

# BRIDGEND COUNTY BOROUGH COUNCIL

## REPORT TO LICENSING COMMITTEE

4 OCTOBER 2011

### REPORT OF THE ASSISTANT CHIEF EXECUTIVE LEGAL AND REGULATORY SERVICES

#### REVIEW OF STREET TRADING IN THE COUNTY BOROUGH

##### 1. Purpose of Report

To report back on a consultation exercise undertaken in connection with the above review and seek approval to adopt a new street trading Order.

##### 2. Connection to Corporate Improvement Objectives/Other Corporate Priorities

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

##### 3. Background

At the meeting held on 19 January 2011, the Committee received a report on proposed changes to the designation of streets within the County Borough for the purposes of street trading and on a proposed street trading policy. The Committee approved a further consultation and public notice of the proposals, the results of which are set out below.

##### 4. Current situation / proposal

##### 4.1 One of the proposals is to relax the current ban on street trading in John Street Porthcawl, to allow trading by consent as part of Council approved themed events or festivals.

Our Pet Shop at 55 John Street Porthcawl responded by stating that: *“as traders, shopkeepers and property owners in John Street for many years, we wish to state our strong objections to the laws being re-addressed.*

*It is obvious that the prohibition of street selling was introduced to protect the bona fide traders from being undermined.*

*We already face a major problem from Utility selling – clipboard holders, mobile phone reps, buskers etc.”*

The objection then referred to the activities of Utility companies which offer their services in town centres. However, In order for an activity to qualify as street trading, and to fall within the remit of this review, there must be a physical exchange of goods. For the same reason, other street activities such as charity collections, pedlars, busking etc cannot be considered as part of this review as they are

covered by separate legislation. The objector's concerns will, however, be referred to the Council's Town Centre Manager.

The objector concludes their letter by stating: *"we believe the town (Porthcawl) is vibrant enough without undermining the bona fide traders who pay far too much in council tax for the privilege."*

This was the only letter of objection received from a trader.

- 4.2** Porthcawl Town Council has responded that at the full Council meeting held on 23 June 2011, *"Members acknowledged that the proposal referred to "approved themed events. It was noted that in the past street trading controls have provided an obstacle for many events wishing to take place in the town, and the proposed changes would remove this obstacle to a certain extent. The proposed changes are flexible however and firm on inappropriate trade in the town... Porthcawl Town Council supports the proposed changes."*
- 4.3** Councillor Norah Clarke requested clarification on how long in advance potential traders would need to apply for street trading consents as each application will need to be consulted upon quite extensively. A guidance note has been included within the policy suggesting that at least two months' notice of application should be given.
- 4.4** The proposed review would also be in Maesteg Town Centre and districts within street trading controls for the first time. Maesteg Town Council responded with *"strong support of the changes to street trading controls borough wide, which it hopes will alleviate several problems that are currently being experienced in the Maesteg area."* No specific problems were highlighted in the response.
- 4.5** The proposed review would bring all areas of the County Borough into the street trading regime and Coity Higher Community Council responded that they had no objections to the proposals.
- 4.6** The Head of Street Scene welcomed the policy as it will assist with dealing with new burger vans, static car sales etc. Some specific comments regarding the policy document are dealt with below.
- 4.7** The consultation involved two statutory agencies, the Police and highway authority as well as all town and community councils, other agencies and Council departments, the Community Safety Partnership, Tourism Department and a representative of the voluntary sector. Finally, letters were given to traders who are not currently affected by street trading controls.
- 4.8** The Head of Streetscene suggested refining the criteria set out in the draft policy for refusing a consent:
- sales of vehicles from or adjacent to the highway other than from premises with the appropriate planning consents in place
  - in close proximity to schools, playgrounds or other community facilities regularly used by children
  - that will result in anti-social behaviour and litter
  - that is likely to obstruct the free flow of traffic and pedestrian movement or otherwise cause a hazard to other road users

- that leads to the contravention of any traffic regulation order or advice given in the Highway Code
- that takes place in narrow or restricted areas where the activity would cause congestion or impact on public safety
- that takes place in areas requiring servicing, deliveries or emergency access
- that have a detrimental effect on the character of an area

**4.8.1** He has also requested minor amendments to the policy in respect of consultation (paragraph 9.1) and for the definition of registered assistant in the statement of policy in respect of the licensing of ex-offenders. The revised policy document is attached at Appendix A for consideration.

**4.9** The Town Centre Manager has responded by saying that she *“fully supports the proposed changes to the street trading controls for Bridgend County Borough Council. The new policy, which will remove the prohibition on trading in Porthcawl town centre to allow for trading in connection with approved themed events, will help with the Council’s objectives to enhance the vibrancy of Porthcawl. This will enable the introduction of themed events such as continental markets which can attract visitors from outside the immediate area, therefore increasing footfall to the town and capturing retail spend. This is essential in supporting the viability of the town centre during the current economic climate.”*

**4.10** Members will recall that the original impetus for this review arose because there are no street trading controls in Maesteg and problems were being experienced with a sweet van trading in close proximity to a school. Further informal consultation highlighted the problems being experienced from rogue traders selling cars at the side of the road, and the prohibition on trading in Porthcawl which was preventing trading in connection with festivals and other events. Members were advised that one solution to these issues would be to adopt a borough wide approach to the control of street trading and to review the policy underpinning the decision making process.

**4.11** A recent press report confirms that Rhondda Cynon Taff County Borough Council has also amended its street trading policy to ban street trading during school hours and term times in roads surrounding two of its Comprehensive Schools.

**4.12** The proposals have been reviewed in the light of concerns that low risk non-commercial events such as school fetes and community events would be brought into the licensing regime causing an unnecessary burden on these organisations. Further research has established that it is possible to determine as part of the authority’s policy, that certain street trading activities will not require the consent of the Council. It is proposed that these events should not fall within the trading regime except where the organisers invite commercial traders to participate in the event. As a result, it is proposed that the policy guidelines are amended as follows:

**4.12.1** The following street trading activities have been deemed to not require the consent of Bridgend County Borough Council:

- ❖ Trading at outdoor school fetes, school carnivals, school car boot sales or other non-profit making events. Any commercial vendor attending such events will be required to hold a street trading consent.

- ❖ Trading at community fun days or similar events organised by non-profit making organisations. Any commercial vendor attending such events will be required to hold a street trading consent.
- ❖ Sales of articles by residential occupiers within the curtilage of their properties

**4.13** In conclusion, if Members are minded to proceed with the initiative, it will bring the whole of the County Borough under street trading controls, to enable action to be taken in areas of consumer protection which are currently causing concern, namely the sale of cars on the roadside. Secondly, it will allow remove the prohibition on trading in Porthcawl Town Centre and other streets but trading will only be permitted with the express consent of the Council. The proposed policy affords a measure of control over the types of trading that will be allowed with the emphasis on consent being given to trading connected to Council approved themed events. Finally, it will enable action to be taken where food vendors cause a nuisance around schools.

Although one objection has been received from a local trader, the current prohibition on trading in Porthcawl town centre means that any festival or event in the Town Centre cannot include stalls or other trading. Some of the issues raised in the objection cannot be addressed by a street trading policy or controls, and this means that legitimate Pedlars (in possession of a Certificate issued by the Police) will be able to sell goods irrespective of whether the Council changes its street trading policy.

**4.14** The Committee has already declared its intention to pass a resolution to amend the current scope of street trading controls in the County Borough of Bridgend. If, having considered the objections and representations received, Members are minded to proceed with the resolution, it will be necessary to set a date for the coming into force of the new designations of streets, formally pass the resolution, and give public notice of the fact, for two consecutive weeks in a local newspaper circulating in the area. Members are also requested to approve the accompanying policy document so that a licensing scheme can be implemented. The proposed date for the new designation to come into force is 14 November 2011.

## **5. Effect upon Policy Framework & Procedure Rules**

When considering applications for street trading consents, the street trading policy will inform the decision making process, but each case must be dealt with on its merits.

## **6. Equality Impact Assessment**

**6.1** An Equality Impact Assessment Screening has been undertaken. This identified that the policy proposals were likely to have a low impact on equality groups and duties. No equality issues were highlighted during the consultation process. Adverse impact of this policy on the equality protected groups is therefore very unlikely. It is not considered, on the basis of the above, that a detailed Equality Impact Assessment is required but in line with our Inclusive Equalities Scheme we

will monitor for any adverse impacts that may develop once the policy is implemented.

## **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.

## **8. Recommendations**

- 8.1 That the Committee pass the following resolution to vary the designation of streets, for the purposes of street trading controls as follows:

“Pursuant to Paragraph 2 of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 the following designations of streets shall come into force with effect from 14 November 2011: 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 includes any part of a street and all forecourts, roads, footways or other areas adjacent to the streets referred to in this resolution for a distance of thirty metres. 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 approve the publication of a revised street trading policy attached at Appendix A to this report.

**P A Jolley**  
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**28 September 2011**

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## **Background documents**

Consultation response letters

Article – Unlicensed fast food vending banned near schools in Wales available at [www.costsectorcatering.co.uk/online](http://www.costsectorcatering.co.uk/online) article

Street Trading Policy – Caerphilly County Borough Council available at [www.Caerphilly.gov.uk](http://www.Caerphilly.gov.uk)

**BRIDGEND COUNTY BOROUGH COUNCIL  
STREET TRADING POLICY**

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

**1.0 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.

**2.0 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.

2.1 The following street trading activities have been deemed to not require the consent of Bridgend County Borough Council:

- Trading at outdoor school fetes, school carnivals, school car boot sales or other non-profit making events. Any commercial vendor attending such events will be required to hold a street trading consent.
- Trading at community fun days or similar events organised by non-profit making organisations. Any commercial vendor attending such events will be required to hold a street trading consent.
- Sales of articles by residential occupiers within the curtilage of their properties

2.2 For the purposes of this document, the term relevant representations means, representations made by a statutory or enforcement agency, Council department, or a person who is likely to be affected by the trading. Relevant representations could include matters relating to obstruction of the street, danger to persons using it or nuisance or annoyance, whether to persons using the street or otherwise, factors which are set out in the Act.

### **3.0 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. Consents will normally be issued for a specific site and will not be transferrable.

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 Act a street is defined as any road, footway, beach or other area to which the public has access without payment. The designation includes any part of a street, and all forecourts, roads, footways or other areas adjacent to the streets for a distance of thirty metres.

3.4 Subject to statutory exemptions a street trading consent is required for the sale of any goods in the streets (as defined in paragraph 3.3) 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 for trading on any part of the pedestrianised town centre areas or any maintainable highway. The grant of a consent does not guarantee that other types of permission or application required will be granted automatically and event organisers are urged to contact the Council at the planning stage to discuss their event in more detail.

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.

#### **4.0 Town Centre and Outer Zone policy**

4.1 The aim of the policy is to encourage vibrant town centres and minimise nuisance in residential areas. 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 In the town centre zones, 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 In addition, there will be a presumption of refusal of consent if the following factors apply:

- a. The sale of vehicles from or adjacent to the highway other than from premises with the appropriate planning consents in place
- b. Trading in close proximity to schools, playgrounds or other community facilities regularly used by children 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.
- c. Trading that will result in anti-social behaviour and litter
- d. Trading that is likely to obstruct the free flow of traffic and pedestrian movement or otherwise cause a hazard to other road users
- e. Trading that will lead to the contravention of any traffic regulation order or advice given in the Highway Code
- f. Trading that takes place in narrow or restricted areas where the activity would cause congestion or impact on public safety
- g. Trading that takes place in areas requiring servicing, deliveries or emergency access
- h. Trading that will have a detrimental effect on the character of an area



- 4.5 The type of goods to be sold at themed events such as food festivals or seasonal 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 For all other outer areas of the County Borough, each application will be dealt on its merits but there will be a presumption of refusal of consent in the following circumstances:
- a. The sale of vehicles from or adjacent to the highway other than from premises with the appropriate planning consents in place
  - b. Trading in close proximity to schools, playgrounds or other community facilities regularly used by children 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.
  - c. Trading that would will result in anti-social behaviour and litter or noxious smells
  - d. Trading which would obstruct the free flow of traffic and pedestrian movement or otherwise cause a hazard to other road users
  - e. Trading that will lead to the contravention of any traffic regulation order or advice given in the Highway Code
  - f. Trading in narrow or restricted areas where the activity would cause congestion or impact on public safety
  - g. Trading in areas requiring servicing, deliveries or emergency access
  - h. Trading which will have a detrimental effect on the character of an area

## **5.0 Street Trading Consent conditions**

- 5.1 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 to include consent being limited to a single location.
- 5.2 Street trading consents are available for a maximum of 12 months and will be issued pro rata where requested.

## **6.0 Application criteria**

- 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 assistant involved in the operation of the consent. A copy of the criteria to be used in the assessment of convictions is set out below. The Licensing Sub-Committee will determine applications from persons with unspent criminal convictions and other cases where an applicant is considered unsuitable to hold a consent.
- 6.2 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.
- 6.3 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.
- 6.4 Applicants are advised to apply at least eight weeks in advance of the event.
- 6.5 The level of street trading fees will be reviewed annually as part of the normal budget exercises. Any default in payment in fees will render the consent void.

## **7.0 Consultation**

7.1 Following receipt of an application for a street trading consent the Council will consult (where applicable);

- The South Wales Police
- Group Manager Highways
- Group Manager Transportation
- 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](http://www.bridgend.gov.uk)
- Head Teachers – close to application site

## **8.0 Appeals process/redress**

8.1 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](http://www.bridgend.gov.uk)

## **9.0 Food premises registration**

- 9.1 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](mailto:publicprotection@bridgend.gov.uk)

## **10.0 “Grandfather” rights**

- 10.1 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. Consent to trade in the following goods, or in the following locations is likely to be refused in the following circumstances:

- a. The sale of vehicles from or adjacent to the highway other than from premises with the appropriate planning consents in place
- b. Trading in close proximity to schools, playgrounds or other community facilities regularly used by children 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.
- c. Trading that will result in anti-social behaviour and litter
- d. Trading that is likely to obstruct the free flow of traffic and pedestrian movement or otherwise cause a hazard to other road users
- e. Trading that will lead to the contravention of any traffic regulation order or advice given in the Highway Code
- f. Trading that takes place in narrow or restricted areas where the activity would cause congestion or impact on public safety
- g. Trading that takes place in areas requiring servicing, deliveries or emergency access
- h. Trading that will have a detrimental effect on the character of an area

## **11.0 Enforcement**

- 11.1 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 and traders will be given a reasonable period of time to apply for the necessary consents. Advice and sources information will be provided to organisers via the Council’s website or via other means where requested.

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

12.1 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.

### **12.2 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.

### **12.3 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.

### **12.4 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 depending on the circumstances.

### **12.5 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 be refused a street trading consent.

### **12.6 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.

#### **12.7 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.

**12.8** The policy shall also apply to any person who assists the consent holder to trade.

**This policy is available in Welsh and in other formats on request**

**Date of issue:**