

TRAFFORD COUNCIL

Report to: Public Protection Sub-Committee
Date: 29th June 2023
Report for: Decision
Report of: Head of Regulatory Services

Report Title

Street Trading – Designated Streets, Policy and Fees

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 – there are guidance notes to assist applicants and conditions which are attached to the consent.

Members agreed at a previous sub-committee meeting on 30th June 2022 that a 28 day consultation should take place to introduce a street trading policy including conditions and fees in relation to street trading licences and consents.

A large number of responses to the consultation were received, all were of a similar content which outlined significant concerns. These concerns were brought back to the sub-committee for consideration and to determine further action on the 15th September 2022. The sub-committee agreed to the proposed policy being withdrawn, to a full review of the street trading process including the re-designation of streets, with consultation with partners taking place; and to a further report being brought to the sub-committee after the review had taken place.

This report outlines the review that has taken place; outlines the current position of street trading within Trafford; asks 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); and proposes revised fees and charges and outlines the consultation process.

Recommendation(s)

It is recommended that the Sub-Committee

1. Notes the proposed re-designation of streets within the Trafford Borough and approves the publishing of a 28 day Notice of Intention to Re-Designate those streets
2. Notes the proposed new street trading policy and approves a consultation period of 28 days on the new street trading policy, to begin on the 6th July (or as soon as possible thereafter).
3. Notes the proposed new fees and charges and approves a consultation period of 28 days on those proposed fees and charges, to begin on the 6th July 2023 (or as soon as possible thereafter).
4. Notes that following the 28 days consultation period, any responses will be reviewed and that a further report will be taken to Full Council thereafter.

Contact person for access to background papers and further information:

Name: Clare Whittle – Regulatory Services Manager (Trading Standards and Licensing)

Contact: clare.whittle@trafford.gov.uk

Background Papers:

1.0 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 is payable. There are currently no Licence Streets in Trafford.
- 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

| | |
|---|--|
| 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>Charging the current 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 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.</i> |
| Equality/Diversity Implications | <i>There are no identified equality / diversity implications arising from this report.</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> |
| 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> |

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 the Borough, and in particular around the Manchester United Football Club (MUFC) stadium on match days, in order to address health & safety and traffic issues and the cost to the Council of continuing to deliver the service, proposals to change several aspects of the way Street Trading was operated and managed were consulted on and agreed by Committee in 2008. As a result, 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 football patterns to MUFC.
- Prices for existing Food Licensed Pitches and Merchandise Licensed Pitches were 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 a charge is not currently made for trading on private land where the public have access without payment. This effectively allows traders to be on the same street paying for premium pitches with those who have situated their vehicle on private land able to trade alongside them without paying anything.

- 1.8 Street Trading is a service area that currently sits within the enforcement team despite it having a large administrative function. There has been successful engagement and enforcement from the team over the years.
- 1.9 There are a number of premium and non-premium food and souvenir pitches around the MUFC area and in Sale Town Centre. Some of these are currently empty.

There are currently 32 Street Trading Consents issued for mobile and static sellers, 31 of which are trading around the borough including burger vans, ice cream vans, and Christmas trees.

- 1.10 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 obtaining a Consent. Many of these traders are located in the area around MUFC and Lancashire County Cricket Club (LCCC) on land adjoining prohibited streets.

The consultation responses received when the previous report was brought before the Sub-Committee highlighted the fact that requiring a Street Trading Consent or Licence to be obtained where a trader sells, exposes or offers for sale any article in any non-prohibited street within the Borough to which the public have access without payment (including private land) would currently mean a Consent or Licence could not be granted by the Council as the Street adjoining the private land is Prohibited.

- 1.11 The Sub-Committee made the decision in September 2022 for a full review of the Street Trading process including consultation with partners in light of the representations received during the consultation process. The Sub-Committee also agreed to a further report being brought to the Sub-Committee after the review had taken place outlining a new proposed policy along with revised fees and charges for full consultation.

2.0 Proposals

- 2.1 It is proposed that the Council publish a notice, as outlined at paragraph 3 below, and carry out a 28-day consultation on the proposed:

- re-designation of streets within the Borough as outlined in Appendix 1 of the Street Trading Policy attached as Appendix A
- Street Trading Policy as attached as the Appendix A
- New fees and charges as outlined in Appendix 3 of the Street Trading Policy attached as Appendix A.

- 2.2 Although there is no statutory requirement for the Council to adopt a policy or to consult on a policy, it is considered best practice and gives those affected time to read the policy and consider steps they may need to take to comply. It also gives opportunity for comments to be made on how the policy could be improved. The policy document serves to outline for Street Traders the Council's approach to, and its standards for those engaged in, Street Trading thus ensuring a level playing field across the Borough and consistency with other local authorities locally and nationally.
- 2.3 A review of the fees and charges for Street Trading has been carried out as there has not been a review since 2008.

Paragraph 9 of Schedule 4 of the Act states a district council may charge such fees as they consider reasonable for the grant or renewal of a Street Trading Licence or a Street Trading Consent.

Further, a Council may determine different fees for different types of Licence or Consent and, in particular, but without prejudice to the generality of this sub-paragraph, may determine fees differing according to:

- (a) the duration of the Licence or Consent;
- (b) the Street in which it authorises trading; and
- (c) the descriptions of articles in which the holder is authorised to trade.

A council may also recover from a licence-holder such reasonable charges as they may determine for the collection of refuse, the cleansing of streets and other services rendered by them to him in his capacity as licence-holder, however before determining or varying such charges the Council must give notice of the proposed charges to licence-holders and also publish a notice of the proposed charges in a local newspaper circulating in their area. The notice must be published for a reasonable period.

3.0 Consultation

3.1 Designated Streets:

In 1984 when the Council designated streets within Trafford pursuant to Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 as Consent Streets and Prohibited Streets, certain streets in the area around MUFC and LCCC were designated as Prohibited Streets. As the Act requires a Street Trading Consent or Licence to be obtained where a trader sells, exposes or offers for sale any article in any non-prohibited street within the Borough to which the public have access without payment (including private land) the current designation of streets would prevent a Consent or Licence being issued to those located on or adjacent to the Prohibited Streets in and around the MUFC and LCCC area (Zone A).

Paragraph 4 of the Act allows the Council to pass a resolution to designate any street in the district as a Prohibited Street, a Licence Street or a Consent Street. To pass this resolution the Council must:

- (a) publish notice of their intention to pass such a resolution in a local newspaper circulating in their area;
- (b) serve a copy of the notice—
 - (i) on the chief officer of police for the area in which the street to be designated by the resolution is situated; and
 - (ii) on any highway authority responsible for that street.

The notice must include a draft of the resolution and that representations relating to it may be made in writing to the council within such period specified in the notice, this being not less than 28 days after publication of the notice.

The Council then has a duty to consider any representations received during this period and it is proposed that these be taken to Full Council for consideration. If the resolution is passed a notice must be published to this effect for two consecutive weeks in a local newspaper circulating in the area. The first publication shall not be later than 28 days before the day specified in the resolution for the coming into force of the designation.

3.2 Fees and Charges:

Paragraph 9 of the Act permits the Council to recover from a licence-holder such reasonable charges as they may determine for the collection of refuse, the cleansing of streets and other services rendered by them to him in his capacity as licence-holder, however before determining or varying such charges the Council must give notice of the proposed charges to licence-holders and also publish a notice of the proposed charges in a local newspaper circulating in their area. The notice must be published for a reasonable period.

The notice will be published for 28 days (the same as required under the Local Government (Miscellaneous Provisions) Act 1976 for vehicle and operator fees) and will ask for any comments to be put in writing to the Council before the consultation period ends.

The Council will consult with existing licence holders and those traders who will be affected by the changes and will also write to all those who sent representations in relation to the previous consultation.

The Council has a duty to consider any representations received during this period and it is proposed that these be taken to Full Council for consideration.

The Council will keep the fees under review every year using an annual time analysis exercise for a period of 4 weeks within the Licensing Team and making any amendments to the fees as it considers appropriate.

- 3.3 The consultation notice is attached at Appendix B. This notice is a combined notice which also includes consultation on the Street Trading Policy although there is no statutory requirement to consult on the Policy.

4.0 Recommendation

It is recommended that the Sub-Committee

1. Notes the proposed re-designation of streets with the Trafford Borough and approves the publishing of a 28 day Notice of Intention to Re-Designate those streets.
2. Notes the proposed new street trading policy and approves a consultation period of 28 days on the new street trading policy, to begin on the 6th July 2023 (or as soon as possible thereafter).
3. Notes the proposed new fees and charges and approves a consultation period of 28 days on those proposed fees and charges, to begin on 6th July 2023 (or as soon as possible thereafter).
4. Notes that following the 28 days consultation period, any responses will be reviewed and that a further report will be taken to Full Council thereafter.

Appendices Attached:

Appendix A: Proposed Street Trading Policy

Appendix B: Consultation Notice