



Local Government (Miscellaneous Provisions) Act 1982

# Street Trading – Consent Streets

## **Guidance and Standard Conditions**

(22/8/12 version)

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# Street Trading

## Draft Guidance and Standard Conditions

### 1. Introduction

Breckland Council has adopted the street trading provisions of Section 3 and Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982. This enables streets to be designated as being either 'Consent', 'Licence' or 'Prohibited' streets.

All streets in the Breckland Council area have been designated as Consent Streets. This means that anyone who wishes to operate as a street trader in the Council area will be required to hold a valid Street Trading Consent.

The purpose of this document is to outline the way in which the scheme works and the standard conditions applied to all consents.

### 2. Definitions

The Act includes the following definitions:

**"Street"** includes:

- (a) Any road, footway or other area to which the public have access without payment.
- (b) A service area as defined in Section 329 of the Highways Act 1980.

**"Street Trading"** means the selling or offering or exposing for sale of any article (including a living thing) in any street.

**"Consent"** means a consent to trade on a street granted by the Council, pursuant to Paragraph 7 of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982.

**"Consent Street"** means a street in which street trading is prohibited without the consent of the Council.

**"Consent Holder"** means the person to whom the consent to trade has been granted by the Council.

**"Licence Street"** means a street in which a licence to trade is required

**"Prohibited Street"** means a street in which street trading is prohibited.

### 3. Exemptions

The following activities are not considered to be street trading for the purposes of this schedule:

- (a) Trading by a person acting as a pedlar under the authority of Pedlar's Certificate
- (b) Anything done in a market or fair.
- (c) Trading in a trunk road picnic area as defined in Section 112 of the Highways Act 1980.

- (d) Trading as a news vendor
- (e) Sales from the forecourt of a petrol filling station
- (f) Trading which is carried on at premises used as a shop or in a street adjoining shop premises and as part of the business of the shop.
- (g) A roundsman or person who delivers orders to the customer's door

#### **4. Making an application**

Applicants are strongly advised to read thoroughly all the conditions attached to a Street Trading Consent prior to making an application.

Please note that consents cannot be granted to a person under the age of 17 years.

All applications must be made to the Council in writing using the appropriate application form. The following items must be submitted with the completed application form:

- (a) The correct fee.
- (b) Where the proposed street trading activity is from a fixed position, a map showing the proposed trading site.
- (c) One coloured photograph of the vehicle, stall, etc that will be used for the street trading activity.
- (d) A copy of a current certificate of insurance that covers the street trading activity for third party and public liability risks.
- (e) Where applicable, a copy of a current Gas Safety Certificate issued by a Gas Safe Registered Engineer.

#### **5. Fees**

An annual fee of £408 is payable, calculated on a full cost recovery basis. This ensures that the scheme operates at no net cost to the Council. (Different fees apply for local charitable fund raising activities. Please contact the Licensing Team for further information).

#### **6. Trading on private land**

If you intend to trade on private land (including car parks) within the Breckland area, you should also provide a copy of the written permission of the landowner before the Council can consider the site suitable for trading.

#### **7. Market Rights**

In some areas of the district established markets have legal powers or rights to protect traders and ensure successful trading.

For the purposes of market rights law the legal definition of a market is 'a concourse of buyers and sellers', with five or more trading positions.

Any rival event deemed a market or fair (private or charity) that falls within 6<sup>2</sup>/<sub>3</sub> miles of such a market may need the consent of the market rights holder to

operate. This is the local Town Council in Attleborough, Dereham, Thetford, Swaffham and Watton.

## **8. Inspection of trading unit**

The vehicle, van trailer, stall or other device to be used for the proposed street trading activity will be inspected by an authorised officer of the Council prior to any Street Trading Consent being granted. This is to ensure compliance with relevant legislation.

## **9. Determination of the application**

The Council will carry out its street trading functions with a view to promoting the following licensing objectives:

- (a) **Public Safety** - The location of the proposed street trading activity should not present a significant risk to the public in terms of road safety, obstruction and fire hazard. The term 'public' refers to customers of the street trading activity and other members of the public using the street.
- (b) **Avoidance of Nuisance** - The street trading activity should not present a significant risk of nuisance from noise, smells, fumes, rubbish, litter or the harbourage of vermin to households or businesses in the vicinity of the proposed street trading site. Observations from officers of the Council will be taken into consideration.
- (c) **Compliance with Legal Requirements** - The proposed street trading activity should be carried out in full compliance with relevant legislation. Persons wishing to obtain a Street Trading Consent should be fit and proper in terms of the nature of the proposed business and their previous criminal convictions.
- (d) **Permitted Trading Hours** - The Council will generally only permit street trading between 5 am and 11 pm. Any trading outside these hours may require the Consent Holder to also hold a Premises Licence under the Licensing Act 2003, for the supply of late night refreshment.

## **10. Issue of Street Trading Consents**

A Street Trading Consent will be issued for a maximum period of 12 months.

## **11. Decision to refuse or revoke**

Should the Council decide to refuse or revoke a Street Trading Consent, the applicant will be notified within 10 working days of that decision and the reasons for it.

If the applicant is not satisfied with the decision, they may make representations in writing to the Council's Environmental Health Department within 28 days of being notified of the decision to refuse/revoke.

The Council may revoke or vary a Consent at any time, including in the following circumstances:

- (a) Where the street trading activity is likely to give rise to nuisance or loss of amenity caused by noise, odour, litter, disturbance or anti social behaviour;
- (b) Where there is insufficient space in the street for the applicant to engage in the trading without causing undue interference or inconvenience to persons using the street;
- (c) Where the Highways Authority considers a location is dangerous or where a personal injury or fatality has occurred within 100 metres, or where the Council considers the location to be unsafe or places the public at risk from harm;
- (d) Where the applicant is unsuitable to hold a consent because of having been convicted of an offence that the Council consider makes them unsuitable to hold such consent, or for any other reason;
- (e) Where the applicant has at any time been granted a Street Trading Consent by the Council, and has persistently refused or neglected to pay the appropriate fee;
- (f) Where the applicant or operator of the stall is under the age of 17 years;
- (g) Where a trader has failed to comply with the conditions attached to the consent;
- (h) Where the street trading may damage the structure or surface of the street;

## **12. Appeal to the Council's Appeals Committee**

The Council's Appeals Committee has been established to hear objections and appeals in relation to licensing matters. The role of the committee in relation to Street Trading Consents is to hear representations from applicants or licence holders where an application has been refused or a licence revoked.

## **13. Refusal of applications**

The Local Government (Miscellaneous Provisions) Act 1982 does not make provision for any legal appeals against the decision of a Council in relation to the refusal or revocation of Street Trading Consents. A person aggrieved by a decision of a Council may seek a Judicial Review of the decision, should it be felt necessary.

## **14. General information**

### **Persons under 17 years**

The Council will not grant a Street Trading Consent to a person under 17 Years of age.

### **Street Trading Consents**

The conditions attached to all Street Trading Consents stipulate that a Consent Holder may not assign, sub let, or part with interest or possession of a Street Trading Consent.

## **Variation of Conditions**

The Council may from time to time vary the conditions of a Street Trading Consent.

## **Enforcement**

The Council will enforce the provisions of street trading legislation within its area. All enforcement activities will be carried out in accordance with the Council's Enforcement and Prosecution Policy.

## **15. Street Trading Consent Standard Conditions**

The following conditions will be attached to all street trading consents:

1. The holder of a Street Trading Consent shall take all reasonable precautions to prevent obstruction of the street, danger to persons using it and nuisance or annoyance to other users and residents.
2. Stalls or vehicles shall not be positioned in such a way so as to obstruct the view of drivers of other vehicles.
3. The holder will comply with all directions of the Police, the Council or the Highway Authority whether verbal or in writing.
4. The grant of a Street Trading Consent does not convey any other approvals that may be necessary under food hygiene, planning, market rights or any other appropriate legislation. It also does not convey any right to trade on privately owned property.
5. The holder shall comply with all appropriate statutory provisions e.g. food hygiene, advertisement control, health and safety regulations, planning, market rights, etc.
6. The Consent Holder shall at all times have a copy of this consent available for inspection by a duly authorised officer of the Council or any Police Officer.
7. A Street Trading Consent Plate will be issued along with the consent and must be clearly displayed on the vehicle, trailer or stall so as to be clearly visible to the public. In the case of vehicles or trailers the Consent Plate shall be displayed on the rear of the vehicle/trailer.
8. The Consent Holder shall only trade from the size and type of vehicle, stall or trailer specified in this consent.
9. The Consent Holder shall not permit any person under the age of 17 years to be left in charge of a street trading establishment.
10. All Consents are personal to the Consent Holder, who shall not assign, transfer or in any way permit anyone else to benefit from their Street Trading Consent.

11. There shall be no change in the mode of trading or range of articles sold as specified in the Street Trading Consent without the written permission of the Council having been obtained.
12. The Consent Holder shall present their vehicle, stall or trailer used for street trading for inspection by a duly authorised officer of the Council at a time and place designated by the officer if requested.
13. Consent Holders shall ensure that staff who prepare open high risk food, or handle food and have a supervisory role, have been trained to a level equivalent to the Chartered Institute of Environmental Health (CIEH) Level 2 Award in Food Safety within three months of the consent being issued.
14. The Consent Holder shall be responsible for the collection and temporary storage of all refuse and other waste generated by trading activities and its subsequent removal from the site and proper disposal.
15. No water from any washing of equipment or hands shall be allowed to discharge to the ground.
16. At least one refuse container shall be provided by the Consent Holder and positioned near to the vehicle, stall or trailer and be available for use by customers. A notice shall be displayed requesting customers to deposit litter in a waste container.
17. The Consent Holder shall take all reasonable steps to ensure public safety and, in particular, ensure that the vehicle, stall or trailer used in connection with the street trading activity is maintained in a clean and safe condition and, as appropriate, is tested/serviced annually.
18. The Consent Holder must at all times have available for inspection an up to date and valid Certificate of Insurance (vehicle and public liability) - the level of public liability cover must be a minimum of £1,000,000.
19. The Consent Holder must take adequate precautions to prevent the risk of fire at their vehicle, stall, or trailer. Where an electrical generator or bottled gas is used, then current safety certificates must be in force and a suitable fire extinguisher shall be provided. In addition, a fire blanket shall be provided when frying hot food.
20. The Consent will expire on the date given on the Consent.
21. Where the Consent Holder fails to comply with any of the conditions attached to a Consent then it may be revoked and they may be liable to prosecution.