

CENTRAL BEDFORDSHIRE COUNCIL

STREET TRADING POLICY

FINAL DRAFT

Preface

Central Bedfordshire Council [The Council] resolved to adopt Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 with regard to Street Trading on 24th February 2011.

Central Bedfordshire Council has not imposed any restriction on the number of licences/consents to be issued. The standard conditions adopted by Central Bedfordshire Council are attached as Appendix A to this policy

The Council consulted on this policy between 18th October 2010] and 9th January 2011 and it was approved by {*the Regulation Committee on 13th April 2011*}.

Consultation was conducted with existing / future potential holders of street trading licences/consents within Central Bedfordshire, the statutory responsible authorities as named under the Licensing Act 2003, Central Bedfordshire Council Highways and with members.

In developing this policy, the legal requirements of the 1982 Act and duties under the following provisions were taken into account;

- (a) The Provision of Services Regulations 2009 to ensure requirements are;
 - (i) non-discriminatory
 - (ii) justified by an overriding reason relating to public interest
 - (iii) proportionate to that public interest objective
 - (iv) clear and unambiguous
 - (v) objective
 - (vi) made public in advance, and
 - (vii) transparent and accessible

Adoption of Schedule 4 also allows the council to set terms, conditions and fees for the grant or renewal of such licences/consents, and set the number of licences that may be issued in the area, including nil.

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1. Purpose of Policy

1.1 The purpose of the Council's street trading policy is to create a street trading environment within Central Bedfordshire which:

- complements premises-based trading establishments;
- provides diversity and consumer choice;
- enhances the character, ambience and safety of local environments;
- will complement and inform other Council initiatives;
- is sensitive to the needs and concerns of residents;
- highlights the requirements and standards expected of street traders;
- is fairly, appropriately and proportionately controlled;
- supports community cohesion and equalities
- provides clear guidance to the officers who will administer the scheme.

1.2 Central Bedfordshire Council has designated all streets within its authority as Consent Streets, and each application will be considered on its merits. Consent will normally only be refused if it is not safe to allow a vehicle or stall to trade in the proposed location.

2. Equal Opportunities Statement

2.1 Central Bedfordshire Council is committed to promoting equality for all by removing direct and indirect indiscriminate on the grounds of:

- Age
- Gender or transgender identity
- Race, colour, national or ethnic origin
- Disability
- Religious belief, non belief, or other belief
- Sexual orientation

3. The Legislation

3.1 Schedule 4 of the Local Government (Miscellaneous provisions) Act 1982 (the Act) gives Councils the power (but no duty) to designate specific areas within their administrative boundaries as either:

A prohibited street – A street in which street trading is prohibited.

A licence street – A street in which street trading is prohibited without a licence granted by the council.

A consent street – A street in which street trading is prohibited without the consent of the council.

3.2 Street trading is defined as 'selling, exposing or offering for sale any article (including a living thing) in a street.'

3.3 The term 'street' includes 'any road, footway, beach or other area to which the public have access without payment'. Any person street trading without a valid Consent commits a criminal offence.

- 3.4 The courts have held that the definition of a 'street' does not depend upon the area of land in question being in public ownership and private land may be classified as 'a street' too if it meets the definition in the Act and the precise circumstances of the trading indicate that it amounts to street trading.
- 3.5 The fact that a trader has a licence or lease to occupy the land, or has some other form of consent e.g. planning consent or a licence under the Licensing Act 2003, will not override the requirement to obtain a Consent where the trading amounts to street trading. Similarly, holding a Consent for street trading will not remove the obligation, on the trader, to comply with any other legal requirements e.g. holding a current food hygiene certificates nor override the duty to comply with the general law concerning e.g. trespass (the landowner's permission to occupy the land must be obtained), highways, planning, licensing, health and safety, nuisance, waste disposal requirements etc.
- 3.6 The requirement to obtain a Consent for any street trading is wide-ranging and would include, for example, all hot and cold food vendors selling burgers, kebabs, doughnuts, ice cream etc., and all vendors of non-food products from any vehicle, stall, barrow, trailer, or any other moveable or static structure.
- 3.7 Advice should be sought from the Licensing Team on the proposed activity/location to see if a Consent is required before starting to trade – see Appendix B for contact details.

4. Exemptions

4.1 The following are not street trading for the purposes of this policy:

- a) Trading by a person acting as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871.
- b) Anything done in a market or fair the right to hold which was acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of an enactment or order.
- c) Trading in a trunk road picnic area provided by the Secretary of State under section 112 of the Highways Act 1980.
- d) Trading as a news vendor.
- e) Trading which is carried on at a premises used as a petrol filling station.
- f) Trading which 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.
- g) Selling things or offering or exposing them for sale as a roundsman.
- h) The use for trading under Part VIIA of the Highways Act 1980 of an object or structure placed on, in or over a highway.
- i) The operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980.
- j) The doing of anything authorised by regulations made under section 5 of the Police, factories, etc. (Miscellaneous Provisions) Act 1916.

Central Bedfordshire Council Exemptions from Street Trading Consents

The following activities will not require a street trading consent:

- 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)
- sales of articles by householders on land contiguous with their homes

5. Applications

5.1 All applications must be made on the Council's prescribed application form.

5.2 Each completed application must be accompanied by:

- The fee.
- If the proposed activity is from a fixed position, a copy of a map of at least 1:125 scale, clearly marked in red to identify the proposed site boundary.
- Confirmation that adequate levels of third party and public liability insurance (minimum £5 million) is, or will be, in place during the street trading activity.
- One colour photograph of the vehicle, barrow, cart, van, portable stall etc. that will be used for street trading.

5.3 On receipt of the completed application form, an acknowledgement will be sent to the applicant.

5.4 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.

5.5 The council will consult with the following bodies before deciding an application:

Central Bedfordshire Council – Highways

Central Bedfordshire Council –Planning

Central Bedfordshire Council – Public Protection Service (in respect of food hygiene, health and safety and nuisance matters where applicable)

Bedfordshire Fire & Rescue Service

Bedfordshire Police

and a period of 21 days will be allowed for those consulted to respond and for any comments to be taken into consideration before deciding the application.

5.6 The Council will normally seek to grant a street trading consent, unless in its opinion:

- There would be a significant effect on road safety from the siting of the trading activity, or from customers visiting and leaving the site.
- There are concerns over the recorded level of personal injury accidents in the vicinity of the street trading activity.
- There would be a significant loss of amenity caused by traffic, noise, rubbish, possible vermin infestation, odour or fumes.
- There is already adequate similar provision in the vicinity of the site to be used for street trading purposes.
- 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.

- The pitch interferes with sight lines for any road users such as at road junctions or pedestrian crossings.
 - The site does not allow the consent holder, staff and customers to park safely.
 - 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.
- 5.7 In all cases where the applicant has been convicted of an offence in the preceding ten years, the application will be determined by a Sub Committee of the Licensing and Regulation Committee in accordance with the following:
- The details of any convictions will be treated in strict confidence.
 - The relevance of the offence will be taken into consideration, in particular offences for dishonesty, violence, drugs or indecency.
 - In general a street trading consent is unlikely to be granted where an application is made within 3 to 5 years of the date of conviction.
 - Any explanation as to the circumstances surrounding the offence will be taken into account.
- 5.8 Every application will be assessed on its merits and individual circumstances, and the licence if granted will be subject to the standard conditions in Appendix A, as well as any specific conditions considered by the licensing officer to be relevant and appropriate to the application in question.
- 5.9 Where an application is refused, full reasons will be given in writing to the applicant. The Act does not provide for an appeal where a consent is refused, but the Council's complaints procedure will apply should the applicant be dissatisfied. The applicant may also be able to seek judicial review of the decision through the courts.
- 5.10 A street trading consent may be granted for any period not exceeding 12 months but may be revoked at any time.
- 5.11 The holder of a consent may at any time surrender the consent and it will then cease to be valid.
- 5.12 Where a consent is surrendered or revoked, the Council will remit or refund as appropriate, the whole or a part of any fee paid.

6. Offences

- 6.1 Under the Local Government (Miscellaneous Provisions) Act 1982, a person who;
- Engages in street trading in a prohibited street;
 - 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-
 - i) from a stationary van, cart, barrow or other vehicle, or
 - ii) from a portable stall,without first having been granted permission to do so;
 - Contravenes a condition imposed on a consent

Shall be guilty of an offence

- 6.2 It shall be a defence for a person charged to prove that they took all reasonable precautions and exercised all due diligence to avoid committing the offence.
- 6.3 Any person who makes a false statement regarding a street trading application, which they know to be false in any material respect, or which they do not believe to be true, shall be guilty of an offence.
- 6.4 Any action taken by the authority with regard to the above offences will have regard to the appropriate enforcement policy.
- 6.5 A person found guilty of an offence shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

7. Fees

- 7.1 The application process involves paying an application fee, including costs for inspections of the premises and processing the application.
- 7.2 Please see application form for current fees.
- 7.3 The fees are reviewed annually against any rise in council costs of administering the regime.

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APPENDIX A

STANDARD CONDITIONS APPLICABLE TO STREET TRADING CONSENTS

These Standard Conditions will apply to all consents unless disapplied or varied by the Head of Public Protection.

1. The Consent granted by the Council is not transferable and the holder shall not permit any person to exercise the Consent in his/her absence unless that person is employed by the consent holder and is at least seventeen years of age.
2. The Consent may only be transferred to another person or body with the prior written approval of the Head of Public Protection.
3. Any van, vehicle, barrow, cart or stall must be maintained in a neat, tidy and safe condition.
4. The holder shall not use the street for any trading purposes other than that permitted in the Consent, and then only during the permitted hours.
5. The holder shall not trade in any street designated by the Council as a prohibited street.
6. At all times the Consent Holder shall comply with all statutes, statutory instruments and byelaws currently in force. Particularly in relation to Food Hygiene, Health & Safety at Work and Environmental Protection.
7. The holder shall not cause any obstruction of the street or cause any danger to any persons using it and shall not do anything, or permit anything to be done, that in the opinion of the Head of Public Protection may be a nuisance, annoyance or danger to any member of the public.
8. The holder shall maintain the area in the vicinity of any van, vehicle, barrow, cart or stall specified within the Consent in a clean and tidy condition, and shall ensure that all rubbish and litter is removed from the area at the end of each day of trading.
9. The holder shall not place on the street any furniture or equipment or advertisement other than as specified in the Consent.
10. The trader shall be insured against any claim in respect of third party liability whilst trading under a consent. No consent will be issued until a current policy has been produced to the Head of Public Protection and the trader shall produce evidence of such insurance to an authorised officer of the Council within seven days of the officer's request.
11. The holder, or any employee of the holder, shall display a copy of the Consent on the premises whilst trading.

12. Where there is a potential ignition source present, including cooking facilities, a 2kg dry powder extinguisher which complies with the standard set out in BS5423:1987 shall be provided.
13. Where hot fat cooking facilities are used, a fire blanket should be provided and so positioned as to allow the blanket to be accessed easily and quickly.
14. The Council may revoke the Consent at any time.
15. The holder will return the Consent to the Council immediately upon revocation or surrender.
16. In the event of the Consent being surrendered or revoked before the expiry date no refunds will be given.
17. The Council may at any time vary these conditions without notice.

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APPENDIX B

CONTACT DETAILS

The Licensing Team
Public Protection
Central Bedfordshire Council
Watling House
High Street North
Dunstable
Beds
LU6 1LF

Tel: 0300 300 8647

E-mail: licensing.section@centralbedfordshire.gov.uk

Website: www.centralbedfordshire.gov.uk

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