

# LICENSING COMMITTEE (LICENSING ACT 2003 FUNCTIONS)

## Agenda Item 18

Brighton & Hove City Council

<b>Subject:</b>	<b>Street trading exclusion zones for schools - Street Trading Policy Review</b>		
<b>Date of Meeting:</b>	<b>24 November 2016</b>		
<b>Report of:</b>	<b>Director of Neighbourhoods, Housing and Communities</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Jim Whitelegg, Licensing Manager</b>	<b>Tel: 01273 292438</b>
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<b>Ward(s) affected:</b>	<b>All</b>		

### FOR GENERAL RELEASE

#### 1. SUMMARY AND POLICY CONTEXT

- 1.1 The Council's Street Trading Policy was set by Members at Licensing Committee after extensive consultation in November 2009 and was last considered at Licensing Committee on the 21<sup>st</sup> November 2013.
- 1.2 At the June 2016 Licensing Committee (Non-Licensing Act 2003) the Committee considered a letter from Councillor Peltzer-Dunn regarding a review of the Council's Street Trading Policy to consider whether a street trading exclusion zone could be introduced around schools in the interest of road safety and healthy eating. A copy of Councillor Peltzer-Dunn's letter is attached in Appendix 1. The Committee requested that a further report be brought forward to a future meeting of the committee assessing the issue of mobile street traders near schools.

#### 2. RECOMMENDATIONS

- 2.1 That the Committee notes the contents of this report and decided whether to ask officers to consult on changing the Street Trading Policy to introduce a school exclusion zone for street trading that the Committee notes the contents of this report and decides whether to ask officers to consult on changing the Street Trading Policy to introduce a school exclusion zone for street trading.
- 2.2 That officers should continue to monitor trends of applications/complaints and illegal activity to inform future policy.

#### 3. RELEVANT BACKGROUND INFORMATION /CHRONOLOGY OF KEY EVENTS

- 3.1. The regulation of street trading by consents covers infrequent, itinerant trading. There is no right of appeal against refusal and so it is vital that licensing authorities behave in a fair and reasonable manner. An established street trader would have a reasonable expectation that his/her consent would continue. Street trading consent regulations' primary purpose is to prevent obstruction of the street or danger to persons using it, or nuisance or annoyance to people using the street or otherwise. This department promotes diet, health and local food issues including engagement with school children by its healthy awards scheme and the recently launched Sugar Smart City initiative. Using street trading regulations to promote healthy food, although appealing, is not likely to be proper use of the Regulatory controls.
- 3.2. The Licensing Committee considered a report into possible "exclusion" zones around schools in 2009 and after extensive consultation it was felt, on balance, that there was no justification to interfere with this legitimate business. The Licensing Committee decided that using street trading regulations to promote healthy food, although appealing, may not be a proper use of the regulatory controls. A recent case in North Lanarkshire ruled that a ban on 'burger vans' selling within 250 metres of schools was not lawful on grounds of diet and health.
- 3.3. A summary of complaints relating to street trading and councillor enquiries has been compiled and can be found below.

Complaints 01.04 - 31.03	Illegal	Obstruction	Noise/Odour/Litter	App Enquiries	Misc	Schools
Apr 2016 - 16/09/2016	13	3	2	5	5	2
2015 - 2016	13	8	0	21	16	1
2014 - 2015	16	14	3	13	22	0

Cllr Enquiries	Illegal	Obstruction	App Enquiry	Misc	School
2016	0	0	0	0	2
2015	1	1	1	0	1
2014	0	0	1	4	0

The figures include complaints relating to Upper Gardner and George Street markets. The complaints about obstruction relate to traders obstructing the highway, pavements, parking bays or blocking access for residents/businesses and cycle lanes. No complaints related to schools, except for the Councillor enquiries in 2015/16 which related to concerns around obstruction and access to ice cream for school children. Officers investigated by visiting and monitoring the area around schools and contacting the schools. However, no responses were received from the schools and Highways deemed it not to be an obstruction where an ice cream van was operating near a school. We have no record of obstruction or safety incidents caused by street traders operating close to schools.

Where a trader is found to be causing a nuisance, obstruction or danger to the public the licensing team will consider revoking the street trading permit.

- 3.4. With regard to road safety, officers have consulted with colleagues in Highways and the Road Safety Team with regard to the specific question of school exclusion zones for street trading. The Highways Enforcement Team reported that street trading would not normally be considered highway obstruction as it would be seen as a reasonable use of the public highway.
- 3.5. The Road Safety Team (Accident Investigation & Prevention) is not aware of any incidents involving street traders near schools. The Road Safety Team consulted the South East Accident Reduction working group (local authorities in the South) and found that no exclusion zones around schools exist.
- 3.6. Changing the Street Trading Policy would require an extensive consultation exercise which would have resource implications and there would need to be valid grounds for triggering such a review. The basis for such change would need to be appropriate and lawful.

### **Current street trading process**

- 3.7. The city centre streets, with a few exceptions, are prohibited streets. There are five static pitches within the City Centre (Zone A), mainly off Western Rd Brighton (Castle Street, Clarence Square, Dean Street, Crown Street and Marlborough Street) where trading is permitted. Outside of the city centre (Zone B), traders with a consent can trade on the highway, providing they are not causing a nuisance, obstruction or danger to the public. The Council's street trading policy can be found from the following link <http://www.brighton-hove.gov.uk/content/business-and-trade/licensing-and-gambling/street-trading> and in Appendix C, which sets out in a table the type of trading permitted in certain areas of the city.
- 3.8. The Seafront area including Grand Junction Road and Kings Road is designated a consent street but is outside the trading policy established by the Council and control of that area is the responsibility of the Seafront Office.
- 3.9. Officers in Environmental Health and Licensing issue permits for street trading. Any appeals against officer's decisions are heard by the Licensing Committee (Non-Licensing Act 2003).
- 3.10. A street market is held each Saturday in Upper Gardener Street between the hours of 07.00 and 17.00. Occasional markets are held in Bartholomew Square and George Street Hove. New Road and Black Lion Street in Brighton need to be authorised for street markets.
- 3.11. Street artists and hot chestnut sellers are permitted to operate in East Street, Duke Street, Bartholomew Square and Market Street.
- 3.12. Ice cream and burger vans are issued permits by the Licensing Team giving them consent to trade as "Mobile Street Trading". This is allowed in Zone B (outside of the city centre), with the exception of Parks & Gardens and within 1 mile of the Falmer Community Stadium therefore it gives mobile trading a wide area to trade from. There are no stipulations of roads but only that

trading takes place within Zone B in accordance with the Street Trading Policy. We have 18 Zone B permits currently issued.

- 3.13. There are areas throughout the city in which street trading is prohibited. These areas are generally main thoroughfares or areas in the city centre and run from the western boundary of Brighton & Hove in Vale Road, Portslade, along Portland Road, Sackville Road, Church Road, Western Road, Montpelier Road, Chatham Place, Viaduct Street, Upper Lewes Road, then southwards down Lewes Road, Albion Street and Grand Parade before heading East along Edward Street, Eastern Road and finishing in Arundel Road. Street trading is also prohibited within 1 mile of the Community Stadium, but excluding council owned public spaces, which would remain undesignated.

### **Commentary on street trading policy**

- 3.14. Historically, parks have remained undesignated to allow Leisure officers flexibility in permitting outdoor events. The Seafront has been a consent street managed on a day to day basis by Seafront officers. Economic development members and officers are considering corporate market policies and officers are working to ensure corporate market policies and street trading policy work in harmony.

- 3.15. For members assistance and as reported last time:

Street trading is selling articles on the street, including exposing or offering articles for sale. It does not include provision of services, like henna tattooing, hair braiding, tarot reading etc.

The following activities are not subject to street trading controls:

- Pedlars, with a pedlar's certificate issued by the Police under the Pedlars Act 1871. These are itinerant traders.
- Markets covered by enactment or order (ancient – none in Brighton & Hove)
- Trunk road picnic areas (none in Brighton & Hove)
- News vending
- Trading at petrol filling station
- Trading on the street adjoining a shop as part of the business of the shop
- Selling things on a round like milk doorstep delivery
- Objects on a highway licensed under highways legislation, like tables and chairs or A boards
- Recreation or refreshment facilities licensed under highways legislation
- Charitable street collections which are subject to separate permissions

Controls only apply to the street or other public places.

## 4. CONSULTATION

- 4.1 If the Committee decide that street trading should be reviewed, a full and measured consultation should involve residents (via the council's website), residents associations and Community Associations including the North Laine Community Association, businesses (including individual street traders) in Brighton & Hove, Police and Highway Authority, Economic Development and Regeneration regarding the corporate markets policy, Tourism, Events Office, Seafront Office (including Seafront Trader Association), Trading Standards, City Clean, Legal, Finance, Ward Councillors, City Centre and Hove Business Fora, Trader Associations including North Laine Traders Association, Upper Gardener Street Traders Association, Brighton & Hove Albion Football Club, and the Education Authority (Children's Trust).

## 5 FINANCIAL & OTHER IMPLICATIONS:

### 5.1 Financial Implications:

Street Trading fees are set at a level that officers reasonably believe will cover the costs of administering the service. Any costs associated with the Street Trading Policy will be met from within existing Licensing budgets. Fees are set as part of the annual Council budget setting process.

Finance Officer Consulted: Michael Bentley      Date: 18/10/16

### 5.2 Legal Implications:

Section 3 of the Local Government (Miscellaneous Provisions) Act 1982 enables a district council in England and Wales to adopt a code for the regulation and control of street trading within its area and the Council has adopted Schedule 4 of the Act which governs street trading. Schedule 4 permits the Council to designate by resolution streets as prohibited, licence or consent streets. There is no obvious mechanism for creating exclusion zones, but part of a street could be re-designated a prohibited street. There is a statutory procedure for this involving publication of a notice in a newspaper and inviting representations which must then be considered. There should be good justification for changing the designation of streets. Challenge might reasonably be expected from those adversely affected by changes to street designation both on administrative law and human rights grounds.

Lawyer Consulted: Rebecca Sidell      Date: 14.10.16

### 5.3 Equalities Implications:

Diversity is valued and strong, safe communities are vital to future prosperity.

### 5.4 Sustainability Implications:

Some street trading supports recycling of goods. Farmers markets may reduce "food miles".

5.5 Crime & Disorder Implications:

Transparent, proportional street trading controls minimise danger of obstruction and nuisance. Street trading can be a source of stolen or counterfeit goods.

5.6 Risk and Opportunity Management Implications:

Street trading is a crucial business and employment opportunity and unnecessary regulation might lead to legal challenge.

5.7 Corporate / Citywide Implications:

Street trading represents some traditional, historic heritage

**SUPPORTING DOCUMENTATION****Appendices:**

Appendix A – Councillor Peltzer-Dunn letter and response  
Appendix B – Council’s Street trading Policy

**Documents In Members’ Rooms:**

None

**Background Documents:**

None

