

APPENDIX 1

GENERAL POLICY AND CONDITIONS

FOR STREET TRADING CONSENT

DRAFT

APPENDIX 1

Contents	Page
1 General Information	3-4
2 Legislation	4
3 Application Process	4-6
4 Licensing Process and Delegation of functions	6-7
5 Consultation on Application for Consents	7
6 Renewals	8
7 Decisions	8
8 Exemptions	8
9 Hours of Trading	9
10 Trading on Market Days	9
11 More than one trader in a location	9
12 Special Events	9
13 Markets	9
14 Planning Permission	10
15 Licensing Act 2003	10
Appendix A – Criteria for Assessing Applications	11
Appendix B - Conditions	12

APPENDIX 1

1. General Information

1.1 The aim of this policy is to prevent obstruction of the streets of the District of South Kesteven and ensure the safety of persons using them. In doing so, it recognises the importance of licensed 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 of the area.

1.2 Consultation

In determining this policy, the council has consulted with the following people and bodies:

- Chief Constable of Lincolnshire Police
- Lincolnshire Fire and Rescue Service
- Lincolnshire Highways Department
- Town and Parish Councils
- Business Clubs/Chamber of Trade
- All current consent holders

We have also consulted various other professional people within the Council. These include:

- Environmental Health
- Planning
- Waste and Recycling
- Legal Services
- Property and Facilities
- Chair and members of the Licensing Committee

1.3 We have considered and taken into account the views of all the appropriate bodies and organisations

1.4 Review of the Policy

This policy will be reviewed every five years. At the time of the review, we will again consult all interested parties. As well as the five-yearly reviews, we will continue to evaluate the policy and may update it at any time. Any minor changes will be agreed by the Licensing Committee.

1.5 Contacts:

The licensing function is part of Environmental Services. Our address is:

Licensing Department
Council Offices
St Peter's Hill
Grantham NG31 6PZ

APPENDIX 1

- 1.6 To ask about any licensing issue, first contact the Licensing Team on 01476 406190, or visit the website: www.southkesteven.gov.uk, or via e-mail on licensing@southkesteven.gov

2. Legislation

- 2.1 Street Trading is controlled in accordance with the provisions contained in Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (hereinafter referred to as 'The Act'). The Council adopted this schedule at the time of its enactment.
- 2.2 On 1 September 2006 the Council designated the whole of South Kesteven a consent area. As a result, **all streets** within South Kesteven District are designated as Consent Streets. This means that anyone who wishes to trade on a street, highway or other area to which the public have access without payment must hold a Street Trading Consent.
- 2.3 In addition, anyone trading on private land, to which the public obtain access without payment, is required to hold a Street Trading Consent.
- 2.4 There are additional requirements where a trader is conducting their business from private land. Please refer to paragraph 13.
- 2.5 The Act defines street trading as "the selling or exposing or offering for sale of any article (including a living thing) in a street".
- 2.6 There are exemptions from requiring consent to trade on a street. Please refer to paragraph 7.

3. Application Process

- 3.1 Each application for grant or renewal of street trading consent will be considered on its merits.
- 3.2 A basic Police/Criminal Records Bureau (CRB) check will be required for all new applications. Existing consent holders will be required to undergo a Police/CRB upon first renewal;
- 3.3 It will be the responsibility of the applicant to provide a CRB for each person working at the stall, this must not be more than a month old at the time of application;
- 3.4 New applications should be accompanied by the first month's fee. Annual consents will be invoiced monthly thereafter.
- 3.5 Consents issued on a shorter basis will be payable in advance by cheque.

APPENDIX 1

- 3.6 Consent holders will be given four weeks holiday per year, to be taken at their convenience. Payments will be adjusted accordingly. No further reductions in fees for non-trading will be considered except under exceptional circumstances.
- 3.6 For every such application, South Kesteven District Council may impose such conditions as may be reasonable, having regard to all the circumstances to prevent:-
- (i) obstruction of the street or danger to persons using it; or
 - (ii) nuisance or annoyance, (whether to persons using the street or otherwise).

Standard conditions will be imposed unless circumstances dictate otherwise.

- 3.7 The Trader shall provide insurance in the sum of £5,000,000 to insure against third party liability claims and to indemnify the Council against all claims, liabilities, actions, demands and expenses arising in respect of the grant or renewal of this consent. The Trader shall provide on demand for inspection by the Council the insurance certificate and evidence of full payment of the premium.
- 3.8 If a site is already occupied, applicants may be included on a waiting list, a request for which to be made in writing. Applicants will remain on the waiting list for 6 months. To remain on the list notifications must be made to us in writing.
- 3.9 Where the imposition of conditions is not adequate to control potential problems, applications will be refused.

Refusal or withdrawal of street trading consents will be normal in the following circumstances:-

- (a) where the granting of the application is likely to give rise to nuisances or loss of amenity caused by noise, mal-odour, litter, disturbance or anti social behaviour;
- (b) in respect of applications for hot, malodorous food - where granting the application is likely to give rise to mal-odour, litter, disturbance or anti-social behaviour;
- (c) where there is not enough space in the street for the applicant to engage in the trading in which he/she desires without causing undue interference or inconvenience to persons using the street;

APPENDIX 1

- (d) where the Highways authority considers, through a risk assessment, a location is dangerous or where a personal injury or fatality has occurred within 100 metres;
- (e) where granting of a consent for the sale of goods or services would conflict with those provided by nearby shops or cafes providing similar services;
- (f) where the applicant is unsuitable to hold a consent because of having been convicted of an offence that the Council consider makes them unsuitable to hold such consent, or for any other reason;
- (g) where the applicant has at any time been granted a street trading consent by the Council, and has persistently refused or neglected to pay fees due to them for said consent or charges due to them for services rendered;
- (h) where the applicant or operator of the stall is under the age of 17 years;
- (k) where a trader has failed to comply with the conditions attached to the consent;
- (l) where street trading in a particular location will conflict with concessions granted to existing traders;
- (m) where the street trading may damage the structure or surface of the street;
- (n) where the appearance of the trading equipment or structure in use is not compatible with the character of the area in which it is proposed to be situated;
- (o) in respect of an application in an area which is residential and where trading would not normally take place.

The Council may at any time revoke a consent or vary the conditions of an existing consent where there are reasonable grounds for so doing.

4. Licensing Process & Delegation of Functions

4.1 Applications for street trading consents are delegated to either the Licensing Committee or to the Licensing Officer.

4.2 The delegation is as follows:

APPENDIX 1

Matter to be dealt with	Cabinet	Licensing Committee	Licensing Officers
Grant or renewal for a Street Trading Consent		If a representation is made	If no representation is made
Grant or renewal for Street Trading Consent for a Special Event		If a representation is made	If no representation is made
Grant or renewal for a second Street Trading Consent in one location		If a representation is made	If no representation is made
Review of policy & conditions	In all cases		
Refusal of Consent			In cases where the set conditions or criteria are not met/breached
Suspension/ Revocation			In consultation with Head of Service

4.3 Where an application is referred to the Licensing Committee, it will determine each application on its own merit. Members of the Committee will consider all information attached to the application and the contents of this policy.

5. Consultation on Applications for Consents

5.1 When we receive an application for a Street Trading Consent the Council will consult with:

- Lincolnshire County Council Highways or Highways Agency (depending on the area of trading)
- South Kesteven District Council – Planning
- South Kesteven District Council – Environmental Health
- Town Council
- Business Club/Chamber of Trade
- Relevant businesses

APPENDIX 1

6. Renewals

- 6.1 Street Trading Consents can be issued for a period of up to one year.
- 6.2 Applicants should then re-apply if they wish to continue to trade and submit an application at least one month before the expiry of their current consent. At this renewal time, the Licensing Officer will notify Highways and Environmental Health that the current holder has applied to renew their consent to trade.

7. Decisions

- 7.1 Following the determination of an application by the Committee - the applicant and any objectors will be notified of the decision at the end of the hearing. The Licensing Team will then send confirmation in writing, as soon as possible after the decision.
- 7.2 There is no right of appeal against refusal to issue consent. Where an application is refused, payment received with the application shall be refunded.

8. Exemptions

- 8.1 The Act makes certain activities exempt from the requirement to hold a consent. These are:
- pedlars acting under the Pedlars Act 1871;
 - anything done within a market or fair – please refer to paragraph 12;
 - trading on a trunk road picnic area under Section 112 of the Highways Act 1980;
 - news vendors selling only newspapers or periodicals;
 - petrol filling stations
 - shop forecourts
 - roundsmen (as they have defined customers, defined routes). The Council will refer to recent case law in their interpretation (Kempin v Brighton & Hove where, in the absence of a statutory definition, the Court defined a roundsman to be “one who goes the round of his customers for orders and the delivery of goods”).
 - objects or structures placed on, in or over a highway under Part VIIA of the Highways Act 1980 – table & chairs on the highway;
 - operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980;
 - street collections.

APPENDIX 1

9. Hours of Trading

9.1 Hours of trading within the South Kesteven District will be determined as appropriate.

10. Trading on Market Days

10.1 Street Trading will not be permitted at locations which conflict with market days or during fairs in the District.

11. More Than One Trader in a Location

11.1 The Council will normally only allow one trader to hold a consent in a specific location, unless the second applicant wishes to trade in a different commodity.

11.2 The exceptions to this rule are:

(a) where a special event is arranged and there will be more than one trader covered by the event consent; and

(b) in the case of "Mobile Traders" – where a vehicle is stationary for less than 15 minutes in one location and doesn't return to the area within 2 hours.

12. Special Events

12.1 At charitable events, we will issue one consent to the person organising the event, rather than to each individual trader. This policy is aimed at promoting events and encouraging more traders to attend them.

12.2 The number of traders covered is as follows:

Category 1 – Up to 20 traders – 50% of individual fee

Category 2 – Over 20 traders – 25% of individual fee

NOTE: *If the event is being held on behalf of raising funds for a charity, etc. the Council has the discretion to waive the fee.*

13. Markets

13.1 Statutory markets, or markets and fairs granted by charter, are exempt from requiring consent.

APPENDIX 1

14. **Planning Permission**

14.1 Where trading takes place on private land where the public have access without payment, there is a requirement to have a street trading consent. In such cases the applicant must make enquiries with regard to planning permission and to seek the landowner's permission to trade.

14.2 The onus is on the applicant to obtain both planning permission and permission to trade from the landowner prior to making an application for street trading consent. It is not the responsibility of the issuing Authority to investigate and obtain this information.

15. **Licensing Act 2003**

15.1 In addition to the requirement of having a street trading consent, applicants who sell hot food or drink between 2300 hrs and 0500 hrs will need a Premises Licence under the Licensing Act 2003.

DRAFT

APPENDIX 1

APPENDIX A

CRITERIA FOR ASSESSING APPLICATIONS

All applications will be considered individually, in accordance with the following criteria:

- 1 No application will be considered if the area stated is in a residential location where trading would not normally take place.
- 2 Consent will not be given for a location where it is not safe for customers to stand, e.g. on the highway.
- 3 Consent will not be granted if it is in direct competition with other local traders e.g. shops/cafes, etc. providing similar services.
- 4 The Council will determine times that trading will take place depending on the location.
- 5 Risk assessments will be carried out in accordance with guidance from LCC Highways.
- 6 Officers will determine the type of goods and units that may be used according to the area requested. For example, anybody wishing to trade in a conservation area does so only from traditional style barrows/vehicles, selling traditional ware, crafts, foods, etc.

APPENDIX 1

APPENDIX B

CONDITIONS

The following conditions are attached to all street trading consents:

- This street trading consent does not convey any other approvals that may be necessary under the Food Hygiene regulations, Planning legislation or other appropriate legislation.
- Trading is permitted only from the stall or vehicle, details of which has been previously supplied to the Council and shall be confined thereto.
- Trading is permitted only from the position or the area specified in the consent.
- Trading is only permitted in the type of goods specified in the consent.
- The holder shall comply with all appropriate statutory provisions e.g. food hygiene, advertisement control and health and safety regulations.
- The holder of a street trading consent shall take all reasonable precautions to prevent obstruction of the street or danger to persons using the street and to prevent nuisance or annoyance, whether to persons using the street or otherwise.
- Street trading consent shall be limited to times and days for trading purposes and all vehicles, trailers and equipment, etc. shall be removed at the end of each trading period.
- The holder of a street trading consent shall ensure that suitable arrangements are made for the disposal of any litter that may be caused in connection with the trading permitted under this consent.
- The holder of a street trading consent shall be required to seek the approval of the Council to any proposed change to the mode of trading permitted under the consent.
- The street trading consent shall be displayed on the vehicle used in connection with the trading.
- The consent holder shall not at any time cause or permit any goods or produce to be stored or displayed at the side of the unit, or place any table, chair, trestle, box or other structure in the consent street without permission from Lincolnshire County Council, as a pavement café licence may be required.
- Any major damage caused to the site that can be directly attributed to the presence of a street trader may be taken into account during the consideration of renewal consent.
- In exceptional circumstances the unit may have to be moved by the operator without prior warning for emergency reasons.
- This street trading consent does not convey any right to trade on privately owned property.
- Consents are personal to the applicant and are not transferable. Once the consent has been issued to an individual it will only be renewed to that individual. This is to prevent the pitch being sold on for a monetary gain.

Do not assume that these rules apply to other districts – some local authorities do not allow any street trading and, in any event, local conditions may vary.