

Agenda Item No:

Report To: CABINET

Date of Meeting: 28 November 2019

Report Title: Street Trading Policy (revision)

Report Author & Job Title: Trevor Ford
Environmental Protection & Licensing Team Leader

Portfolio Holder Cllr. Jo Gideon
Portfolio Holder for: Community Safety and Wellbeing



Summary:

The purpose of this report is to propose a revision to the existing policy to clarify the council's position regarding trading on private land.

Key Decision:

NO

Significantly Affected Wards:

All

Recommendations: The Cabinet is recommended to:-

- i. **Approve and recommend the proposed amendment to council**

Policy Overview:

There is no statutory duty to publish a Street Trading Policy; however, it is considered good practice to provide information that guides members of the public, applicants, elected members and officers on matters relating to street trading.

The aim of the Council's street trading policy is to encourage a street trading environment which complements premises based trading, is sensitive to the needs of residents, provides diversity and consumer choice, and seeks to enhance the character, ambience and safety of local environments.

Financial Implications:

A small handful of traders may no longer require a street trading consent from the Licensing Authority as a result of this change. The income and expenditure implications have been taken into account and are not considered significant.

Legal Implications:

The revised report provides greater clarity on the expectations of the Licensing Authority and reduces potential inconsistency that could lead to legal challenge. No specific new negative implications are expected.

Equalities Impact Assessment:	See attached
Other Material Implications:	None
Exempt from Publication:	NO
Background Papers:	Street Trading Policy 2018-2023 https://www.ashford.gov.uk/media/6370/street-trading-policy-2018.pdf
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Report Title:

Street Training Policy (revision)

Introduction and Background

1. The purpose of this report is to present to Cabinet an amendment to Ashford Borough Council's 'Street Trading Policy'.
2. There is no statutory duty for the Council to maintain a Street Trading Policy, however, it is considered good practice to have one to guide applicants, the public, officers and members, in matters considered in the determination of licensing applications.
3. The current policy statement expires in 2023, and the planned amendment acts to keep the document up to date and relevant pending the 2023 review.
4. The statement of policy sets out how the council will approach the making of decisions and indicating what the council considers to be important. It is vital that the policy does not turn into a rule that is applied inflexibly and fetters the exercise of discretion. There must be a willingness to consider individual applications on their particular merits.
5. A policy relating to the determination of applications not only guides the decision-maker but also services to inform an applicant about what they should consider in preparing their application.

Proposal/Current Position

6. The proposed amendment amounts to a small revision to clarify the council's position regarding trading on private land adjacent to the street.
7. The clarification will introduce a pragmatic approach to the open wording of the Local Government (Miscellaneous Provisions) Act 1982, where the act states that it applies to '*any land where the public have access without payment*'.
8. This amendment ensures that unnecessary regulatory burden on business is avoided, and ensures that our regulation in this area continues in a consistent manner commensurate with the intentions of the Act.
9. For that purpose we wish to add into the policy document the following information to clarify when trading on private property would not be considered to be street trading;

If any of the below scenarios apply, the you will be unlikely to require a street trading consent.

Planning permission, food business registration, business rates etc. will however still be required as appropriate

Trading on private land, were the stall/trading is not adjacent to the public highway. The term 'adjacent' is not strictly defined, but it is suggested to be within 25 meters of a public highway

Example – An ice-cream trader operating outside the front doors of a supermarket with the landowner's permission, but away from the public highway.

Trading on private land, that is adjacent to the public highway (carriage of pavement), where there is no direct access from the highway due to continuous hedging/fencing. The term 'adjacent' is not strictly defined, but it is suggested to be within 25 meters of a public highway

Example - Trading at a retail unit car park alongside the highway but where customers from the street would need to walk around the site boundary to the public entrance and then back across the car park

Trading on private land regardless of proximity to the highway, but only trading to occupiers of the private land with no trading to the public from the highway (carriageway or pavement).

Example – Sandwich van serving industrial unit employees, or, a food stall at a promotional event for retail unit customers.

Implications and Risk Assessment

10. The amendment to this policy is not anticipated to have any significant implications.
11. It is expected that a small handful of traders on private property may no longer require a licence as a result of this proposal, however, there is no perceived negative effect to them or the public as a result of this change. The small decrease in licences is not considered significant in terms of budgetary management.
12. The change does not negate any other requirements on businesses to register as food business operators, to obtain planning consent, or pay business rates where appropriate to their activities.
13. Judicial review is a risk if the policy strays beyond the requirements of the act, or restricts legal activities without due and appropriate cause

Equalities Impact Assessment

14. The policy will affect all persons involved in or affected by a relevant licensable activity in the Borough, irrespective of gender, race, disability, sexuality or age. Recipients of the policy include holders of licences, members of licensing sub-committee, authorities e.g. Kent Police, Kent Fire & Rescue Service, etc. and all of the Borough's businesses, residents of the borough and those who visit and use premises offering licensable activities.
15. An equalities impact assessment is attached as *Appendix A*

Consultation Planned or Undertaken

16. There is no formal requirement for consultation and due to insignificant implications, wider public consultation is not proposed.

Other Options Considered

17. Whilst there are range of options available, such as making no change, or adding further controls, neither are considered appropriate as to the current position with reference to street trading within the borough.

Reasons for Supporting Option Recommended

18. This proposed option ensures that unnecessary regulation on business is avoided, without introducing new risks to the public.
19. Furthermore the amendment ensures that regulation of this matter continues in a manner consistent with the intentions of the act.

Next Steps in Process

20. Upon adoption of this amendment, the policy document will be updated appropriately, and published on our street trading webpages.
21. The statement of policy will be subject to review in 2023, along with any periodic review brought about by changes in the council's approach, or change to relevant legislation.

Conclusion

22. In summary, the proposed amendment helps to clarify the Council's position and ensures that our approach is transparent and remains robust.

Portfolio Holder's Views

23. "I welcome this minor amendment which aids transparency, and sets out the council's expectations in a clear and pragmatic manner"

Councillor Jo Gideon

Contact and Email

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Appendix A: Equalities Impact Assessment

Equality Impact Assessment

1. An Equality Impact Assessment (EIA) is a document that summarises how the council has had due regard to the public sector equality duty (Equality Act 2010) in its decision-making. Although there is no legal duty to produce an EIA, the Council must have **due regard** to the equality duty and an EIA is recognised as the best method of fulfilling that duty. It can assist the Council in making a judgment as to whether a policy or other decision will have unintended negative consequences for certain people and help maximise the positive impacts of policy change. An EIA can lead to one of four consequences:

- (a) No major change – the policy or other decision is robust with no potential for discrimination or adverse impact. Opportunities to promote equality have been taken;
- (b) Adjust the policy or decision to remove barriers or better promote equality as identified in the EIA;
- (c) Continue the policy – if the EIA identifies potential for adverse impact, set out compelling justification for continuing;
- (d) Stop and remove the policy where actual or potential unlawful discrimination is identified.

Public sector equality duty

2. The Equality Act 2010 places a duty on the council, when exercising public functions, to have due regard to the need to:
- (a) Eliminate discrimination, harassment and victimisation;
 - (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it (ie tackling prejudice and promoting understanding between people from different groups).

3. These are known as the three aims of the general equality duty.

Protected characteristics

4. The Equality Act 2010 sets out nine protected characteristics for the purpose of the equality duty:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership*
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

*For marriage and civil partnership, only the first aim of the duty applies in relation to employment.

Due regard

5. Having 'due regard' is about using good equality information and analysis at the right time as part of decision-making procedures.
6. To 'have due regard' means that in making decisions and in its other day-to-day activities the council must consciously consider the need to do the things set out in the general equality duty: eliminate discrimination, advance equality of opportunity and foster good relations. This can involve:
- removing or minimising disadvantages suffered by people due to their protected characteristics.
 - taking steps to meet the needs of people with certain protected characteristics when these are different from the needs of other people.
 - encouraging people with certain protected characteristics to participate in public life or in other activities where it is disproportionately low.
7. How much regard is 'due' will depend on the circumstances. The greater the

potential impact, the higher the regard required by the duty. Examples of functions and decisions likely to engage the duty include: policy decisions, budget decisions, public appointments, service provision, statutory discretion, decisions on individuals, employing staff and procurement of goods and services.

8. In terms of timing:

- Having 'due regard' should be considered at the inception of any decision or proposed policy or service development or change.
- Due regard should be considered throughout development of a decision. Notes shall be taken and kept on file as to how due regard has been had to the equality duty in research, meetings, project teams, consultations etc.
- The completion of the EIA is a way of effectively summarising this and it should inform final decision-making.

Case law principles

9. A number of principles have been established by the courts in relation to the equality duty and due regard:

- Decision-makers in public authorities must be aware of their duty to have 'due regard' to the equality duty and so EIA's must be attached to any relevant committee reports.
- Due regard is fulfilled before and at the time a particular policy is under consideration as well as at the time a decision is taken. Due regard involves a conscious approach and state of mind.
- A public authority cannot satisfy the duty by justifying a decision after it has been taken.
- The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.
- The duty is a non-delegable one. The duty will always remain the responsibility of the public authority.
- The duty is a continuing one so that it needs to be considered not only when a

policy, for example, is being developed and agreed but also when it is implemented.

- It is good practice for those exercising public functions to keep an accurate record showing that they have actually considered the general duty and pondered relevant questions. Proper record keeping encourages transparency and will discipline those carrying out the relevant function to undertake the duty conscientiously.
- A public authority will need to consider whether it has sufficient information to assess the effects of the policy, or the way a function is being carried out, on the aims set out in the general equality duty.
- A public authority cannot avoid complying with the duty by claiming that it does not have enough resources to do so.

The Equality and Human Rights Commission has produced helpful guidance on "Meeting the Equality Duty in Policy and Decision-Making" (October 2014). It is available on the following link and report authors should read and follow this when developing or reporting on proposals for policy or service development or change and other decisions likely to engage the equality duty. [Equality Duty in decision-making](#)

Equality Impact Assessment

Lead officer:	Trevor Ford
Decision maker:	Cabinet
Decision: <ul style="list-style-type: none"> • Policy, project, service, contract • Review, change, new, stop 	To approve and recommend a proposed amendment to the council's Street Trading Policy
Date of decision: The date when the final decision is made. The EIA must be complete before this point and inform the final decision.	28 November 2019
Summary of the proposed decision: <ul style="list-style-type: none"> • Aims and objectives • Key actions • Expected outcomes • Who will be affected and how? • How many people will be affected? 	To introduce a minor amendment to introduce clarity with reference to street trading and trading on private land where the public have access.
Information and research: <ul style="list-style-type: none"> • Outline the information and research that has informed the decision. • Include sources and key findings. 	Research conducted as part of the amendment of the policy includes; <ul style="list-style-type: none"> • Examples of practice at other authorities • General legislative research • Case law research
Consultation: <ul style="list-style-type: none"> • What specific consultation has occurred on this decision? • What were the results of the consultation? • Did the consultation analysis reveal any difference in views across the protected characteristics? • What conclusions can be drawn from the analysis on how the decision will affect people with different protected characteristics? 	No formal requirement for consultation. Due to insignificant implications, wider public consultation is not planned.

Assess the relevance of the decision to people with different protected characteristics and assess the impact of the decision on people with different protected characteristics.

When assessing relevance and impact, make it clear who the assessment applies to within the protected characteristic category. For example, a decision may have high relevance for young people but low relevance for older people; it may have a positive impact on women but a neutral impact on men.

Protected characteristic	Relevance to Decision High/Medium/Low/None	Impact of Decision Positive (Major/Minor) Negative (Major/Minor) Neutral
<u>AGE</u> Elderly	None	Neutral
Middle age	None	Neutral
Young adult	None	Neutral
Children	None	Neutral
<u>DISABILITY</u> Physical	None	Neutral
Mental	None	Neutral
Sensory	None	Neutral
<u>GENDER RE- ASSIGNMENT</u>	None	Neutral
<u>MARRIAGE/CIVIL PARTNERSHIP</u>	None	Neutral
<u>PREGNANCY/MATERNITY</u>	None	Neutral
<u>RACE</u>	None	Neutral
<u>RELIGION OR BELIEF</u>	None	Neutral
<u>SEX</u> Men	None	Neutral
Women	None	Neutral
<u>SEXUAL ORIENTATION</u>	None	Neutral

Mitigating negative impact: Where any negative impact has been identified, outline the measures taken to mitigate against it.	N/A
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Is the decision relevant to the aims of the equality duty?

Guidance on the aims can be found in the EHRC's [Essential Guide](#), alongside fuller [PSED Technical Guidance](#).

Aim	Yes/No
1) Eliminate discrimination, harassment and victimisation	Yes
2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it	Yes
3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it	Yes

Conclusion:

- Consider how due regard has been had to the equality duty, from start to finish.
- There should be no unlawful discrimination arising from the decision (see guidance above).
- Advise on whether the proposal meets the aims of the equality duty or whether adjustments have been made or need to be made or whether any residual impacts are justified.
- How will monitoring of the policy, procedure or decision and its implementation be undertaken and reported?

No further action required.

EIA completion date:

3 October 2019