthcawl, Bridgend and Maesteg, whilst addressing the problem of nuisance trading in the town centres and outlying areas. The main nuisances relate to litter, noxious smells and generators from food vendors and there are consumer protection concerns arising from the sale of second hand cars. In addition, concern has been raised relating to mobile traders close to schools and the potential for adverse effects on projects such as the healthy eating programme which is being promoted in schools.
- 4.5 Informal consultation with the Town Centre Manager has been undertaken to consider a zoned based approach to the policy for the grant of consents. The policy in the Town Centre zone (Porthcawl, Bridgend and Maesteg) would be broadly based on the existing policy to grant trading consents as part of Council approved themed events and festivals. The remaining areas of the County Borough would be designated as the Outer Zone where the policy would be to determine each case on its merits but with a presumption of refusal for applications to trade in close proximity to schools and for trading in certain goods. The final determination of the extent of the zones and preparation of plans will take place following the consultation period.
- 4.6 The proposed policy contains provision for a presumption of refusal for trading in the following items to avoid public nuisance and ensure consumer protection:
- Posters or similar items
 - Fish and meat from commercial vans or stalls
 - Static or second hand car sales

- 4.7 Food vendors, including burger vans, ice cream vans or sweet vans are undoubtedly controversial, but offer a service to the public on trading estates or in other areas.
- 4.8 If the Committee approves the move to County Borough wide control it will be necessary to consider the effect of the policy on traders who have, until now been trading lawfully (in terms of street trading legislation) in areas where no street trading controls exist.
- 4.9 Case law has led to a re-appraisal of how local authorities interpret the definition of a street contained within the Local Government (Miscellaneous Provisions) Act 1982. For the purposes of this legislation, a street is defined as any road, footway, beach or other area to which the public have access without payment. This phraseology has been open to a wide interpretation. Street trading licensing controls would not have been applied to areas where public have access, but where it was considered to be private land. (e.g. retail parks, trading estates, car parks etc).
- 4.10 The High Court in the case of WEST BERKSHIRE DISTRICT COUNCIL v PAINE (2009) clarified the scope of the definition of a street. The judgement said it was important to keep in mind the purpose of the 1982 Act, namely that it enabled a local authority to regulate sellers who operated without premises and itinerant traders so that it could assess the suitability of sellers; assess what nuisance or obstruction they might cause; and ensure consumer protection.
- 4.11 The judgement concluded that whether premises were private property was an immaterial consideration for the purposes of considering what constituted a street for the purposes of Sch.4 paragraph 1(1)(a) of the 1982 Act. Therefore the key consideration for the local authority was whether the public could go to a place without having to make a payment and not whether they did so go.
- 4.12 If approved, the change in interpretation of a street and the extension of the controlled areas is likely to disadvantage some existing street traders and the new policy guidelines would result in some applications being refused. To mitigate these risks, it is proposed that those traders who can produce evidence of long standing permanent and lawful trading from a site with the land owner's permission in place receive special consideration and the grant of a consent under the principle of "grandfather rights"; the grant of a consent would be subject to all other relevant permissions relating to trading and occupation of the site being in force and that the trading would not:
- Obstruct the free flow of traffic movement
 - Take place in narrow or restricted areas where the activity would cause congestion and impinge on public safety
 - Take place in areas required for servicing, deliveries or emergency access
 - Have a detrimental effect on the character of an area, causing obnoxious smells, or noise nuisance from generators etc

- Take place in the close proximity of a school where representations are received or that the trading will result in road safety issues, impact on safe routes to schools, or be likely to cause anti-social behaviour and litter.

4.13 In addition, trading at small scale charitable or community type events such as outdoor school fayres, carnivals, fund raisers and car boot sales where no admission fee is charged would also fall within the street trading legislation. To reduce the burden on such events it is proposed to exclude schools and school playing fields from the licensing regime. Furthermore, it is proposed that a favourable approach is adopted to the grant of consents in relation to non-commercial events with fees being waived together with the need to submit a PNC check or Criminal Record Disclosure if a member of the organising committee has already undergone appropriate checks. Such organisations would be required to satisfy the Council of their non-commercial status. This exemption would not apply to larger scale market style events which, because of the higher risk, would require pre-event inspections and monitoring.

4.14 For information, the fees for street trading consents are as follows and are subject to annual review. If Members adopt the new proposals the fee scales will be amended at the next fee review.

Street Trading Consent - per annum (Minimum)	£213.00
Street Trading Consent - per month or part thereof (Minimum)	£31.00
Street Trading Consent - annual consent for non profit making or charitable organisations per event	£35.00
Street Trading Licence Plate Deposit - payable in addition to Consent Fee (vehicles, carts etc)	£27.00

4.15 A copy of the proposed policy is attached at Appendix A to the report. The Committee is recommended to approve a change to the application procedure to require that applicant provide a Criminal Record Disclosure or Subject Access check from the Police National Computer in order to ensure the protection of children from harm; the cost of obtaining the disclosure or check to be met by the applicant. The policy also contains proposed guidelines for the assessment and relevance of convictions. This document will also be published on the Council's website as part of the consultation process.

5. Effect upon Policy Framework & Procedure Rules

None at present – although if the consultation moves this forward then any current street trading procedures will have to be amended accordingly, this will be addressed in any further report to Committee.

6. Equality Impact Assessment

6.1 A full Equality Impact Assessment has not been undertaken in relation to this service, however due regard has been given to the implications on persons protected by equality legislation and human rights. Adverse impact of this

Legislation on the equality protected groups is very unlikely. We do not consider, on the basis of the above, that a detailed Equality Impact Assessment is required for this service. In line with our Inclusive Equalities Scheme we will monitor for any adverse impacts that may develop during the consultation in the future.

7. Financial Implications

- 7.1 The cost of giving public notice including translation of the changes to the street trading orders is estimated at £3000 which will be met from existing budget. The alternative approach of changing the legal orders in a phased approach would incur these costs each time the orders were amended.

8. Recommendations

- 8.1 That the Committee declare its intention to resolve to adopt a new designation of streets for the purpose of street trading as follows:

“Pursuant to Paragraph 2 of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 the following designations of streets shall apply: All streets shall be designated as consent streets with the exception of any school or school playing field designated on the public list of schools published by the authority. A street shall be defined as any road, footway, beach or other area to which the public have access without payment; and a service area as defined in section 329 of the Highways Act 1980; and includes any part of a street.

Any resolutions made by the Bridgend County Borough Council, the former Ogwr Borough Council, and their predecessor authorities specifying certain streets as being prohibited streets and consent streets, shall be rescinded”

- 8.2 That the Committee approves the publication of a Public Notice and consultation inviting representations on the proposed change to street trading control, policy and guidelines relating to the grant of consents attached at Appendix A to the report.
- 8.3 That at the end of the consultation period the Committee will receive a further report outlining the responses received which they are required to consider before passing any final resolution to adopt the new designations.

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Background documents:

Local Government (Miscellaneous Provisions) Act 1982
Letter and Local Petition

**BRIDGEND COUNTY BOROUGH COUNCIL
STREET TRADING POLICY**

**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982
SCHEDULE 4**

1. Definition of Street Trading

- 1.1 Street Trading is the offering, exposing or selling of articles for sale (including living things). This means that the legislation covers the advertising and offering of items for sale although it is restricted only to goods and not to services.
- 1.2 Street Trading involves the actual sale of goods, and not just an agreement to sell goods; that is, the goods need to be physically present and title in the property must pass as part of the contract transacted between the trader and the buyer.

2. Exemptions from Street Trading controls include:

- Trading by person acting as a pedlar with a pedlar's certificate granted under the Pedlars Act 1871.
- Markets or fairs, where there is statutory authority to hold the market or fair (such as by way of Royal Charter).
- Trading in a trunk road picnic area provided by the Secretary of State under S112 of the Highways Act 1980.
- Trading as a news vendor (only newspapers or periodicals may be sold and no stall or receptacle may be larger than 1.0m by 1.25m by 2.0m high and does not stand on the carriageway).
- Trading carried on at petrol filling stations or on their forecourts.
- Trading at premises used as a shop, or in a street adjoining those premises and which is part of the shop's business.
- Selling things, or offering or exposing them for sale, as a rounds man.
- The use for trading facilities or recreation or refreshments under the Highways Act 1980, such as pavement cafes.
- Activities where trading takes place as part of street collections authorised by S5 of the Police, Factories etc. (Miscellaneous Provisions) Act 1916, for charitable and benevolent purposes.

- Street trading is also prohibited on special roads, such as motorways, motorway service areas, and principle trunk roads and a 'street' as defined in the Highways Act 1980 as including any road, footway, beach or other area to which the public have access without payment.

3. Introduction

- 3.1 This policy covers street trading within the Bridgend County Borough area. The granting of the street trading consents is made under the Local Government (Miscellaneous Provisions) Act 1982, Schedule 4 – Street Trading. (The Act).
- 3.2 For the purpose of this policy, the Council shall be comprised of two zones – Town Centre zones being the Bridgend, Porthcawl and Maesteg town centres and an Outer Zone comprising any other part of the County Borough. Outer zone consents will not be valid in the Town centre zones and vice versa.
- 3.3 For the purpose of the policy, all streets within the Bridgend County Borough have been designated as consent streets as defined in the Act. For the purposes of this policy a street is defined as any road, footway, beach or other area to which the public have access without payment.
- 3.4 Subject to statutory exemptions a street trading consent is required for the sale of any goods from land to which members of the public have access to without payment.
- 3.5 A separate application process applies to the sale by retail of alcohol and/or the provision of any regulated entertainment associated with trading and for permission to trade from specific pitches and on any part of the pedestrianised town centre areas or any maintainable highway.
- 3.6 The Council must be mindful of the operation of any existing market, the commercial shops in the Town Centres and existing festivals and events. The Council may restrict the sale of goods by street traders to types which are not in direct competition with shops, sales outlets or other street traders in that immediate vicinity.

4. Town Centre Zone policy

- 4.1 The following policy regarding the grant of street trading consents will apply to the three town centre zones of Bridgend, Porthcawl and Maesteg as shown on the attached plans.
- 4.2 The aim of the policy is to encourage vibrant town centres and the overriding policy is that each application will be determined on its merits. However, there will be a presumption of refusal, following relevant representations on certain grounds connected to the potential for public safety, road safety, nuisance, obstruction, visual intrusion, litter, and noxious smells.

4.3 Applications for consents involving the following goods from sole traders not connected to a Council approved themed event or festival will normally be refused if relevant representations are made.

- Posters or similar items
- Sports goods, household goods and clothing
- Fish and meat from commercial vans or stalls
- Food vendors (burger vans, ice cream vans etc)

4.4 There will be a presumption of refusal for consents relating to sales of vehicles from or adjacent to the highway.

4.5 The type of goods to be sold at themed events such as food festivals or “Christmas” events may include those included in the above list, but subject to approval by the Town Centre Manager.

4.6 There will be a presumption of grant for applications for consent for ice cream tricycles subject to a limit of a maximum of six being issued per annum in the Porthcawl Zone.

4.7 There will be a presumption of refusal for applications to trade in the close proximity of a school where representations are received that the trading will result in road safety issues, impact on safe routes to schools, or anti-social behaviour and litter.

5. Outer Zone policy

5.1 The following policy regarding the grant of street trading consents will apply to the Outer Zone which is defined as all areas not included within the Town Centre Zone. The overriding policy is that each application will be determined on its merits but that there will be a presumption of refusal on certain grounds connected to the potential for public safety, road safety, nuisance, obstruction, visual intrusion, litter, and noxious smells.

5.2 Applications for consents to trade in the following goods will normally be refused:

- Posters or similar items
- Sports goods, household goods and clothing
- Fish and meat from commercial vans or stalls
- Static car sales

5.3 In addition, there will be a presumption of refusal on applications where representations are received that the trading is likely to:

- Obstruct the free flow of traffic movement
- Take place in narrow or restricted areas where the activity would cause congestion and impinge on public safety
- Take place in areas required for servicing, deliveries or emergency access

- Have a detrimental effect on the character of an area

5.4 There will be a presumption of refusal for applications to trade in the close proximity of a school where representations are received that the trading will result in road safety issues, impact on safe routes to schools, or anti-social behaviour and litter.

6. Town Centre and Outer Zones

6.1 In respect of small scale charitable or community type events such as outdoor school fayres, fetes, carnivals, fund raisers where no admission fee is charged a light touch approach is adopted in respect of the grant of consents. Application fees will be waived together with the need to submit a PNC check or Criminal Record Disclosure if the organization can demonstrate that a responsible person present has already undergone appropriate vetting checks. However, these exemptions do not apply to any commercial trader/vendor attending such events or to larger scale events or markets run by non-profit making organisations.

7. Street Trading Consent conditions

7.1 The granting or renewal of a street trading consent is subject to standard and/or special conditions relating to such issues as:

- Obstructions
- Nuisance or annoyance
- Location of trading
- Operation times
- Litter control
- Any other conditions as are reasonable and proportionate

7.2 Street trading consents are available for a maximum of 12 months and will be issued pro rata where requested.

8. Application criteria

8.1 Except as outlined in paragraph 6.1, applicants for street trading consents have a public interface, often with children and vulnerable persons. Applicants will therefore be required to submit a current (a maximum of 28 days old) "subject access search" from the Police National Computer (PNC) or other approved Criminal Record Disclosure before consent is issued and for every vendor involved in the operation of the consent. A copy of the criteria used in the assessment of convictions is attached at Appendix A.

8.2 Organisers of events may hold an 'umbrella style' consent to cover commercial traders at their events subject to the necessary consent being applied for and a suitable PNC check or other approved Criminal Record Disclosure being submitted.

8.3 Applications may be submitted in hard copy or electronically and must include a plan showing the location of proposed trading, a description of the goods to be sold, the contact details of the consent holder and vendors and,

where trading takes place from a stall, cart or vehicle, a photograph of said stall, cart or vehicle. The Council will also request any other information deemed necessary and reasonable to determine the application.

- 8.4 The applicant will be responsible for obtaining any other permissions, including permissions from the planning and highway authority and the land owner's consent to trade on the street. The applicant will be required to provide written confirmation of the land owner's consent to trade on the street.

9. Consultation

- 9.1 Following receipt of an application for a street trading consent the Council will consult;

- The South Wales Police
- The highway authority
- The planning authority
- Bridgend County Borough Council Town Centre Manager
- Bridgend County Borough Council Property Department
- Bridgend County Borough Council Public Protection Department
- Bridgend County Borough Council Streetworks Manager
- Local Chamber of Trade or other similar representative group
- Public Consultation will be via the Council's website www.bridgend.gov.uk
- Head Teachers

10. Street Trading Consent Fees

The level of fees will be reviewed annually as part of the normal budget exercises. Any default in payment in fees will render the consent void. Fees for consents will be waived in the following circumstances: trading as part of small scale charitable or community type events where the organiser can demonstrate that the organisation and the event are non-profit making.

11. Appeals process/redress

- 11.1 The legislation does not make provision for an appeal to be brought against the refusal of a consent. Redress in the first instance should be sought via the Group Manager Public Protection or via the Council's Corporate Complaints service. More details of this service can be accessed at www.bridgend.gov.uk

12. Food premises registration

- 12.1 Although not forming part of this policy applicants are reminded of the need to register food businesses with the local authority. Registration involves completing an application form. There is no charge for registration but new businesses must register at least twenty eight days before they intend to open so as to enable appropriate advice to be given by Council officers. More information can be accessed at publicprotection@bridgend.gov.uk

13. “Grandfather” rights

13.1 Following the adoption of this policy, the Council will depart from the above criteria in order to give special consideration to applications from existing traders in areas where controls did not previously exist who can provide evidence of long standing or permanent trading from a site, providing they are in possession of the land owner’s permission and all other relevant permissions relating to the trading operation, and where the trading operation does not:

- Obstruct the free flow of traffic movement
- Take place in narrow or restricted areas where the activity would cause congestion and impinge on public safety
- Take place in areas required for servicing, deliveries or emergency access
- Conflict with the policy guidelines relating to trading close to schools or have a detrimental effect on the character of an area.

14. Enforcement

14.1 The Council will adopt a risk based approach to enforcement and regulation and follow the Council’s enforcement protocols. The aim of the approach is to ensure proportionality, consistency and transparency. It is likely that trading associated with small scale charitable events will be subject to a “light touch” approach to regulation. Advice and sources information will be provided to organisers to include as a minimum food hygiene and health and safety requirements.

STATEMENT OF POLICY IN RESPECT OF THE LICENSING OF EX-OFFENDERS IN RESPECT OF STREET TRADING CONSENT APPLICATIONS

The following is a description of the Council's general approach to certain categories of offences but each case will be dealt with on merit. The main considerations in each case will be the safety of the public, the fact that traders do not trade from premises and may therefore have unsupervised access to the public, and in particular the young and vulnerable. In all cases, greater weight will be given to convictions where the victim was a young or vulnerable person and those relating to trading, counterfeiting or similar offences.

Dishonesty

Members of the public using a street trading outlet expect the holder and his/her assistant to be honest and trustworthy. For this reason a serious view will be taken of any conviction involving dishonesty. In general, an applicant for the grant or renewal of a street trading consent is unlikely to be granted a street trading consent where the application is made within 3 to 5 years of a conviction for dishonesty of any kind.

Violence

As street traders and their assistants have close contact with the public, a firm line will be taken with applicants who have convictions for violence. In cases where the commission of an offence involves loss of life, a street trading consent will normally be refused.

In other cases, a period of 3 to 10 years free of conviction from the date of conviction or the date of release where a custodial sentence has been imposed, depending upon the nature and seriousness of the offence(s), will generally be required before an application is likely to be considered favourably.

Misuse of Drugs

A very serious view will be taken of convictions relating to the supply or importation of drugs and is likely to result in the refusal of a consent.

For a conviction relating to the possession of drugs the applicant should be free of conviction for at least 5 years at the date of the application.

Sexual and indecency offences

As the holders of street trading consents and their assistants may have access to unsupervised children or the vulnerable applicants who have convictions for rape, indecent assault, any sexual offence involving children and any conviction for an offence under the Sexual Offences Act 2003 will normally be refused a street trading consent.

Motoring convictions

In most cases, motoring offences are unlikely to be relevant when deciding if an applicant for a street trading consent is a suitable person. Each case will be dealt with on its merits with greater weight being given to convictions attracting a disqualification.

Formal cautions and fixed penalty notices

For the purposes of these guidelines, the Council will treat relevant Formal Cautions and fixed penalty notices as though they were a conviction before the courts.

The policy shall also apply to any registered assistants.