

LICENSING COMMITTEE

Date: Monday 30 November 2020

Time: 5.30 pm

Venue: Legislation has been passed that allows Council's to conduct Committee meetings remote

Members are invited to attend the above meeting to consider the items of business.

If you have an enquiry regarding any items on this agenda, please contact Mark Devin, Democratic Services Officer (Committees) on 01392 265477 or email mark.devin@exeter.gov.uk

During the Corona Virus outbreak, Licensing Committee meetings will be held by virtual means. To view the meeting: <https://www.facebook.com/exetercitycouncil/live/%E2%80%99>

Membership -

Councillors Owen (Chair), Buswell (Deputy Chair), Begley, Branston, Henson, D, Mitchell, K, Newby, Oliver, Quance, Vizard, Warwick, Wood and Wright

Agenda

Part I: Items suggested for discussion with the press and public present

1 Apologies

To receive apologies from Committee members.

2 Declarations of Interest

Councillors are reminded of the need to declare any disclosable pecuniary interests that relate to business on the agenda and which have not already been included in the register of interests, before any discussion takes place on the item. Unless the interest is sensitive, you must also disclose the nature of the interest. In accordance with the Council's Code of Conduct, you must then leave the room and must not participate in any further discussion of the item.

Councillors requiring clarification should seek the advice of the Monitoring Officer prior to the day of the meeting.

3 Local Government (Access to Information) Act 1985 - Exclusion of Press and Public

To pass the following resolution:

RESOLVED that, under Section 100A (4) of the Local Government Act 1972, the press and public be excluded from the meeting for item 5 on the grounds that it involves the likely disclosure of exempt information as defined in paragraphs 1 and 2 of Part I of Schedule 12A of the Act.

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

4 **Amendment to Street Trading Policy and Terms of Reference for the Licensing Sub-Committee**

To consider the report of the Service Lead - Environmental Health & Community Safety. (Pages 3 - 16)

Part II: Items suggested for discussion with the press and public excluded

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

5 **Application for Consent to Street Trade in at Duckes Meadow and Clapperbrook Bridge Car Park**

To consider the report of the Service Lead - Environmental Health & Community Safety. (Pages 17 - 36)

Individual reports on this agenda can be produced in large print on request to Democratic Services (Committees) on 01392 265107.

REPORT TO EXTRAORDINARY LICENSING COMMITTEE

Date of Meeting: 30 November 2020

REPORT TO EXECUTIVE

Date of Meeting: 1 December 2020

REPORT TO COUNCIL

Date of Meeting: 15 December 2020

Report of: Service Lead- Environmental Health & Community Safety

Title: Amendment to Street Trading Policy and Terms of Reference for the Licensing Sub-Committee

Is this a Key Decision?

No

Is this an Executive or Council Function?

Council

1. What is the report about?

- 1.1 This report details, and seeks approval for, the changes that are being proposed to the Street Trading Policy from 1 January 2021.
- 1.2 This reports also sets out proposals to amend the Terms of Reference for the Licensing Sub-Committee.

2. Recommendations:

2.1 That the Licensing Committee

- a) approves the amendment to the Street Trading Policy as shown in Appendix A to read as follows, commencing from 1st January 2021:

- Section 6.3 which currently reads as follows "*All relevant representations relating to the grant of a consent will be referred to the Licensing Committee for consideration as part of the determination*" is proposed to be amended as follows:

- All relevant representations relating to the grant of a consent will be referred to the Licensing Sub-Committee hearing the application, for consideration as part of the determination.
- b) Supports the proposal for the following addition to the Council's Constitution terms of reference for the Licensing Sub-Committee:-

To determine whether to grant or refuse a street trading consent

2.2 That Executive:

- a) Notes and supports the proposed amendment to the Street Trading Policy
- b) Supports the proposal for the following addition to the Council's Constitution terms of reference for the Licensing Sub-Committee:-
To determine whether to grant or refuse a street trading consent.

2.3 That the Council

- a) adopts the amended Street Trading Consent Policy as set out in Appendix A of this report
- b) approves the following addition to the Council's Constitution terms of reference for the Licensing Sub-Committee:-
To determine whether to grant or refuse a street trading consent.

3. Reasons for the recommendation:

- 3.1 The above proposed amendment in conjunction with proposed changes to the Council Constitution would mean that in future Street Trading Applications would be able to be determined at Licensing Sub Committee Hearings.
- 3.2 As we are able to organise more frequent Licensing Sub-Committee hearings than is currently the case for full Licensing Committee Meetings (presently scheduled for five meetings per calendar year), this would enable the Licensing Authority to deal with street trading applications in a more timely manner, and provide a more flexible timeframe for both applicants and Officers alike.
- 3.3 Other Licence applications such as Licensing Act 2003 and Taxi matters are already dealt with via Licensing Sub-Committees, and as such the above proposed amendment would ensure that the same consistent approach is also applied to the determination of street trading applications.

4. What are the resource implications including non financial resources.

- 4.1 The proposed changes to policy do not give rise to any additional resource implications or have any revenue impact.
- 4.2 There are no reductions, restructuring and/or redundancy implications as the key changes identified in this report do not give rise to any additional resource requirements.
- 4.3 Any future costs in relation to the production of the policy will be met by income from fees.

5. Section 151 Officer comments:

There are no financial implications for Council to consider contained within this report.

6. What are the legal aspects?

- 6.1 The Council has adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 for the whole of its area as 'consent streets' for street trading purposes, with exception of a number of streets in the city centre, which are designated 'licenced streets or prohibited streets'.
- 6.2 As with all policies produced by the Council, it is necessary for it to be reasonable and workable in order to avoid any legal challenge by third parties. However, since the proposed policy change will help to ensure that street trading consent applications are heard in a more-timely manner by trained Licensing Committee Members (via a quorate Licensing Sub-Committee), such a prospect seems unlikely.

7. Monitoring Officer's comments:

The Monitoring Officer has no additional comments.

8. Report details:

- 8.1 Since the start of the Covid-19 crisis and its subsequent economic impact, the Licensing Team have seen an increase in interest in Street Trading Consents as food businesses in particular, look to diversify in response to the crisis.
- 8.2 It is hoped that the proposed policy amendment will assist applicants affected by the crisis by determining their applications at more frequent Licensing Sub-Committee Hearings.

9 How does the decision contribute to the Council's Corporate Plan?

- 9.1 The proposed Policy amendment will assist in ensuring that Street Trading Consent Applications are heard in a timely manner, and thereby lend support to a robust, business friendly economy.

10 What risks are there and how can they be reduced?

- 10.1 As with all proposed changes to policy, there is a risk of the policy change being challenged via Judicial Review. However, the proposed policy change is both reasonable and workable, and as such the risk of legal challenge is considered low.

11 Equality Act 2010 (The Act)

- 11.1 Under the Act's Public Sector Equalities Duty, decision makers are required to consider the need to:
- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
 - advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
 - foster good relations between people by tackling prejudice and promoting understanding.
- 11.2 In order to comply with the general duty authorities must assess the impact on equality of decisions, policies and practices. These duties do not prevent the

authority from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.

- 11.3 In making decisions the authority must take into account the potential impact of that decision in relation to age, disability, race/ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant women and new and breastfeeding mothers, marriage and civil partnership status in coming to a decision.
- 11.4 In recommending this proposal, there are no equalities impacts that are identified.

12 Carbon Footprint (Environmental) Implications:

- 12.1 No direct carbon/environmental impacts arising from the recommendations.

13 Are there any other options?

- 13.1 The Licensing Committee may reject the proposed amendment to the Street Trading Policy, and instead continue to hear applications at the Full Licensing Committee.

Service Lead - Environmental Health and Community Safety, Simon Lane,

Author: Lee Staples Principal Licensing Officer

Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

None

Contact for enquires:
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Exeter
City Council

**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT
1982**

Street Trading Policy and Conditions

Environmental Health and Community Safety
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 www.exeter.gov.uk/licensing

Issue Date: December 2020

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Section 1 – Purpose

- 1.1. Exeter City Council (the Council) street trading policy's aim is to create a street trading environment which complements premises based trading, is sensitive to the needs and amenities of residents, provides diversity of consumer choice, and seeks to enhance the character, and ambience of local environments.
- 1.2. The policy recognises the importance of street trading to the city and that it can add to the vibrancy and vitality whilst not necessarily adding to nuisance and crime and disorder.

Section 2 – What is Street Trading?

- 2.1. Street trading means selling, exposing or offering for sale any article in a street. The term 'street' includes any road, footway, beach or other area to which the public have access without payment. In this regard, 'other area' will include a retail car park to which the public have access to without payment.
- 2.2. The Council has adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 for the whole of its area and has designated all streets in the area as 'consent streets' for street trading purposes, with the exception of a number of streets in the City Centre, which are designated 'licence streets or prohibited streets'.
- 2.3. The effect of this designation is that street trading in any street is forbidden, subject to legal exemptions, without first obtaining a street trading consent or licence from the Council.
- 2.4. This includes all streets, car parks, parks and all adjacent paved, grassed and ornamental areas to which the public have access without payment.

Section 3 – Exemptions from the need to obtain a Consent or Licence

- 3.1. Some types of trade are legally exempt from the need to obtain a street trading consent or licence. These include:
 - a person trading under the authority of a pedlars' certificate granted under the Pedlars Act 1871, and which the trading activity is one of peddling;
 - a trade carried out by roundsmen eg a milkmen serving registered customers;
 - a trade carried on at a petrol filling station;
 - a market created by statute or grant;
 - trading as a news vendor (selling newspapers or periodicals);
 - trading in premises used as a shop or in a street adjoining premises so used and as part of the business of the shop;
 - authorised charity collections.

Section 4 – Street Trading Consents for which fees are not payable

- 4.1 The Council may remit the payment or part of the payment of fees for the following street trading activities:
- fetes, carnivals or similar community-based and run events;
 - non-commercial or charitable events;
 - farmers markets (producer-managed marketplace for local producers to sell their own produce direct to local people) as these are subject to Street Licence authorisation;
 - sales of articles by householders on land contiguous with their homes (eg a garage sale).

Section 5 – Site Assessment for Consents

- 5.1 The Council will not identify suitable 'pitches' for street trading but will maintain a map showing the location of existing sites that have permission to street trade.
- 5.2 In determining whether to permit street trading at a selected site 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, smell or other nuisance;
 - existing Traffic Orders e.g. waiting restrictions, parking, etc.;
 - any potential obstruction of pedestrian or vehicular access;
 - any obstruction to the safe passage of pedestrians;
 - the safe access and egress of customers and staff from the pitch and immediate vicinity; and
 - the impact on the character of the area.
- 5.3 With regard to itinerant street trading (e.g. an ice-cream van or fish & chip van), where due to the nature of the business there is a genuine need to ply trade in many locations, a general consent will be issued.

Section 6 – Consultation for Consents

- 6.1 Before a new pitch is authorised by the Council for the purposes of street trading (non market) we will, where reasonably practicable, seek representations from:
- the relevant ward councillors
 - Police
 - Highways (Devon County Council)
 - Estates Dept of Exeter City Council
 - Existing holders of street trading consents in the immediate vicinity
- 6.2 Where practicable, fourteen days will be given for representations to be received. If no representations are received, the application will be referred to the next available Licensing Sub-Committee of the Council and may be granted in the terms applied for, and standard conditions will be considered and may be attached to the consent.
- 6.3 All relevant representations relating to the grant of a consent will be referred to the Licensing Sub-Committee hearing the application, for consideration as part of their determination.
- 6.4 Subsequent renewal of consents to street trade submitted on the same terms as previously granted and for the same site, where there have been no relevant objections to the trading, will be dealt with by the Service Lead - Environmental Health and Community Safety.
- 6.5 There is no right of appeal to the Magistrates' Court against refusal to issue a consent, however, where an application is refused, payment of the application fee shall be refunded.

Section 7 - Nature of Good and Trading Hours

- 7.1 The nature of goods which may be sold from any pitch will be specified in the consultation process. No substantial change to the products sold will be permitted without referral back to the Service Lead - Environmental Health and Community Safety.
- 7.2 The Council would not normally grant a new consent for the sale of goods or services which conflict with those provided by nearby traders.
- 7.3 The Council does not permit the sale of New Psychoactive Substances
- 7.4 General street trading hours are not set, therefore in the case of hot food takeaways and fresh produce sellers trading hours will be determined on a pitch-by-pitch basis.
- 7.5 The design and appearance of the stall, barrow, van or cart etc. to be used must be agreed by the Council.

Section 8 – Issue of Street Trading Consents / Licences

- 8.1 Street trading consents will normally be issued for a period of one year, but new consents may be issued for a three month trial period to determine if necessary the viability and impact of trading. Consents for shorter periods may be issued on request but subject to the payment of the appropriate fee determined by the Council.

- 8.2 Consents will be issued for seven days per week, unless there are limiting factors on the use of a pitch on particular days. The permissions granted will identify the permitted days and times of trade.
- 8.3 Fees for consents must be paid in full in advance. In the case of renewals, payments must be at the time of renewal.
- 8.4 Failure to provide payments as above will result in the permission not being renewed or being revoked. This does not apply when a direct debit arrangement has been agreed between the Council and the consent holder.
- 8.5 Where a consent has expired or has been revoked the pitch will awarded to the first applicant that applies to trade on that pitch, no waiting lists will be maintained
- 8.6 A consent cannot be issued to a person under the age of 17 years. An application may be refused if the applicant is unsuitable to hold the consent/licence by reason of having been convicted of an offence or for any other reason.

Section 9 – Planning Permission

- 9.1 If a consent is applied for, the onus is on the applicant to obtain both planning permission and permission to trade from the landowner when necessary, prior to making an application for street trading consent. It is not the responsibility of the Council to investigate and obtain this information.

Section 10 - Licensing Act 2003

- 10.1 In addition to the requirement of having a street trading permission, applicants who sell hot food or hot drinks between 23.00 pm and 05.00 will need a premises licence under the Licensing Act 2003. The Licensing Section is able to provide advice as to the application process.
- 10.2 For premises that seek to trade only between the hours of 23.00 and 05.00 consent will still be required in addition to the Licensing Act licence.

Section 11 – Fee Structure

- 11.1 The Service Lead - Environmental Health and Community Safety will arrange for the setting of street trading fees through the Council and will annually review the fee structure.

Section 12 – Applicants and Assistants

- 12.1 The Council will issue an identity badge to the person applying for the consent and will require the applicant to identify any person that is to work under his permission.
- 12.2 The applicant will provide passport size and quality photographs of himself following the grant of the consent.

- 12.3 He will ensure that the full names addresses and dates of birth plus photographs of any and every person that will or may be used under the authority of the consent is submitted following the grant of the consent.
- 12.4 No person will be permitted to work under the permission of the consent without holding an identity badge issued by this Council at all times they are working.
- 12.5 When submitting an application, the applicant will need to pay the appropriate sum in full. These are set out in the list of fees and charges and can be found on the Council website. The fees will be reviewed annually and updated accordingly as of the first week in April each year.

Section 13 – Conditions and Enforcement

- 13.1 Standard conditions may be attached to each street trading consent detailing the holder's responsibilities to maintain public safety, avoid nuisance and generally preserve the amenity of the locality.
- 13.2 The Service Lead - Environmental Health and Community Safety may review the conditions set out in Appendix A and may add to, delete or amend the conditions as necessary.
- 13.3 Specific conditions may also be attached such as the days and hours when street trading is permitted, the goods which may be sold and the size of the pitch.
- 13.4 Failure to comply with conditions, non-payment of fees or non-attendance at the site without good reason may lead to revocation or non-renewal of a consent.
- 13.5 Persons trading without a street trading permission and who are not exempt (see 3.1 above for examples) will be the subject of enforcement action. This will include any person who holds a certificate granted under the Pedlar's Act 1871, but who fails to operate in accordance with the Act.
- 13.6 The issue of absent traders will be addressed by conditions upon the licence or the consent, for example conditions which:
- require personal attendance of the holder without the option for someone else to run the business on his behalf;
 - require the holder to provide notification of his nominated assistant;
 - require the holder to provide notice of non-attendance to the Service Lead - Environmental Health and Community Safety (not required for periods of less than 20 working days for Annual leave);
 - allow the Service Lead - Environmental Health and Community Safety to revoke the consent after 20 working days nonattendance where no notification of absence has been submitted.

Section 14 - General

- 14.1 This policy will be the subject of periodic monitoring and review and will be applied in a manner which is consistent with the Council's equalities and diversity policies.

Appendix A – Pool of Conditions that may be imposed on a consent to street trade

In these conditions:

"The Council" means Exeter City Council.

"You" means the holder of the consent to trade.

"Your Assistant" means any person or persons who assist the holder of a consent to trade whilst trading under that consent and who has been notified to and has been issued with an identity badge by the Council.

"New Psychoactive Substances" means *Psychoactive drugs which are not prohibited by the United Nations Drug Conventions but which may pose a public health threat comparable to that posed by substances listed in these conventions.*

1. The consent relates to the trader named and is not transferable.
2. Unless a "city wide" consent is applied for and granted, the consent holder may only site the permitted structure at the approved location.
3. A copy of the consent, shall be displayed in a conspicuous place, whilst trading.
4. The consent holder may only trade between the approved times as indicated on the street trading consent.
5. The consent holder may only sell articles or foodstuffs approved by the Council as indicated on the street trading consent.
6. The consent holder or an assistant shall write to the Council giving details of a new home address or new address of the registered office within seven days of moving.
7. No person under the age of 17 years shall engage or be employed in street trading.
8. The consent holder shall ensure full compliance with relevant food safety and health and safety legislation. Compliance with food safety legislation will be indicated by a food hygiene rating of 3, 4 or 5 as issued by Environmental Health.
9. Where a consent holder is operating under both consent and provisions of the Licensing Act 2003 he will ensure both Authorisations are displayed.
10. The consent holder must ensure that staff who prepare open high risk foods, or handle food and have a supervisory role, have training to the level equivalent to the Level 2 Award in Food Safety in Catering within three months of the consent being issued.
11. The consent holder shall take all reasonable precautions for the safety of all other persons using the street(s) and to prevent danger to persons using the street(s).
12. The consent holder shall not cause any obstruction of the highway.
13. The consent holder shall ensure that trading is conducted in a manner which avoids any nuisance or annoyance to the occupiers of neighbouring premises. In particular the holder shall ensure that any power driven equipment (including generators) are sited to minimise noise and attenuated where necessary.

14. The consent holder shall comply with the reasonable requests of a duly authorised officer of the Council or a police officer to take such action as is considered necessary to abate any nuisance or obstruction.
15. Public highways shall be maintained in a clean condition during each day's trading and all rubbish and waste paper accumulated throughout the daily operation of this consent shall be removed at the end of each day's trading.
16. Suitable refuse facilities shall be provided to encourage customers to dispose of rubbish and waste paper so as to avoid causing a nuisance by the littering of the highway and private land bordering the approved location. All litter generated by the trading and discarded by customers of the trading up to 100 metres of the stall, shall be cleared by you at regular intervals throughout the day.
17. The consent holder shall, where applicable, at all times when trading comply with all "Codes of Practice" relating to noise in particular the "Codes of Practice on Noise from Ice Cream Vans Chimes etc 1982".
18. No animal shall be present on any stall or vehicle.
20. The consent holder or an assistant shall not sell New Psychoactive Substances.
21. In addition to these conditions, the Council may also impose conditions which are specific to individual consents to trade.

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By virtue of paragraph(s) 1, 2 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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