



Northumberland County Council

STREET TRADING POLICY 2015 to 2016

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LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

1.0 Street Trading — Adoption of Legislation

1.1 On the 6th July 2011, Northumberland County Council resolved, in accordance with Section 3 of the Local Government (Miscellaneous Provisions) Act 1982 to adopt Schedule 4 of the Act. These are powers to designate streets for the purpose of the Act and to establish a street trading scheme. It came into effect on the 22nd August 2011. This policy sets out how the council intends to control and regulate street trading activities within the administrative area of Northumberland.

2.0 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.
- To 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.

3.0 Equal Opportunities Statement

3.1 This policy takes 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

4.0 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 30 metres from the centre of those streets which are part of the public highway.

5.0 Street Trading Events for which fees are non-payable

5.1 Northumberland County Council will not require the payment of fees UNDER THIS POLICY for the following activities:

- Fetes, carnivals or similar community based and run events
- Non — commercial or charitable events
- Farmers' Markets (MARKET PLACE PRIMARILY FOR LOCAL PRODUCERS TO SELL THEIR OWN PRODUCE DIRECTLY TO CONSUMERS)
- 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 whose trading is ancillary to its main activity e.g. mobile libraries who sell restricted goods to the community as part of their service.

5.2 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.

5.3 Each application will be judged according to its merits.

6.0 Definition of Street Trading

6.1 The selling or exposing or offering for sale of any article (including a living thing) in any street.

6.2 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" 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. (MARKET TRADERS SHOULD SEEK ADVICE FROM THE APPROPRIATE PAGES ON THE AUTHORITY'S WEBSITE, www.northumberland.gov.uk)
- 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 e.g. 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 and 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)

- TRADING BY MEANS OF A PAVEMENT CAFÉ. PROPRIETORS SHOULD SEEK ADVICE FROM THE APPROPRIATE PAGES ON THE AUTHORITY'S WEBSITE, (www.northumberland.gov.uk)

7.0 Fees

7.1 Street trading fees will be determined by the Council who will consider a range of payment options appropriate to the cost and duration of the consent sought.

7.2 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 of an Officer from Northumbria Police.

7.3 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 the transfer of a consent.

7.4 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, minus any administrative charge.

7.5 It is permissible for the authority to charge different fees for consents for different durations, different locations, (such as a pro rata rate for occasional consents), for concessionary consents in certain circumstances and for sales of different articles.

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

8.0 Duration of Consents

8.1 A Street Trading consent cannot be issued for more than one year but the council will consider granting consents for varying durations subject to the payment of the relevant

9.0 Tendered Locations

9.1 In respect of locations which have been subject to a formal tender process by the Council, best endeavours will be used to commence both the start of the tender and the street trading consent on the same date.

9.2 Note — Approval to trade from a specific location following submission of a successful tender will be subject to both payment of the agreed tender amount AND the appropriate street trading fee.

10.0 Types of Street Trading

10.1 For the purposes of this policy, the council have identified two types of street trading activity which may be defined as follows:

Fixed: the intention to trade from the same location for a continuous period in excess of thirty minutes

Mobile : the intention, having come to a stop, to undertake street trading, at that location for no more than fifteen minutes unless customers are in attendance and in any event no longer than thirty minutes.

10.2 In the case of a mobile trader, the trader shall not return to the same trading location or engage in street trading within 200 metres of a previous trading location within any twenty four hour period

11.0 Determination of the Application

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

12.0 Type of Goods for Sales

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

12.2 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

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

- Arts/Crafts
- Jewellery

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

13.0 Site Criteria including Conditions

13.1 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.

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

- A significant effect on road safety would arise either from the siting of the trading activity itself, or from customers visiting or leaving the site;
- Where there are concerns over the recorded level of personal injury accidents in the locality where the street trading activity will be sited;
- There would be a significant loss of amenity caused by traffic, noise, rubbish, potential for the harbourage of vermin, odour or fumes;
- There is a conflict with Traffic Orders such as waiting restrictions;
- 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;
- 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;
- The site does not allow the Consent Holder, staff or customers to park in a safe manner;
- 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;
- If the area stated is in a residential location where trading would not normally take place;
- If the consent holder is trading in a manner that is likely to cause a nuisance or annoyance;
- That any site does not have written permission from the landowner or this permission has not been submitted to the appropriate licensing department of the Council with the application; or
- 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.

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

13.4 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 trader is likely to operate for more than 28 days in any one year.

14.0 Locations

14.1 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.

15.0 Application Process

15.1 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 are downloadable from the website.

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

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

- 1) A completed and signed Street Trading Consent Application Form.
- 2) The fee as appropriate for the periods of trading applied for.
- 3) 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.
- 4) For any fixed site, written permission from the landowner for the use of the land.
- 5) One colour photograph of the stall, van, barrow, cart etc. that will be used for the street trading activity.
- 6) An original copy of the certificate of insurance that covers the street trading activity for third party and public liability risks.
- 7) A personal statutory declaration as to the applicants "fitness and propriety" including the disclosure of unspent convictions.
- 8) If relevant, evidence of registration under the Food Safety Act 1990.

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

15.5 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.

15.6 The application will be determined within 28 days of receipt, unless an objection is received from a consultee. If that all consultees confirm that they do not wish to object to an application, the application may be determined before the end of the 28 day period.

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

15.8 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.

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

15.10 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 placed on the Authority, such as food hygiene inspections.

15.11 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.

15.12 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.

16.0 Renewal of Trading Consents

16.1 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.

17.0 Revocation of a Trading Consent

17.1 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, the consent may be revoked.

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

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

18.0 Consultations on Applications Made

18.1 On receipt of the application form, the Licensing Authority will send a copy of the application to each of the following consultees:

- o The Highway Authority o Northumbria Police o The local town or parish council
- o Trading Standards Service o Community Safety Team o N.C.C. Planning Authority

- o Parish and Town Councils would not normally be consulted in the case of mobile Ice Cream Sellers requesting a 'Whole Northumberland County Council ' consent*

18.2 In addition to the above, further consultation may also be carried out with property owners within 100 metres of the proposed site.

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

18.4 In the event that the Public Safety Unit Manager, following consideration of any representations arising from the consultation or otherwise, is minded to refuse, modify or attach conditions to a consent, those representations will be made available to the applicant unless it would not be in the public interest to do so or they contain sensitive or confidential information.

18.5 Further, in the event of an appeal against the decision of the Public Safety Unit Manager the representations will be published and made publically available unless it would not be in the public interest to do so or they contain sensitive or confidential information.

18.6 No consultation will be required for renewals of consent provided there are no significant material changes to intended manner of trading and there have been no reasons for refusal or modification during the consent period.

19.0 Consent Holder

19.1 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 undertaken.

20.0 Amendments or Variations to Trading Consents

20.1 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 opportunity to make any representations against this variation of the trading consent.

20.2 The authorised officer will present a report to the Public Safety Unit Manager for consideration and they will take into consideration the representations made, if any.

20.3 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.

20.4 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.

21.0 Guidance on the Relevance of Convictions

21.1 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.

22.0 Dishonesty

22.1 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 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 years from the date of conviction.

23.0 Violence

23.1 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 years free of conviction will be required before an application is likely to be considered favourably.

24.0 Drugs

24.1 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.

25.0 Indecency Offences

25.1 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 (minimum of 5 years) free of such offences. More than one conviction of this kind should preclude consideration for a minimum of 5 years. In either case if consent is granted a strict warning as to future conduct will be issued.

26.0 Motoring Convictions

26.1 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 2 years free of conviction.

27.0 Formal Cautions and fixed penalty notices

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

28.0 Regulatory Sub-Committee Hearings

28.1 A Sub-Committee comprised of members from the Licensing and Regulatory Committee will be set up to hear any appeal of a decision of the Public Safety Unit Manager following the refusal, modification, or attachment of a condition imposed on a consent. The panel of members will be made up of not less than three elected members.

28.2 In all cases, the hearing will be conducted in accordance with the Licensing and Regulatory Committee general hearing rules. The Committee will consider the matter as if it is making the decision without it previously having been decided.

29.0 Offences

29.1 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 o from a stationary van, cart, barrow or other vehicle; or o 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.

29.2 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.

29.3 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.

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

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

30.0 Further Information

30.1 For further information in relation to street trading please contact:-

PUBLIC PROTECTION SERVICE
Northumberland County Council
Licensing Department
County Hall
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Tel: 0845 600 6400