

# **NORTHUMBERLAND COUNTY COUNCIL**

## **STREET TRADING POLICY**

**Version (5)(3) August 2011**

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## **Local Government (Miscellaneous Provisions) Act 1982**

### **Street Trading**

Northumberland County Council are considering adopting Schedule 4 of the Local Government (Miscellaneous provisions) Act 1982 enabling them to control Street Trading within the administrative area of the Council.

### **Objectives of the Policy**

- To protect health through the control of street trading within the County of Northumberland.
- To improve standards of food safety, health and safety and environmental management and enhance the image of the district.
- Ensuring that traders operate within the law and act fairly in their dealings with the public.
- Preventing and detecting statutory nuisance, unsafe practices and anti social behaviour.
- Set out in a fair and transparent manner, how the Council intends to harmonise the terms and conditions across Northumberland in licensing street trading provision.

### **Equal Opportunities Statement**

This policy shall take into account the aims Northumberland County Council's Equal Opportunities Policy which is committed to achieving equality for all by removing direct and indirect discrimination on the grounds of:

- Age
- Gender or transgender identity
- Race, colour, nationality, national or ethnic origin, being a traveller or gypsy
- Disability, including people with a hearing impairment, people with a visual impairment, people with learning disability, people with a mental illness, and people living with HIV and AIDS
- Religious belief or non-belief, or other beliefs
- Marital status, family circumstances, or caring responsibilities
- Sexual orientation
- Income, employment status or housing circumstances
- Membership or non-membership of trade unions, or involvement in trade union activity
- Offending Status
- Any other ground that cannot be shown to be justified

### **Definitions**

"Authorised Officer" - An officer of the Council authorised by it to act in accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1982.

"Consent" - A consent to trade on a street granted by the Council, pursuant to Paragraph 7, Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.

"Consent Holder"-The person or company to whom the consent to trade has been granted by the Council.

"Consent Street"- Means a street in which street trading is prohibited without the consent of the Council.

"Council" means Northumberland County Council.

“Street” means any road, footway or other area to which the public have access without payment, or any part of a street, including all roads, footways and areas open as a matter of fact to the public without payment within the distance of 30metres from the centre of those streets which are part of the public highway.

### **Street Trading Events for which fees are non payable**

Northumberland County Council will not require the payment of fees for the following activities:

- Fete’s, carnivals or similar community based and run events
- Non – commercial or charitable events
- Farmers Markets ( Producer managed market place for local producers to sell their own produce direct to local people)
- Sales of articles by householders on land contiguous with their own homes.
- Community fairs and craft events
- Events celebrating local anniversaries
- Operators of statutory services who’s trading is ancillary to it’s main activity i.e. “mobile libraries who sell restricted goods to the community as part of their service”

Street trading events for which fees are not payable will be exempt from the full application process but organisers of such events must give prior notification of their event to the Council at least 14 days prior to the event taking place, stating the name and address of the organiser, type/nature of event, day and time of event and event duration. Each application will be judged accordingly to its merit and any applications which fall outside this policy, or those that attract relevant objections will be determined by the relevant sub-committee.

Street Trading: - The selling or exposing or offering for sale of any article (including a living thing) in any street. The following are not street trading for the purposes of this policy:-

- A pedlar with a pedlars certificate
- Anything done in a market or fair the right to hold which was acquired by virtue of a grant (including a presumed grant) acquired or established by virtue of an enactment or order.

Note: Special market events may fall within the scope of this policy but where the events are of a “charitable purpose” they will be dealt with under the Police, Factories, Etc. (Miscellaneous Provisions) Act 1916 (street collections or sales). This policy is aimed at promoting events and encouraging more traders to attend them.

- Trading in a trunk road picnic area provided by the secretary of State under section 112 of the Highways Act 1980.
- Trading as a news vendor selling only newspapers/magazines
- Trading which is carried on at premises used as a petrol filling station or is carried on at premises used as a shop or in a street adjoining premises so used and as part of the business of the shop.
- Selling things, or offering or exposing them for sale, as a roundsman eg window cleaner.

Note: These have defined routes and defined customers. Ice cream sales will not normally be exempt from street trading controls on the grounds that they are not a roundsman.

- The use for trading under Part VIIA of the highways Act 1980 of an object or structure placed on, in or over a highway.
- The operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980
- The doing of anything authorised by regulations made under section 5 of the police, factories etc (Miscellaneous Provisions Act 1916)

## **Fees**

Street trading fees may be found at Appendix 1. The Council will consider a range of payment options as appropriate to the cost and duration of the consent sought.

A Street Trading consent cannot be issued for more than one year. The fees will be reviewed annually. The fees charged by the authority for consents to trade should cover the cost of administration and monitoring. The Consent shall be clearly displayed at the point of sale and produced for inspection at the request of an Authorised Officer of the Council or an Officer from Northumbria Police.

Should the consent holder wish to vary the consent at any time during the life of the consent an administration fee will be charged. This includes transfer of consent.

Where a trading consent is surrendered during the life of the consent the authority will refund the fee paid on a pro rata basis as appropriate less the administrative charge.

It is possible for the authority to charge different fees for the consents that are for different durations or locations such as a pro rata rate for occasional consents or concessionary consents in certain circumstances.

Registered charities and market traders (on market days only) who hold licences from the Council are exempt from the requirements to hold a street trading consent.

## **Determination of the Application**

The Public Safety and Enforcement Manager acting on delegated powers will use the criteria listed below in determining any Street Trading Consents. Similarly any objections received will be considered against these criteria. All should normally be satisfied, with equal weight applied to the criteria listed. Each case will be assessed on its merits and individual circumstances, where appropriate, may be taken into consideration.

## **Type of Goods For Sales**

The suitability of goods to be sold will be determined on a case by case basis. The Council will be mindful of and take account of all relevant matters, including local shopping needs, diversity, balance and conflict with nearby commercial shops and trading vehicles.

The following are likely to be considered not suitable:

- Age restricted products;
- Second hand gas and electrical appliances;
- Pets & livestock;
- Explosive and inflammable products;

- Motor vehicles;
- Alcohol
- Other goods as may be identified by the Licensing and Regulatory Committee.

The types of goods approved as part of this policy for street trading will include those below (subject to the pitch location) but is not exclusive:

- Arts/Crafts
- Jewellery
- Candles
- Paintings (include portraits/face painting)
- Balloons
- Confectionary/Nuts/Doughnuts
- Ice cream
- Hot potato vendors
- Crepes/Waffles

### **Site Criteria including Conditions**

When granting or renewing a trading consent the authority may attach such conditions as considered necessary to the individual application. The Council retains the right to vary the conditions of a street trading consent at any time. The conditions may specify the exact location trading may take place from and the times of trading.

The Council will normally grant a street trading consent unless, in its opinion:-

- A significant effect on road safety would arise either from the sighting of the trading activity itself, or from customers visiting or leaving the site, or
- Where there are concerns over the recorded level of personal injury accidents in the locality where the street trading activity will be sited, or
- There would be a significant loss of amenity caused by traffic, noise, rubbish, potential for the harbourage of vermin, odour or fumes, or
- There is already adequate like provision in the immediate vicinity of the site to be used for street trading purposes, or
- There is a conflict with Traffic Orders such as waiting restrictions, or
- The site or pitch obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use for street trading purposes, or
- The trading unit obstructs the safe passage of users of the footway or carriageway, or
- The pitch interferes with sight lines for any road users such as at road junctions, or pedestrian crossing facilities, or
- The site does not allow the Consent Holder, staff and customers to park in a safe manner, or
- 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 or
- If the site is within the immediate vicinity of a school, the sale of food and confectionary may not be allowed between the hours of 10 am and 2pm Monday to Friday in circumstances where there is adverse impact upon the school or the pupils who attend the school. This restriction will be lifted outside of term time as defined by Northumberland County Council.
- If the area stated is in a residential location where trading would not normally take place or
- That any site not under the control of the Council has written permission from the landowner and this permission is submitted to the appropriate licensing department of the Council with the application.

- If the consent holder is trading in a manner that is likely to cause a nuisance or annoyance;

All applications will be considered individually and on merit. Consents will be valid for a maximum period of one year.

It is the responsibility of each individual trader to seek advice from the Council's Planning Services as to whether planning consent is required. This is likely to be more pertinent if the trade is likely to operate for more than 28 days in any one year.

### **Locations**

In considering the suitability of a street trading location account will be taken of:

- road safety;
- existing traffic restrictions;
- obstruction of free and safe passage;
- loss of public amenity.

### **Application Process**

An application for a street trading consent must be made in writing on the Council's approved application form. Application forms and information packs are available from the authority or downloadable from the website.

An applicant for a licence must be aged eighteen or over.

A "duly" made application must include or be accompanied by the following:

- a) A completed and signed Street Trading Consent Application Form
- b) The fee as appropriate for the periods of trading applied for
- c) Where the proposed street activity is from a fixed position, a copy of a map of at least 1:125 scale. The map should clearly identify the proposed site position by marking the site boundary with a red line
- d) One colour photograph of the stall, van, barrow, cart etc that will be used for the street trading activity
- e) An original copy of the certificate of insurance that covers the street trading activity for third party and public liability risks
- f) A personal statutory declaration as to the applicants "fitness and propriety" including the disclosure of non spent convictions.
- g) If relevant, evidence of registration under the Food Safety Act 1990

The Council may require the application to be advertised in the vicinity of the proposed location for a period of 21 days should they see fit.

On receipt of the application form an acknowledgment will be sent to the applicant.

An officer may visit the applicant and inspect the vehicle, barrow, cart, van, portable stall or other vehicle or premises which the applicant intends to trade from.

The Council will seek to determine all applications within a maximum of 56 days of receipt.

Until the application has been determined it is an offence to trade in the areas requiring a consent to trade.

The Council will usually grant a consent for a period of either 6 or 12 months but will consider granting consents for varying periods.

The application will either be;

- 1) Granted and a trading consent will be issued with conditions attached upon receipt of the appropriate fee, or
- 2) Refused, in which case the administration fee will not be returned.

The Council may have regard to the number, nature and type of traders already trading within a consent area when determining an application.

Additional visits may be made to holders of trading consents throughout the consent period to assess compliance with the conditions or to undertake any other duty that the authority has, such as food hygiene inspections.

Trading consents are granted to individuals. The person who is the consent holder is required to be present at the vehicle, barrow, cart, van, portable stall or other vehicle or premises which are traded from during trading hours. The consent holder may nominate an assistant to cover their absence. Advice on this should be sought from the Licensing team.

For special events such as Christmas markets or Continental Street Markets, the Council will issue one consent to the person organising the event rather than to each individual trader.

### **Renewal of Trading Consents**

An application to renew a trading consent must be received by the authority at least 14 days before the expiry of an existing consent and must be accompanied by the appropriate fee and relevant documentation.

### **Revocation of a Trading Consent**

If an authorised officer of the authority is of the opinion that the holder of the trading consent has contravened the conditions attached to the consent a revocation of the consent may be sought.

The authorised officer will present a report to the Public Safety and Enforcement Manager who will consider this in consultation with the Chair of the Licensing and Regulatory Committee for consideration.

Comments from the consent holder would be sought to accompany the report.

### **Consultations on Applications Made**

Before a Street Trading Consent is granted or renewed the Council **may** carry out a consultation process with various persons and groups. In particular the following organisations or persons may be consulted:

- The Highway Authority
- Northumbria Police
- Northumbria Fire and Rescue Service
- The local town or parish council
- Occupiers of premises in the vicinity of the proposed trading location
- The local chamber of trade
- Trading Standards



For new applications, in addition to the above, further consultations may also be carried out with property owners within 100 metres of the proposed site. This consultation will be by the Council sending copies of the Application Form to the relevant property owners.

Written observations from the above organisations and occupiers of properties will be sought and taken into consideration when determining an application.

### **Consent Holder**

The consent holder shall not dispose or transfer his/her consent for street trading to another person without the consent of the Council. In the event of the death of the consent holder the consent may be operated by the next of kin for up to fifty six days until such time as a formal consent transfer can be conducted.

### **Amendments or Variations to Trading Consents**

In certain circumstances, the Council may wish to add, alter or amend the conditions on a trading consent. If this is the case then the authorised officer will notify the consent holder of their intention and the consent holder will be given the chance to make representations against this variation of the trading consent.

The authorised officer will present a report to the Public Safety and Enforcement Manager for consideration who will also take into consideration the representations made if any. Any amendments or variations to consents or conditions that are requested by consent holders must be made in writing. An administration fee will be charged to the consent holder for any amendments or variations made.

There is no statutory right of appeal against the Council's decision to refuse, amend or vary a consent but the Council will as set out in this policy, make provisions for appeals to be heard by a sub-committee of the Licensing and Regulatory Committee.

### **Guidance on the Relevance of Convictions**

The details of any convictions will be treated in strict confidence. If an applicant has previously been convicted of an offence this will not necessarily debar them from holding a consent unless the authority considers that the conviction renders them unsuitable. In making this decision the Council will consider the nature of the offence and how long it has been since they were convicted in accordance with the following information. In considering previous convictions the following matters will be taken into account:

- a) whether the conviction is relevant;
- b) the seriousness of the offence;
- c) the length of time since the offence occurred;
- d) whether there is a pattern of offending behaviour;
- e) whether that person's circumstances have changed since the offence occurred;
- f) the circumstances surrounding the offence and the explanation offered by that;

### **Dishonesty**

The holders of a street trading consent and their assistants have to be persons who can be trusted. It is easy for a dishonest trader or assistant to take advantage of the public. Members of the public using a street trading outlet expect the holder and any assistant to be honest and trustworthy. For these reasons 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 from the date of conviction. Similarly a person wishing to be registered as an assistant to a street

trading consent holder is unlikely to be registered where registration is sought within 3 to 5 years from the date of conviction.

## **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. Generally, a period of 3 to 5 years free of conviction will be required before an application is likely to be considered favourably.

## **Drugs**

An applicant with a conviction for a drug related offence should be required to show a period of at least 3 years free of convictions before an application is entertained, or 5 years after detoxification treatment if he/she was an addict.

## **Indecency Offences**

As street traders regularly come into contact with young children, applicants with convictions for indecent exposure, indecent assault, importuning, or any of the more serious sexual offences, should be refused until they can show a substantial period (at least 3 to 5 years) free of such offences. More than one conviction of this kind should preclude consideration for at least 5 years. In either case if a consent is granted a strict warning as to future conduct should be issued.

## **Motoring Convictions**

Motoring offences are unlikely to be relevant when deciding if an applicant for a street trading consent or to be registered as an assistant to the holder of a street trading consent is a suitable person. However, there may be instances where the offences are not isolated and are of a very serious nature. In such circumstances the applicant should be required to show a period of one to three years free of conviction.

## **Formal Cautions and fixed penalty notices**

For the purposes of these guidelines, the Council may treat Formal Cautions issued in accordance with Home Office guidance and fixed penalty notices as convictions.

## **Regulatory Sub-Committee Hearings**

A panel of members from the Regulatory Sub-Committee will be set up to hear any appeal of a decision of the Public Safety and Enforcement Manager in relation to the refusal of a consent, goods deemed not suitable for sale or against a condition imposed on a consent. The panel of members will be made up of not less than three elected members.

In all cases where an adverse Criminal Records Bureau disclosure is received the application will be determined by a panel of members from the Regulatory Sub-Committee in accordance with the Guidelines on the relevance of convictions (detailed above).

## **Offences**

Under the Local Government (Miscellaneous Provisions) Act 1982, a person who;

- Engages in street trading in a consent street without being authorised to do so;
- Being authorised by a street trading consent to trade in a consent street, trades in that street

- (i) from a stationary van, cart, barrow or other vehicle; or
- (ii) from a portable stall,

without first having been granted permission to do so;

-Contravenes a condition imposed in agreeing to permit street trading shall be guilty of an offence.

It shall be a defence for a person charged with an offence above to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence.

Any person who, in conjunction with an application for a street trading licence or for a street trading consent, makes a false statement which he knows to be false, in any material respect, or which he does not believe to be true, shall be guilty of an offence.

Any action taken by the authority with regard to the above offences will have regard to the Councils appropriate enforcement policy.

A person found guilty of an offence shall be liable on summary conviction to a fine not exceeding level 3 on standard scale.

### **Further Information**

For further information in relation to street trading please contact:

Public Protection & Licensing  
Northumberland County Council  
County Hall  
Morpeth  
Northumberland  
NE61 2EF

Tel: 0845 600 6400

## **APPENDIX 1- Fees**

Street Trading Consents will normally be issued for one of the following periods:

All applications where a charge is payable shall be subject to £50 non refundable application with the individual amount as specified below to be payable upon approval of the street trading consent

- |                |      |
|----------------|------|
| 1. Daily       | £15  |
| 2. Weekly      | £25  |
| 3. Monthly     | £75  |
| 4. Half Yearly | £150 |
| 5. Annually    | £300 |

Organised special events with multiple traders

Number of Stalls	Fee (Daily)
1-9	£50
10-29	£100
30-49	£150
50 and above	£200