



Report to Licensing (Regulatory) Committee

Date:	27 th February 2024
Title:	Buckinghamshire Council draft Street Trading Consent Policy
Cabinet Member(s):	CLlr Mark Winn, Cabinet Member for Homelessness & Regulatory Services
Contact officer:	Jo Bowles, Senior Licensing Officer
Ward(s) affected :	none specific
Recommendations:	<p>(1) The Licensing Committee recommend that Full Council pass a resolution to designate all streets in Buckinghamshire as ‘consent streets’ for the purposes of street trading.</p> <p>(2) That the draft Street Trading Consent Policy set out at Appendix 1, subject to any recommended amendments, be approved for public consultation.</p>
Reason for decision:	<p>The adoption of street trading controls helps promote prosperity, local order, consumer protection, public health and safety, fairness, quality, and community involvement.</p> <p>The adoption of a policy supports Buckinghamshire Council’s commitment to transparency, fairness and openness when determining applications and ensuring compliance with the relevant legislation.</p>

1. Background

- 1.1 Outside London, street trading is mainly controlled through the Local Government (Miscellaneous Provisions) Act 1982 (referred to onwards as “The Act”), the Highways Act 1980, the Pedlars Act 1871 and historic common law, modified and supplemented by general and local legislation.

- 1.2 Street trading legislation is adoptive and may be used to regulate the sale or offering for sale of anything in a street. A “street” includes any road, footway, beach, or other area to which the public have access without payment, including service stations. The definition is not limited to the public highway and can include the public realm and privately owned but freely and publicly accessible areas, such as open spaces and retail shopping centre car parks.
- 1.3 Determination of street trading matters, including fee setting, is a non-executive function of the council. The power to determine consents and take enforcement under may be delegated to council officers, in accordance with the council’s scheme of delegations.
- 1.4 Prior to the formation of Buckinghamshire Council in April 2020, street trading was dealt with differently in each legacy district council area, using different application forms, processes, and fee levels. Since becoming a unitary authority, the licensing team have been working to consolidate records and develop working practices that are consistent across the new council area.
- 1.5 There is currently no street trading consent policy covering the Buckinghamshire Council area. Whilst there is no statutory requirement for a policy under the legislation, it is considered appropriate to produce a single policy which sets out a clear and consistent framework for the council’s approach to street trading. The adoption of a policy supports the council’s commitment to transparency, fairness and openness when determining applications and ensuring compliance with the relevant legislation.
- 1.6 A pre-draft policy consultation exercise has been carried out and the results have helped shape Buckinghamshire Council’s first draft street trading consent policy. It is proposed that all streets in the Buckinghamshire Council area are designated as ‘consent’ streets.
- 1.7 Subject to agreement by the Licensing Committee, the draft policy will be consulted upon widely for a period of 6 weeks. The results of the consultation will be reported back to the Licensing Committee for further consideration.
- 1.8 The draft Street Trading Consent Policy (referred to onwards as “the Policy”) at Appendix 1 also provides guidance on the application processes and a brief overview of relevant legislation.
- 1.9 The Policy provides an opportunity to outline matters which the council will take into consideration when deciding whether to grant a street trading consent and it aims to balance the needs of the public, traders, businesses, and the environment as well as supporting the council’s [Corporate Plan](#).
- 1.10 The ability to determine where street trading can take place, the articles that may be sold and the way trading is conducted, can help to support other council plans in

terms of how public spaces look, feel, and are used. The street trading regime can be used to promote healthy lifestyle choices and environmentally friendly activities. A well-planned street trading policy also presents an opportunity to support economic prosperity and areas with vibrant street trading activity are likely to benefit not only traders themselves, but other businesses within the vicinity.

2. Main content of report

- 2.1 If the street trading provisions of the Act are adopted, the council will be required to consider and determine applications for street trading consents in line with the provisions set out in schedule 4 of the Act.
- 2.2 In adopting the relevant provisions of the Act, a local authority has various options in terms of its approach to regulating street trading activity. Streets may be designated:
- “Prohibited streets”, where no trading may take place,
 - “Licensed streets”, where a licence is required to trade; and
 - “Consent streets”, where a consent is required from the Council.
- 2.3 There are distinct differences between “licences” and “consents”. Licences are generally considered more suited to permanent traders and provide greater protection for the holder. Councils are obliged to grant licences unless any of the statutory grounds for refusal apply and holders have the right to appeal any decision to refuse, revoke or vary the terms of a licence. Consents are more suited to mobile trader and by contrast consent holders have less protection. The use of consents is generally seen as a simpler and more effective way to regulate street trading. For example, if a consent holder is found to have acted inappropriately their consent can be revoked with immediate effect at any time and the holder has no statutory right of appeal if a consent is refused, revoked, or is modified. Conditions may be attached to both licences and consents and councils tend to adopt standard conditions for this purpose, modified as required to suit specific circumstances.
- 2.4 In areas where street trading controls are adopted, consent from the council will be required for any trading in that area where members of the public can freely enter to see the goods for sale without having to pay any money, unless one of the legal exceptions apply. Case law has further established that if trading happens in an area where the public can access without payment, even if the public did not go there, this is still deemed a “street” and permission from the council is needed to trade there. ([West Berkshire DC v Paine \[2009\]](#))

- 2.5 In accordance with the Act, street trading specifically concerns the selling or exposing or offering for sale of any article (including a living thing). It does not apply to the supply, or offering to supply, of services.
- 2.6 Examples of public areas where street trading consent is required include:
- Public parks, playing fields, commons, and riverbanks
 - Town centre industrial estates and retail shopping centre car parks
 - Car parks attached to pubs and restaurants during opening hours
 - Railway station car parks
 - Private fields temporarily opened to the public
 - Caravan Park
 - Parking bays and grass verges off the public highway
 - Hospital car parks
- 2.7 In accordance with the Act, the following activities are not considered street trading:
- Trading as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871.
 - Trading in a market or fair that has a legal right to be held by virtue of a grant or an enactment or order.
 - 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 where the only articles sold are newspapers or periodicals and they are sold without a stall or with a small stall that does not exceed certain dimensions or occupy a certain area.
 - Trading at premises used as a petrol filling station or a shop, or in a street adjoining such premises as part of the business of the shop.
 - Selling things as a roundsman such as a milkman or a baker.
 - Using an object or structure for trading or operating facilities for recreation or refreshment under Part VIIA of the Highways Act 1980. These facilities are commonly licensed under a "table and chairs or "pavement licence".
 - Selling articles, or collecting money, under the authority of a street collection permit, under section 5 of the Police, Factories, etc. (Miscellaneous Provisions) Act 1916.
- 2.8 Currently, the council is operating under legacy district council arrangements summarised as follows:

Aylesbury Area: Consent streets have been designated in Aylesbury, Buckingham, and Wendover. Unregulated trading can occur outside these consent areas and on privately owned land. There are no licensed streets.

Chiltern Area: Consent streets operate in several areas, and there is one prohibited street. There are no licensed streets.

South Bucks Area: Several roads have been designated as prohibited streets for street trading. There are no consent or licensed streets.

Wycombe Area: Several areas have been designated as Prohibited Streets, the remain areas are deemed consent streets. There are no licensed streets.

2.9 There are 19 street trading consents in operation across the Buckinghamshire Council area, one in Chiltern and South Bucks, 5 in Aylesbury Vale and 14 in the Wycombe area. All the existing consent holders will be engaged with during the consultation period should the draft Policy be approved by the Licensing Committee.

2.10 **Pre-draft Policy engagement**

2.11 The licensing service conducted a pre-draft policy engagement workshops and consultation to elicit the views of stakeholders on several policy areas summarised below.

2.12 The pre-draft policy workshops were held on 23rd and 30th May 2023 and were well attended by internal and external stakeholders. The workshops were used as an opportunity to discuss the various approaches to regulating street trading and to explore the potential opportunities that a new policy would present. Below is a summary of the key findings from the workshops:

- Opportunity to regulate traders that do not currently have to apply for consent, ensuring that all traders are held to the same standards.
- Individuals and vehicles, carts, barrows, stalls, etc. would have to be deemed safe and suitable to trade in Buckinghamshire.
- Must ensure that we do not put measures in place that would be to the detriment of not-for-profit community events.
- Clear enforcement policy is required.
- Need the ability to be flexible to accommodate traders and existing events that take place.
- Sustainable and environmentally friendly traders are essential, need to utilise the street trading regime to support this.

2.13 The consultation was conducted by way of an online survey, open from 3rd August 2023 until 1st October 2023. The survey was shared with all consultees listed in the

draft policy, all elected members, all town and parish councils and existing consent holders.

- 2.14 Survey respondents were asked to describe their role: resident, business, ward councillor, responsible authority, town, or parish council and other. In total six responses to the survey were received which incorporated representatives from eight roles.

Role type	Response rate
Residential interest	37.5%
Business interest	12.5%
Councillor ward, parish, town	25%
Responsible authority	25%

- 2.15 A copy of the pre-draft policy survey questionnaire is shown at Appendix 2. A summary of key findings is shown at Appendix 3. The results of the survey and the workshops have helped inform the content of the draft version of the Policy, as summarised below.

2.16 **Draft Policy**

- 2.17 The draft Policy is based on the recommendation that Full Council designates all streets in the authority's area as 'consent' streets, should the Licensing Committee be minded supporting this recommendation. This would mean that anyone wishing to trade in Buckinghamshire Council's area would need to apply for a street trading consent, unless one of the exceptions shown in 2.7 applies.

- 2.18 It is also proposed that there be some local dispensation from the requirement for street trading consent in specific circumstances and these are:

- Non-commercial events such as not for profit events like village fetes and school fundraising activities.
- Shopping centres, where traders are set up within covered shopping centres or arcades.
- Goods sold from working farms at the premises where they were produced.
- Residential properties holding garage sales or similar, selling unwanted household goods.
- Domestic sale of a single used vehicle.

- 2.19 The draft Policy provides that the following types of consent are available to applicants:

- Standard consent, for traders from a static location.
 - Consent for peripatetic traders, for those who travel around the area such as ice cream and fish and chip vans.
 - Event consent, for community or special events to allow one consent to cover multiple traders.
- 2.20 The application process is set out in the draft Policy, with applicants being encouraged to contact the licensing service in advance of making an application to seek advice and clarification on any aspects of the Policy and requirements that they are unsure about.
- 2.21 As part of the application process, applicants and nominated assistants will be required to provide a basic disclosure certificate from the Disclosure and Barring Service (DBS) dated within two months of the date of application. This will enable the council to assess the suitability of applicants and any nominated assistants.
- 2.22 Street traders and their staff may encounter a wide variety of members of the public including children and vulnerable adults. Some individuals may use their position as a trader to take advantage of such people. There is an expectation from the public that those persons trading under a consent granted by Buckinghamshire Council are trustworthy, honest and do not pose a risk to the public. The draft Policy explains the types of convictions and unacceptable behaviour that are particularly relevant to street trading. It also emphasises that each application is considered on its own merits.
- 2.23 The draft Policy requires applicants to provide proof of identity documents. Applicants are also required to provide various documents in relation to the suitability and safety of the vehicle, van, stall, or unit they are seeking to trade from so the licensing authority can be satisfied it is in a safe and suitable condition to be used in this manner.
- 2.24 Once an application is complete and deemed valid, the application will be subject to a 28-day consultation to allow other council departments, external stakeholders and members of the public to review the application and make any representations either for or against the application.
- 2.25 As part of the consultation, the applicant will need to display a public notice detailing the hours applied for and description of the proposed articles to be sold at the desired location. This will not be required for peripatetic trader applications.
- 2.26 The draft Policy details various criteria that will be used when deciding whether a consent should be granted to an applicant. The criteria include considerations in relation to nuisance, public safety, protection of children and vulnerable adults. Other factors that relate to the council's broader corporate aims are also considered in the draft Policy:

- The environmental impact of the proposal.
- Whether the proposal will enhance the quality of the local area
- Does the proposal present increased opportunities for small businesses and encourage economic growth.

2.27 The draft Policy also supports Buckinghamshire’s Joint Local Health and Wellbeing Strategy (2022-2025) priority to reduce childhood obesity and contribute to the council’s whole systems approach to a healthy weight. The draft Policy recommends an exclusion zone of 400m for fast food outlets around schools for standard traders from a fixed site. For those traders classified as peripatetic, the restriction is that they should trade within 200m from any entry or exit gate to a school or college from an hour before the start of the school day until an hour after the end of the school day, unless they have written permission from the Head Teacher. The Whole Systems Approach to Healthy Weight in Buckinghamshire is guided by the Office for Health Inequalities and Disparities (OHID – formerly Public Health England). A key priority in Buckinghamshire’s action plan is “to create an environment where healthy food is the preferred choice, whether eating in or out of the home”. OHID proposes Local Authorities use licensing policies to prevent mobile trading near a school or requiring healthier choices as a condition of a licence to trade. It is hoped that by having these restrictions in the draft policy it will:

- Contribute to improving the food environment as part of a whole systems approach to reduce child obesity and support healthy food choices
- Reduce traffic safety concerns and traffic congestion around schools
- Avoid undermining school health policies and programmes to support children’s health and wellbeing
- Avoid undermining healthy school catering services
- Reduce persistent and immediate pressures on parents (both pester power and financial pressures) at the school gate to purchase unhealthy items that they may not be able to easily afford.

2.28 There is no statutory right of appeal against a decision to refuse or revoke a street trading consent. However, if an applicant is aggrieved by the council’s decision it is proposed that they will have the opportunity to lodge an appeal in writing to the licensing service that will be considered by a senior officer, unconnected to the application.

2.29 Street trading consents are granted for a maximum of 12 months and fees will be set and reviewed annually on a cost recovery basis. The council may charge such fees as is considered reasonable for the grant of a consent. Furthermore, different fees may be charged according to the duration of the consent, the streets in which the

authorisation applies and the articles the holder is authorised to sell. Essentially, the Courts have determined that street trading fees must be set at a level designed to only recoup the costs of administering the consent scheme and the council cannot aim to make a profit from the scheme.

- 2.30 Applications must be accompanied by the relevant fee. If an application is approved and consent granted, the balance of the fee will be due before the consent is issued. The council may choose to agree that remaining fees be paid in instalments if it considers it appropriate to do so.
- 2.31 It is proposed that consents are issued with standard conditions that are outlined in Appendix 2 and 3 of the draft Policy. The council also has the ability to add any additional conditions related to specific business should it be deemed reasonable and appropriate to do so. This can be done at the point of grant, or any time during the course of the consent period.
- 2.32 A risk-based approach to compliance checks and enforcement is set out in the draft Policy. This includes reference to partnership working with other agencies and/or council departments and the sharing of intelligence relating to offences under the Act and unauthorised street trading.

3. Next steps and review

- 3.1 If approved by this Committee, and subject to any suggested amendments, the draft Policy will undergo a six-week public consultation with all relevant stakeholders notified, including current street trading consent holders and non-consent holders (where these can be identified), Ward, Town and Parish Councillors, Community Boards, Thames Valley Police, Fire and Rescue Service and a number of Council departments such as Environmental Health, Trading Standards, Economic Development Team, Public Health, Planning and Community Safety.
- 3.2 Following the consultation process, a further report will be presented to this Committee providing full details of any comments received, together with any recommended changes by the licensing service to the draft Policy arising from the consultation.
- 3.3 Should the Committee be minded agreeing the proposed recommendation to adopt consent street controls, the matter will be referred to Full Council for consideration, once a final version of the Policy has been agreed by this Committee.

4. Other options considered

- 4.1 The council could decide to adopt different controls, in different areas of the borough, as well as deciding to apply no controls in certain areas, or indeed no

controls at all. It has been recommended that street trading consent controls be adopted across the whole council area as this allows for the greatest flexibility, ensures equitable standards are applied in all areas and allows swift action to be taken should it be necessary. The ultimate decision on adoption of controls rest with Full Council, however this committee could consider the matter again, following consideration of consultation feedback on the draft Policy, before a final recommendation is made to Full Council.

- 4.2 The council could choose not to have a street trading licensing policy as there is no statutory requirement to have one. However, a policy provides an opportunity for the council to set out its approach, providing clarity for applicants, consent holders and other affected parties.

5. Legal and financial implications

- 5.1 The Local Government (Miscellaneous Provisions) Act 1982, schedule 4, sets out the process for designating consent streets and rescinding any existing street trading resolution(s). Should the committee be minded to recommend the adoption of consent streets, or any other recommendation related to trading controls in designated streets, the Act requires the council to pass a resolution. In accordance with the council's constitution, the passing of bye-laws and local legislation is reserved to Full Council.
- 5.2 As a consequence of the Local Government (Structural Changes) (Transitional Arrangements) (No.2) Regulations 2008 (SI 2008/2867), resolutions made by the former legacy councils in respect of street trading controls will continue to apply until such time as Buckinghamshire Council passes a new resolution to adopt street trading controls.
- 5.3 The adoption of a Policy ensures consistency of approach, and it is considered that the council would be far less likely to be open to legal challenged where a policy is adopted which clearly sets out how applications will be considered, reasons for refusal and the council's approach to enforcement.
- 5.4 The Licensing Committee is responsible for setting fees charged by the council for street trading. Licence fee levels are required to be calculated on a cost recovery basis with a view to ensuring that they remain cost neutral to the council. The forecasted income for street trading consents for 2023/24 is circa £60k, based on the various fee structures of the legacy district councils which still apply. Any new controls on street trading will not be introduced within the current financial period so this forecast will be unaffected by the recommendations contained within this report.
- 5.5 Should new street trading controls be introduced across the whole council area, including controls on mobile traders, it is anticipated that more traders will be

brought within scope of the regime. At present it is not possible to give an accurate estimate of the number of new traders however it is expected that this information will be available following the proposed consultation exercise. Once final decisions have been made on the adoption of street trading controls and policy content, the licensing service intends to review both the budgetary position and levels of fees and charges during the period 2024/25 with a view to ensuring a cost neutral financial position is maintained. A further report will be presented to the licensing committee on this and if approved new fees may be introduced during 2024/25 dependent on the policy decision making process. Thereafter fees and income levels will be reviewed on an annual basis.

- 5.6 The council has referred to the document “Open for Business: Local Government Association (LGA) guidance on locally set licence fees”. The LGA guidance acknowledges that Councils are free to design their licensing service in a manner that best serves the needs of their community and recover the costs accordingly.

6. Corporate implications

Protecting the vulnerable – by setting out our expectations around the suitability of applicants and nominated assistants, it is hoped that this will provide assurance to customers in relation to these businesses.

Property – N/A

HR – N/A

Climate Change – N/A

Sustainability – applicants are encouraged to consider the potential environmental impact of their business and provide an environmental impact statement as part of the application process.

Equality - An equality impact screening assessment has been carried out which does not indicate any adverse or disproportionate effects on those with protected characteristics however the assessment will be kept under review to ensure appropriate information in this regard is available as and when required.

Data – dealing with any application for a consent will require the collection and processing of personal data. Such processing is justified in the public interest in appropriate licensing of street traders. The Council’s current licensing procedures ensure relevant personal data (including criminal conviction data) is processed in accordance with the Data Protection Act and UK GDPR requirements and this will apply to any further detailed personal data (if any) processed as a result of the proposed policy being adopted.

Value for money – policy will be reviewed as legislative changes occur and updated accordingly, ensuring that it is fit for purpose. A formal review will be carried out at least every 5 years. All of this work will be performed by officers in-house.

7. Key documents

- Appendix 1 – Draft Street trading consent policy
- Appendix 2 – Pre-draft policy engagement survey questionnaire
- Appendix 3 – responses to pre-draft policy engagement survey questionnaire
- The Local Government (Miscellaneous Provisions) Act 1982
[Local Government \(Miscellaneous Provisions\) Act 1982 \(legislation.gov.uk\)](#)
- [Buckinghamshire Council Corporate Plan, 2020 – 2025](#)
- Pedlars Act 1871
[Pedlars Act 1871 \(legislation.gov.uk\)](#)
- The Highways Act 1980
[Highways Act 1980 \(legislation.gov.uk\)](#)
- West Berkshire District Council V Simon Paine
[West Berkshire District Council v Paine \[2009\] EWHC 422 \(Admin\) \(05 February 2009\) \(bailii.org\)](#)