

## Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982

### **Eastbourne Borough Council Street Trading Policy**

**9<sup>th</sup> December 2015**

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# **STREET TRADING POLICY**

## **1.0 Introduction Scope and Purpose**

- 1.1 Local Authorities have a legal discretion to regulate street trading in their area. If they exercise their discretion they can apply controls across the whole of their administrative boundary or just parts of it. In the early 1980's Eastbourne Borough Council, herein referred to as "The Council" adopted the provisions of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
- 1.2 The Council agreed at that time to regulate street trading in certain parts of the town centre, predominantly in the central area or in other areas where street trading activity would be considered inappropriate. As detailed below, the Council more recently decided to extend its regulatory coverage to the whole borough.
- 1.3 The purpose of this Street Trading Policy is to provide a decision making framework for the consideration of applications for street trading consents.
- 1.4 This Policy aims to create a street trading environment which complements premises based trading, is sensitive to the needs of residents and businesses, provides diversity and consumer choice. It seeks to enhance the character, ambience and safety of the local environment.
- 1.5 Street trading can be a valuable tool to aid the regeneration of Eastbourne's retail centres. The Council's ability to regulate street trading is set out in Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 referred to in this Policy as "the Act".

## **2.0 Definition of Street Trading**

- 2.1 Street Trading is defined in paragraph 1 of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 as:  
  
"the selling or exposing or offering for sale of any article (including a living thing) in a street".
- 2.2 The Act defines the term "street" as including:  
  
"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".
- 2.3 Any part of a street is a "street" for the purposes of the Act.

- 2.4 As reaffirmed in the case of West Berks DC v Paine [2009] EWHC 422 (Admin) any area to which the public have access without payment is considered, for the purposes of this legislation, as a "street". Under the wide re-designation of the status of all the roads and streets within the Borough passed by the Full Council in February 2012 and confirmed by them in July 2012 after the statutorily required consultation and advertisement, this includes areas such as free car parks at Shopping Centres etc.
- 2.5 The Act at paragraph 1(2) of Schedule 4 states that the following types of trade are not street trading:
- (a) a pedlar trading under the authority of a pedlar's certificate granted under the Pedlar's Act 1871;
  - (b) anything done in a market or fair, the right to hold which was acquired by virtue of a grant, enactment or order;
  - (c) trading in a trunk road picnic area provided by the Secretary of State under Section 112 of the Highways Act 1980;
  - (d) trading as a News Vendor;
  - (e) trading carried on at premises used as a petrol filling station;
  - (f) trading carried on at premises used as a shop or in a street adjoining a shop where the trading carried on is part of the business of the shop;
  - (g) selling things, or offering or exposing them for sale, as roundsmen
- 2.6 For the purposes of street trading activity, streets are designated as either '**prohibited,**' or '**consent**' streets. The location of prohibited and consent streets in Eastbourne is included in **Appendix A**.
- 2.7 A map of the town centre area defined in this policy is included in **Appendix B**. A definition of the different classifications is set out below:

### **3.0 Prohibited Streets**

- 3.1 If a street is designated as a "**prohibited street**" then a criminal offence is committed by any person engaging in street trading in that street. There could be a number of reasons for wishing to designate a street as prohibited.
- 3.2 For example, the street may not be wide enough to facilitate a trader or the Council may wish to restrict trading at a particular location.

## 4.0 Consent Streets

- 4.1 If a street is designated as a "**consent street**," then street trading without consent is a criminal offence. The Council is bound to act reasonably and consistent with its general obligations, for example those under the Human Rights Act 1998.
- 4.2 However, subject to this, the Council enjoys a very wide discretion with regard to the granting or refusal of street trading consents. It does not have to rely upon specific statutory grounds in order to refuse an application for grant or renewal of a consent. This may include:
- That there are sufficient traders in the locality;
  - The proposed operation is likely to cause noise, nuisance or disturbance
  - There is insufficient space for trading to take place
- 4.3 There is no statutory right of appeal against any Council decision made in respect of a street trading, although in theory a demonstrably unreasonable decision could be challenged by way of judicial review. A street trading consent can only be granted for a period not exceeding twelve months, and can be revoked at any time.
- 4.4 When granting or renewing a consent, the Council may attach any reasonable conditions to it. The Council may, at any time, vary the conditions attached to a consent.
- 4.5 Any such variations will be notified in writing to the named person on the application, and to whom the consent has been approved, and will take effect immediately, or on the date contained within the notification letter.

## 5.0 Policy Considerations

- 5.1 This Policy facilitates the administration of applications for street trading consents. Central to the Council's policy are a number of objectives which are set out below:-
- 5.2 **Public Safety:** The proposed location of the activity should not present a significant risk to the public in terms of highway safety and obstruction. This would include the consideration of factors such as: - interference with sight lines for road users, and pedestrian access including access for the disabled. The views of the Highway Authority may also be sought in this regard.
- 5.3 **Commercial Issues:** Consideration will be given to the number of other traders in the vicinity of the application site and whether the street trading proposed is for a similar type of product or offer. The Policy aims to protect against the over proliferation of street traders, and is mindful of the impact such can have in an existing retail area or other localised issues.

- 5.4 **Prevention of Crime and Disorder:** The proposed activity should not present a risk to crime, disorder or give rise to anti-social behaviour and related nuisance. This is likely to be more of an issue in respect of applicants wishing to trade in the later hours, or where the area is a crime hotspot or has an issue with anti-social behaviour and nuisance.
- 5.5 **Prevention of Public Nuisance:** Consideration will be given to measures taken to reduce the risk of nuisance from noise, refuse, vermin, fumes and smells. The street trader shall be personally responsible for the removal and disposal of any waste created by that activity. He/she shall return the area back to its original condition at the conclusion of each trading occasion.

## **6.0 Council Resolution**

- 6.1 **On 22/2/12 Eastbourne Borough Council passed a resolution, which it confirmed after the statutorily required consultation on 18/7/12, to designate various streets as "consent" and "prohibited streets." The resolution stated:**

"The Council hereby seeks to make a resolution awarding 'consent street' status to all streets in the Borough, except for the seafront promenade and beach up to high tide, which will be designated as a "prohibited street" where street trading is prohibited unless it is in connection with a pre-planned, Council authorised event. Street trading will also be prohibited on all classified A Roads, and/or where the speed limit exceeds 30 miles per hour. The consent streets, where the Council considers necessary, will include the allocation of specific 'pitches' where street trading can take place to facilitate monitoring and enforcement."

## **7.0 Site Assessment**

- 7.1 The Council will identify suitable pitches for street trading and will also consider applications from individuals to create new pitches in specific locations if the applicant can demonstrate a clear demand for the goods or service to be provided.
- 7.2 Consents may be issued to mobile artists who sketch or paint, sell their work and move from a location to location which will be specified on the consent.
- 7.3 In determining whether to create a street trading pitch, the Council will have regard to:
- Any effect on road safety, either arising from the siting of the pitch or from customers visiting or leaving;
  - Any loss of amenity caused by noise, traffic or smell;
  - Existing traffic orders;
  - Any potential obstruction of pedestrian or vehicular access, for example where the road by its overall design makes street trading unsuitable, it is narrow or one way;

- Any obstruction to the safe passage of pedestrians;
- The safe access and egress of customers and staff from the pitch and immediate vicinity.
- The proximity of such to business and/or residential accommodation where is likely to cause noise, nuisance or disturbance.

## **8.0 Consultation for New Pitches**

8.1 Before a new pitch is created, the Council will consult for a minimum of 28 days, and seek representations from:

- Occupiers of premises immediately adjacent and opposite the proposed location;
- Ward Councillors;
- Sussex Police;
- East Sussex County Council.
- Other parties the Council considers appropriate.

8.2 The Council will also consider any responses received in relation to public notices on the highway.

8.3 Any objections from consultees will be assessed against the criterion set out above, but this list is not exhaustive. An application will normally be determined by an authorised officer, but in exceptional circumstances, may be referred to a Licensing Sub Committee for consideration.

## **9.0 Sustainability and Product Type**

9.1 The applicant should set out measures to reduce the environmental impact of the proposed activity. Typically, this could include the use of recyclable products and energy efficient processes. Consideration will also be given to the type of products sold, and the suitability of the products at the location requested, particularly where there are established outlets selling similar products. The sale or supply of live animals shall be strictly prohibited.

9.2 In general, street trading consents will not be granted where the product to be traded is similar to products sold within existing outlets in the direct vicinity. Goods will normally consist of craftwork, fresh flowers and foodstuffs. Other types of trading, including the provision of services will be considered on a pitch by pitch basis.

## **10.0 Hours of Operation**

10.1 Street trading hours will normally mirror those of existing outlets that may be in the immediate vicinity. In the case of food outlets, trading hours will be determined on a pitch by pitch basis.

## **11.0 Suitability of Trading Unit**

- 11.1 The vehicle, trailer or stall to be used will be of a high quality design/build, and will add to the quality of the street scene. . The unit shall comply in all respects with any legal requirement relating to the trading activity proposed. It must also be deemed roadworthy, and comply with any relevant traffic provisions and laws.
- 11.2 This list is not exhaustive, but it includes the following legislation, and any subsequent revisions:-
- (a) Food Premises (Registration) Regulations 1991
  - (b) Food Safety Act 1990
  - (c) Food Premises (Registration) Regulations 1991
  - (d) Food Safety Act 1990
  - (e) Food Safety (General Food Hygiene) Regulations 1995 (as amended)
  - (f) The Food Safety (Temperature Control) Regulations 1995
  - (g) Health and Safety at Work etc. Act 1974 and any regulations made under this Act.
  - (h) Environmental Protection Act 1990
  - (i) Licensing Act 2003
- 11.3 A pitch is defined as an area of space measuring no more than 3 metres by 3 metres per trading unit. Where this is exceeded, the Council may take enforcement actions and/or charge a supplementary fee.

## **12.0 Submitting an Application**

- 12.1 Application forms are available from

Eastbourne Borough Council  
1 Grove Road  
Eastbourne  
BN21 4TW

E mail: [customer.first@eastbourne.gov.uk](mailto:customer.first@eastbourne.gov.uk)

Website: [www.eastbourne.gov.uk/licensing](http://www.eastbourne.gov.uk/licensing)

Telephone: 01323 410000

- 12.2 The following will be required to be submitted with the application:-
- (a) A completed and signed application form.
  - (b) The application fee.
  - (c) Where the proposed activity will take place at a fixed position a map of at least 1:200 scale should be submitted clearly identifying the proposed location by marking the site boundary with a red line.
  - (d) Two colour photographs of the trading unit illustrating different elevations of the unit.

- (e) A copy of the certificate of insurance covering third party and public liability risks to the level of £5 million.
- (f) 2 colour passport photographs of the applicant.

### **13.0 Who Will the Council Consult?**

13.1 Before any consent is granted, the Council will normally consult with the following agencies or persons. A period of twenty eight days will be allowed for comments to be received. The application will normally be determined within ten working days after the initial consultation period of 28 days. Applicants are therefore advised to make application to trade in good time of any proposed activity; otherwise the application may be refused.

- (a) Sussex Police
- (b) Planning Department (Eastbourne Borough Council) (EBC)
- (c) Highways Department (East Sussex County Council) (ESCC)
- (d) Health and Environment Noise Team (EBC)
- (e) Food Safety Team (EBC)
- (f) Ward Councillors (EBC)
- (g) Others as the Council sees fit.

### **14.0 How the Council Makes its Decision**

14.1 If, when undertaking consultation on an application, no adverse representations are received, or where representations can be resolved by way of mediation, then the application will normally be decided by an authorised Council Officer.

14.2 Where representations are received and remain unresolved, the application may, in exceptional circumstances, be referred to and heard by a Licensing Sub Committee. The applicant will be advised in writing of the date, time and place when the application will be heard. The Council will follow its standard Licensing Sub Committee procedure.

14.3 In the event of a street trading consent, the law does not currently offer a right of appeal. However, the Council will, where it considers appropriate, offer reasons for refusal. When a consent is refused, the fee will be retained.

14.4 The Council will also reserve the right to suspend these pitches at any time to accommodate works on the highway, and to facilitate other street scene activity.

### **15.0 Duration of Permissions and Fees**

15.1 Street trading consents will normally be issued for one of the following periods:

- (a) Daily

- (b) Weekly
- (c) Annual (a maximum of 12 months)

- 15.2 All fees must be paid in full in advance, otherwise the application will be deemed invalid. A list of the fees and charges is included at **Appendix C**.
- 15.3 If permission is revoked or surrendered, no refund of the fee will be made. Failure to maintain payments may result in the consent or licence not being renewed, or the consent being withdrawn/ deemed to have lapsed.
- 15.4 Where consent has been approved for a particular individual or operation, this does not set a precedent, nor create an entitlement that that individual will be granted permission for that, or another location within a consent street.

## **16.0 Conditions and Enforcement**

- 16.1 Standard conditions are contained at **Appendix D**. These will usually be attached to all consents issued. These conditions include details regarding the holder's responsibility to maintain public safety, prevent nuisance, and to preserve local amenities.
- 16.2 Further conditions may also be attached, limiting the days and the hours when street trading is permitted, the goods which may be sold, the size of the trading pitch or any other matter the Council deems appropriate.
- 16.3 Failure to comply with conditions may lead to revocation, or non-renewal of consent to trade.
- 16.4 Persons engaging in street trading (as defined in the Act) without consent to trade, or who fail to comply with the conditions will be liable to prosecution under paragraph 10 of Schedule 4 of the Act.
- 16.5 Decisions regarding enforcement action will be made in accordance with the Licensing Enforcement Policy adopted by the Council.

## **17.0 Street Trading Consent does not:**

- Permit trading outside the terms of the Consent
- Indicate that planning permission is not required
- Indicate that the unit is exempt from business rates
- Override parking restrictions or any other traffic regulations
- Imply approval under *any* other system of control or regulation e.g. planning or licensing.

All applicants for street trading are strongly advised to ensure that all necessary consents/permissions required under the Planning or Licensing Acts are obtained **before** the commencement of trade and that food registration is sought, as appropriate.

## **Appendix A**

### **TOWN CENTRE**

#### **Consent & Prohibited Streets in the Borough**

Many of the streets in the Borough of Eastbourne are designated as “consent streets,” where, subject to the necessary licence consent being in place, street trading is permitted. Several are defined as “prohibited streets” where street trading of any type is prohibited.

The Town Centre is the area bounded by the blue line on **Appendix B**, and mirrors the area defined in the Town Centre Area Action Plan. With the exception of authorised street markets/events taking place in the Town Centre, all other street trading is prohibited unless specifically authorised by the Licensing Authority.

“Prohibited Streets,” are identified as those which are designated as a classified “A Road,” and/or where the speed limit for that road exceeds 30 miles per hour. It also includes the seafront promenades, and the beach up to high tide mark. In “prohibited streets,” street trading is not permitted.

Where a street is awarded consent status, any applications will be considered within the context of the broader Street Trading Policy

## APPENDIX B - Town Centre Area



## Appendix C

### Street Trading Fees

(These may be amended from time to time by the Council's General Licensing Committee)

#### Eastbourne

	Daily	Weekly	Annual
Fee Level	£30	£175	£405

### Street Market Fees

**Per Stall, per established market operated on behalf of Eastbourne Borough Council or as part of a Council authorised event: £1**

If consent is sought for a shorter period, then the daily and weekly fees agreed by the Committee would apply.

The flower salesman who has "grandfather rights" and operates in the town centre could still be issued yearly consent and the annual fee charged.

## **APPENDIX D**

### **GENERAL CONDITIONS THAT WILL NORMALLY BE ATTACHED TO STREET TRADING CONSENT**

1. The consent may not be transferred to any other person or business.
2. The consent holder shall not permit any person to exercise the consent in his/her absence, unless that person is directly employed by the consent holder, and is at least 17 years of age. That person must be duly authorised in writing by the consent holder, and of whom the Council has been informed.
3. The consent holder shall only trade on the days and between the times stated on the consent.
4. The consent holder shall only trade using the appropriate stall, barrow or basket or other receptacle or vehicle in any street, which is specified in the consent, and which has been duly inspected and authorised.
5. The consent holder shall not sell, expose or offer for sale any articles other than those specified on the consent.
6. The consent holder shall not carry on business on any street so as to cause noise, nuisance, obstruction, noxious smells, or cause danger to people/vehicles using the street complying with all highway safety and access requirements.
7. The consent holder shall not carry on business from any vehicle or erect or place any stall or other structure in any street except in the area specified in the consent.
8. The consent holder shall on all occasions, when carrying on business, be strictly sober, and conduct him/herself in a proper, civil and courteous manner. He/she shall not carry on his/her business in such a way as to cause annoyance to the occupier or person in charge of any shop, business, resident, or any person using the street in the vicinity of the pitch.
9. The consent holder shall at all times conduct his/her business and position any vehicle used by him/her in connection with his/her business in such a manner that no danger is likely to arise to persons trading or intending to trade.
10. The consent holder shall at all times conduct his/her business in a clean and tidy manner.
11. The consent holder shall ensure that a copy of the consent available for inspection on request by an Authorised Officer of the Council or Sussex Police. It must also be displayed on the stall/vehicle at all times trading is taking place.
12. The consent holder shall not permit any person to assist him/her in his/her trading unless the details and 2 passport sized photographs of that person

have been supplied to the Licensing Authority. Any such person shall be issued with an identification badge by the Licensing Authority, Eastbourne Borough Council.

13. The Trader shall at all times whilst trading wear in a prominent position an identity badge provided by Eastbourne Borough Council.
14. The Trader shall be insured against any claim in respect of a third party liability whilst trading under consent. No consent will be issued until a current and valid public liability policy has been produced to the value of £5 million. This insurance must also be made available on request to an Authorised Officer of the Council.
15. If, during the currency of any consent there is any material change in the facts of particulars and information contained in, or given along with, the application for the consent, the holder of the consent shall report such changes to the Licensing Authority within 72 hours of that change.
16. Any motor vehicle used for the purpose of street trading shall at all times be in a roadworthy condition and have the relevant documents i.e. insurance, tax and MOT to make the use of that vehicle on a road legal. These documents will be produced by the consent holder to any Police Officer or Authorised Officer of the Council.
17. Neither the consent holder, nor any assistant shall display merchandise which is likely to cause offence or distress to any other person or which would be deemed an offence under any other legislation.
18. A consent holder selling food shall at all times comply with any food hygiene regulations in force at that time, and when required by the Licensing Authority, shall produce appropriate food handling certificates.
19. The Council reserves the right to alter or amend these conditions at any time without prior notice to Consent Holders.
20. The sub-letting of any consent is prohibited.
21. The consent holder shall be responsible for the temporary storage of refuse, liquid and other material accumulated or created whilst trading and its subsequent removal from the site. The removal and disposal must be to the satisfaction of the Council.
22. The consent holder shall ensure that there are adequate fire safety measures in place.

**N.B This consent is issued without prejudice to any other statute, by-law or regulation. This consent does NOT over-ride any regulations regarding parking, food hygiene, obstruction, etc.**