

TRAFFORD COUNCIL

Report to: Council
Date: 22 November 2023
Report for: Decision
Report of: Executive Member for Communities and Safety

Report Title

Street Trading Policy, Designated Streets, and Fees 2023

Summary

Street Trading is governed by the Local Government (Miscellaneous Provisions) Act 1982 Schedule 4. A local authority can charge a fee for a street trading consent to allow the sale of any article in a consented street.

Trafford Council prohibits street trading on certain streets and requires street trading consents to be obtained for the sale of articles from public land.

The legislation also allows consent to be obtained for the sale of articles from private land to which the public have access without payment. Trafford Council does not currently require a consent to be obtained in respect of private land.

There is currently no policy in place for street trading in Trafford – instead there are guidance notes to assist applicants and conditions which are attached to the consent.

This report outlines the current position of street trading within Trafford; asks the Executive to recommend to Council to pass a resolution to designate streets in the Borough as licence, consent or prohibited; proposes a new policy (including recommendations for a consent to be obtained for the sale of articles from private land where the public have access without payment); proposes revised fees and outlines the consultation process.

Recommendation(s)

It is recommended that the Council note the recommendations of the Executive on the 18th September and:

- Note the content of the report; and

- approve the Street Trading Policy, Designation of streets and the new fees and charges as attached at **Appendix A**.

Contact person for access to background papers and further information:

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Background Papers: None

Appendices:

Appendix A	Proposed Street Trading Policy 2023
Appendix B	Summary of Consultation Responses
Appendix C	Fees and Charges
Appendix D	Equality Impact Assessment

Relationship to Policy Framework/Corporate Priorities	<i>This review aims to support and safeguard the sustainability of street trading in Trafford to ensure that Street Trading procedures are consistent, appropriate and fair and in line with best practice nationally. It accords with the Council's policy and budget framework and supports the development of an effective and efficient Council.</i>
Financial	<i>The Council may set fees for the administration and enforcement of street trading on a cost recovery basis only. Charging a street trading consent fee for those selling from private land but where the public have access without payment keeps Trafford in line with other Local Authorities nationally. This will fund an officer who will ensure full cost recovery from street trading consents by marketing and managing the process.</i>
Legal Implications:	<i>The Council has a duty to provide for the issuing of street trading consents under the relevant adopted provisions of the Local Government (Miscellaneous Provisions) Act 1982. There is no statutory requirement for the Council to adopt a policy or to consult on the policy, however it is considered best practice and the policy document serves to outline for street traders the Council's approach to, and its standards for those engaged in, street trading. When determining the fees to be charged for street trading the Local Government (Miscellaneous Provisions) Act 1982 requires the local authority to give notice of those charges. Notice was given in a local newspaper and sent to existing licence holders in accordance with the legislation on the 6th July 2023.</i>

Equality/Diversity Implications	<i>There are no identified equality / diversity implications arising from this report – See Equality Impact Assessment attached at Appendix D.</i>
Sustainability Implications	<i>As part of the policy, conditions are applied to the consent. These conditions can be updated to reflect any relevant sustainability issues.</i>
Carbon Neutral	<i>No direct implications</i>
Staffing/E-Government/Asset Management Implications	<i>None</i>
Risk Management Implications	<i>Failure to reflect the requirements of the Local Government (Miscellaneous Provisions) Act 1982, Schedule 4, in the policy for street trading could result in the council not complying with the legislation. Having a clear policy helps to ensure that decisions comply with the legislation and are made fairly and consistently.</i>
Health and Safety Implications	<i>None</i>

1. Background

- 1.1 Street Trading is governed by the Local Government (Miscellaneous Provisions) Act 1982. In 1984, Trafford Council resolved to adopt Schedule 4 to the Act to control street trading within the Borough. Under the Act, streets may be designated as Prohibited, Licence or Consent streets. A number of streets were designated as “Prohibited Streets” meaning all street trading is prohibited within that street. All other streets within the borough were designated as “Consent” Streets, meaning that consent of the Council must be sought, and for which a fee was payable.
- 1.2 The Act defines street trading as selling, exposing or offering for sale any article in a street. The term ‘Street’ includes any road, footway, beach or other areas to which the public have access without payment. This includes freely accessible private as well as public land.
- 1.3 There are a number of offences relating to street trading, including engaging in street trading in a street which has been designated as Prohibited, and engaging in street trading in a Consent Street without the authorisation of the Council.
- 1.4 For the purposes of the Act, the following matters are not deemed to be street trading:
- Trading by a person acting as a pedlar under the authority of a pedlar’s certificate granted under the Pedlars Act 1871. Pedlars are itinerant traders who travel and trade on foot. Certificated pedlars are free to trade without consent and may even trade in prohibited streets;
 - Anything done in a market or fair; (the exemption applicable to markets applies only to those chartered or statutory markets and where a market has been established under Part III of the Food Act 1984 or other statutory provision). For temporary markets, fairs or events operating on Council land, relevant fees will need to be paid by the

organiser of the market or fair before permission to trade is granted by Trafford Council;

- Trading in a trunk road picnic area as defined in Section 112 of the Highways Act 1980;
- Trading as a news vendor (newspapers and periodicals), trading which is carried on at premises used as petrol filling station or 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;
- Selling things as a roundsman e.g. milkman; and
- Trading in a location where members of the public cannot freely gain access.

1.5 Trafford Council have standard conditions which are attached to a Street Trading Consent and guidance notes to assist in the application process.

1.6 Following a review of street trading activity in Trafford, and in particular around the Manchester United Football Club (MUFC) in 2008 the following proposals were agreed:

- All trading around MUFC on match days and other event days is by Licensed Pitch Consents only. Trading by Street Trading Consent will no longer be permitted. This includes a premium trading zone and fee structure mechanism, based on footfall patterns to MUFC.
- Prices for existing Food Licensed Pitches and Merchandise Licensed Pitches are increased to reflect cost recovery of fees and charges.
- Licensed Pitch Certificates are issued to coincide with the football season i.e. valid from 1st August current year until 31st July following year instead of the financial year arrangement for other street trading fees. Licensed Pitches (food and non-food) are also issued in Sale Town Centre.

1.7 There is no Street Trading Policy currently in place in Trafford and consent is not currently required for trading on private land where the public have access without payment.

1.8 As the Council does not currently require a Street Trading Consent or Licence to be obtained where sales are made from private land there are a number of street traders who sell items from these streets without needing to obtain a Consent. Many of these traders are located in the area around MUFC and Lancashire County Cricket Club (LCCC) on land adjoining prohibited streets.

2. Proposed New Street Trading Policy and Designation of Streets

- 2.1 Whilst the Council has a list of prohibited streets, guidance notes, conditions and agreed fees to assist applicants; it currently does not have an overarching policy which brings all these together in one cohesive document.
- 2.2 Therefore, officers decided to review the procedure and decision-making process; to review the fees; and to also look at bringing into scope those traders who are trading on private land who are currently not required to hold a consent or a licence.
- 2.3 A consultation exercise was undertaken on the proposals between the 6th July and the 4th August 2023. The Draft Street Trading Policy is attached as **Appendix A**. A summary of the comments received and the Council's response to those comments is attached as **Appendix B**.
- 2.4 If approved the Policy, designated streets and fees will come into effect on 1st December 2023. The Policy will remain in force for a period not exceeding five years; and will be subject to review and further consultation before 1st December 2028. The fees will be reviewed annually. The Council will keep the Policy under review, making any amendments as it considers appropriate.

3. Fees and Charges

- 3.1 In February 2023 the Council set the fees and charges for street trading licences and consents - See **Appendix C**. As part of this latest review the fees and charges were reviewed again but this time using the GM fee setting model. The fee setting model has been adopted by the 10 GM authorities primarily to allow a consistent approach to the setting of hackney carriage and private hire licence fees; but it was felt appropriate to use the same methodology here to set the street trading fees.
- 3.2 The Council may set fees for the administration and enforcement of street trading on a cost recovery basis only; and can include in this the cost of street cleaning. The review highlighted ways in which the Council could reduce its costs, in particular around the administration of fee recovery, which has resulted in a reduction in the fees in Zone A from £3315 to £1679; and only a slight increase from £1061 to £1076 in all other areas.
- 3.3 The difference in the cost of a street trading licence in Zone A £1679 and Zones B and C £1076 is due to the additional cost of administering and enforcing street trading pitch licences; and the ancillary costs associated with matchdays and concerts; including street cleaning and waste disposal.
- 3.4 A comparison of street trading fees across GM is provided below and a copy of Trafford's proposed fees in full is attached at **Appendix C**:

Authority	Annual Licence/Consent Fee £
Bolton	864.00
Bury	561.00

Manchester	720.00
Oldham	1126.00
Rochdale	1505.00
Salford	800.00
Stockport	406.00
Tameside	956.00
Trafford	1679.00
Wigan	729.00

3.5 The Local Government (Miscellaneous Provisions) Act 1982 provides that:

(9) Before determining charges to be made under sub-paragraph (6) above or varying the amount of such charges the council—

(a) shall give notice of the proposed charges to licence-holders; and

(b) shall publish notice of the proposed charges in a local newspaper circulating in their area.

3.6 Notice of the proposed new charges was published in a local newspaper and was also sent to existing licence holders in accordance with the legislation on the 6th July 2023. All responses to the notice can be viewed at **Appendix B – Summary of Responses**.

4. Options

4.1 The Council has three options:

- it could decide to accept the proposed Street Trading Policy, designated streets and fees in whole or in part;
- it could decide to accept the proposals with further amendments; or
- it could decide not to accept the proposals.

4.2 If the Council decides not to accept the proposed Policy etc. this would not prevent it from continuing to carry out its statutory licensing functions; however, it could open up the possibility of challenges to the Council's processes and procedures on the basis that they are not clear or consistent.

4.3 It is the view that to adopt the policy as a whole would be the best approach for Trafford given that the proposals focus on best practice and is consistent with the approach taken by other GM Authorities.

5. Consultation

5.1 A Summary of Responses to the consultation is attached at **Appendix B**. The Council has received 10 comments in response to the consultation.

5.2 The main issues raised were:

What concessions will be made for the voluntary sector?

- 5.3 It is considered appropriate that even where a business or individual is trading on a non-profit basis, they should be subject to the same vetting procedures as those that trade for profit. There may still be concerns about the suitability of the person(s) trading; or that the trading may cause an obstruction or a nuisance. Therefore, whilst it is proposed to exempt from the fee charities; those acting on behalf of a charity or Community Benefit Societies; all other requirements in relation to the application of street trading terms or conditions would remain. This means that anyone wishing to trade on the streets in Trafford (whether on a non-profit or profit basis) must do so with a valid Street Trading Consent or Licence.

What concessions will be made for Community Benefit Societies?

- 5.4 The purpose of a community benefit society is to serve the broader interests of the community. A business that wishes to operate as a society must be registered with the FCA.
- 5.5 The FCA says that “the conduct of a community benefit society’s business must be entirely for the benefit of the community.” There can be no alternative or secondary purposes, including any that may preferentially benefit the members.
- 5.6 Any profit made by a community benefit society must be used for the benefit of the community.
- 5.7 In response to the concerns raised it is proposed to amend paragraph 8.4 of the Policy to exempt from the fee those businesses registered as Community Benefit Societies.

What concessions will be made for those who currently trade on private land?

- 5.8 It is not proposed to change the Policy to give grandfather rights to traders who currently trade on private land without a licence. One of the aims of the Policy is to allow the Council to apply the rules and conditions contained within the Policy to those who trade on private land in the same way as for those who trade on public land.
- 5.9 Therefore, whilst it is not the intention of the Policy to prevent those who currently trade on private land from continuing to trade at those locations; businesses would be required to apply for a street trading licence or consent and the application would be assessed in accordance with the determining factors outlined in the Policy. It would not seem appropriate, for instance, to allow a trader to continue to sell an item which is prohibited under the Policy under grandfather rights; or for a trader who has caused nuisance in the past when trading on private land to continue to trade at that location.

Why are the fees so high?

- 5.10 The Council spends a considerable amount of money enforcing health and safety, trading standards, illegal trading, illegal parking, traffic flow etc, all of which is to the benefit of existing traders. The Council also has to clean and take away the litter generated by street trading. The revised charges allow the Council to provide these services whilst still charging traders a relatively small amount per match.
- 5.11 The proposed prices represent a more realistic and reasonable basis to allow the Council to recover its costs whilst still allowing traders to earn a good income and profit. Traders can pass their costs to their customers as would be the case in any other commercial operation.

6. Recommendation

- 6.1 It is recommended that the Council note the recommendations of the Executive on the 18th September and:
- Note the content of the report; and
 - approve the Street Trading Policy, Designation of streets and the new fees and charges as attached at **Appendix A**.

Key Decision (as defined in the Constitution): No
If Key Decision, has 28-day notice been given? N/A

Finance Officer Clearance: **PC**
Legal Officer Clearance: **SL**

[CORPORATE] DIRECTOR'S SIGNATURE



To confirm that the Financial and Legal Implications have been considered and the Executive Member has cleared the report.