
TITLE: REVIEW OF STREET TRADING IN EAST CAMBRIDGESHIRE

Committee: Licensing Committee

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[L117]

1.0 ISSUE

1.1 To review the current street trading provision within East Cambridgeshire and to outline proposals for a street trading review.

2.0 RECOMMENDATION(S)

2.1 a) That the Licensing Committee agree that a review of the current street trading provision is carried out; and

b) That a draft street trading policy is prepared, incorporating a proposed change to consent street trading licences only, and brought back to Licensing Committee for approval before full consultation is undertaken; and

c) Once consultation has taken place, officers report back to Licensing Committee on the outcome of the consultation and with a request to incorporate any proposed changes to the policy as a result of the consultation (if any), together with a request that the Licensing Committee recommend the adoption of the policy to Full Council (the policy would then go to Full Council for adoption).

3.0 BACKGROUND/OPTIONS

3.1 At present, East Cambridgeshire has two different types of street trading licence that it can issue; consent street trading licences and licensed street trading licences. Certain streets within the district are designated as 'prohibited streets', where street trading is not permitted (Appendix 1).

3.2 Street trading is defined as 'the selling of exposing or offering for sale of any article, including a living thing. A 'street' is any area where the public have access to without payment, including private land. This includes both town centres and road lay-bys'.

3.3 Part III, schedule 4 of the 1982 Local Government (Miscellaneous Provisions) Act (the 1982 Act) gives District Councils extensive powers to regulate street trading.

3.4 Under the 1982 Act, District Councils are able to designate any street as a:

- Consent street
- Licence Street
- Prohibited street

It is illegal to trade in a consent street or licence street without first obtaining a consent or licence from the Council. It is illegal to trade in a prohibited street.

- 3.5 The 1982 Act allows Councils to introduce 'reasonable charges' for the granting and renewing street trading consents (Appendix 2).
- 3.6 The following activities are exempt from the 1982 Act and not classed as street trading:
- Pedlars with valid pedlar's certificates issued by the Chief Constable of the Police Authority¹
 - Charter Markets
 - Trading in a trunk road picnic area
 - Trading as a news vendor or roundsman
 - Permitted street collections
 - Trading on premises used as a petrol station or on the street adjoining premises used as a shop under the same ownership
 - Using an object or structure placed on or over a highway
 - Pavement Licensing (tables and chairs)

Current Street Trading Situation within East Cambridgeshire.

- 3.7 With regard to street trading licences, streets within the district have been designated as 'prohibited streets' where street trading is not permitted and some streets have been 'designated' to allow street trading to occur. For designated areas, there is a limit of one street trader allowed for that area. The remainder of the District has not been either prohibited or designated, and therefore these areas remain unregulated (Appendix 1).
- 3.8 With regard to consent licensing, the Council adopted provisions to allow Consent Licences within Jubilee Gardens. A separate policy, licence conditions and application process applies to this area, as the Consent Licensing process is different to the Street Trading Licence process. To date this is the only area within the District that operates under the Consent licence system.
- 3.9 The Licensing Team often receive enquiries as to where sites are available to trade from. However, due to the limited areas currently designated for street and consent trading, those persons do not progress with their enquiry.

¹ Currently under review Nationally

3.10 The Licensing Team are regularly informed of unlicensed traders in the area and traders have to be encouraged to move into another district, where licensing is less prohibitive.

3.11 There are currently 4 street trading licences issued with East Cambridgeshire.

4.0 ARGUMENTS/CONCLUSIONS

4.1 The current list of designated streets and consent areas for the whole of the district is fairly prohibitive and restrictive, and centres around Ely. A review of the street trading provision in East Cambridgeshire needs to be undertaken, with a view to moving towards the issue of consent street trading licences only.

4.2 Many Local Authorities have chosen to opt for the Consent Street Trading system, as it is more flexible. In practice, Local Authorities typically choose to either:

- a) designate the whole District for Consent, and use the licensing application and consultation process to determine the suitability of the proposals; or
- b) Have specific streets where trading is prohibited at any time, and have the remainder of the streets within the District as consent streets.

Trading from consent streets is prohibited unless the trader has applied for and received a written consent to trade from the Council. Street trading consents contain restrictions on the location and permitted times for trading, type of goods to be sold and contain clear licence conditions, which must be adhered to in order for the trader to obtain and retain the street trading consent.

4.3 It is proposed that East Cambridgeshire move to a Consent system² for the whole of the District. A comparison of Consent and Licence Streets is outlined in Appendix 3.

4.4 A new street trading scheme would be beneficial for the District. It would introduce the same fees, procedures and conditions for all street traders, ensuring consistency, fairness and clarity for street traders, local businesses, residents and council officers, for the whole of the district.

4.5 It would also provide the Council with those enforcement powers to remove illegal street traders who trade within the district, as currently any undesignated street does not provide for enforcement.

² Legal advice would need to be sought as to the status of the current street trading licences held by the four traders, should the Council chose to introduce a consent street trading scheme in any street that was previously in a licence street trading scheme.

4.6 The Licensing Team has seen an increase in the number of people enquiring about street trading in the area. However, the current provisions are restrictive, and as such, potential traders look to trade within neighbouring districts.

5.0 FINANCIAL IMPLICATIONS/EQUALITY IMPACT ASSESSMENT

5.1 A review of licence fees could impact on the current licensed traders (assuming that they renew their licences), as fees would be increased. There would be the cost of a consultation. However, much of this would be completed electronically.

5.2 Equality Impact Assessment (INRA) completed.

6.0 APPENDICES

6.1 Appendix 1 List of those designated and prohibited streets – Street Trading licences

6.2 Appendix 2 List of fees currently charged for consent and licensed street trading

6.3 Appendix 3 Comparison of different licence processes

6.4 Appendix 4 Impact and Needs/Requirements Assessment

<u>Background Documents</u>	<u>Location</u>	<u>Contact Officer</u>
Local Government (Miscellaneous Provisions) Act 1982	Room SF209 The Grange Ely	Elizabeth Bailey Principal Environmental Health Officer (Commercial) (01353) 665555 E-mail: Elizabeth.bailey@eastcambs.gov.uk
ECDC existing Street Trading Policy http://www.eastcambs.gov.uk/node/8271		
Hough, The Law of Street Trading, Earlsgate Press, 1994		

EAST CAMBRIDGESHIRE DISTRICT COUNCIL

Street Trading Guidance Notes

1. Street trading is governed by Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982.

2. Streets can be designated by the council is one of three ways:

- a) Prohibited - street trading is not allowed at all
 - b) Licence - street trading is not allowed without a licence granted by the Council
 - c) Consent -street trading is not allowed without the consent of the Council.
- “Street” is defined as including any road, footway, beach or other are to which members of the public have access without payment.

3. The following streets are designated as prohibited (except for charitable or civic events):

a) In Ely:

- Brays Lane;
- Butchers Row;
- The Buttermarket (except for fairs, the market and up to two charity stalls on a Saturday);
- Chequer Lane;
- Forehill;
- The Gallery (except for horse-drawn carriages);
- High Street;
- Minster Place;
- Newnham Street;
- Palace Green (except for horse-drawn carriages on the main carriageway, but not on the open space);
- Quayside;
- Ship Lane;
- Silver Street;
- St Mary’s Green;
- Willow Walk

b) - All of the streets which comprise the line of the whole of the former A10, namely commencing at the junction of the Trunk Road A10 South of Ely with Cambridge Road-Ely, St Mary’s Street-Ely, Lynn Road-Ely, Lynn Road-Chettisham, Ely Road-Littleport, High Street-Littleport, Crown Road-Littleport, Wellington Street-Littleport;

c) - Trunk Road A10 within the District

d) - Trunk Road A11 within the District

Street trading is also prohibited in all car parks covered by the East Cambridgeshire (Off-Street Parking Places) Order 2001.

4. Each of the following street are designated as licence street for one trader only subject to the Council's conditions are licence fee:

- The Cloisters, Ely
- Barton Street, Ely
- Downham Road, Ely (to A10 roundabout)
- Market Place (including Dolphin Lane formerly Market Place, West)/Market Street, Ely (considered as a single street)
- Waterside, Ely
- West fen Road, Ely
- All 'A' Class roads in the District excluding the A10 and A11

5. The Licence fee is £740.00. A deposit of £73.00 (50% of which is returnable if the application is unsuccessful); Two passport-style photographs of the applicant(s) and a site/location plan must also accompany the application.

6. The application will take several weeks to process because of the various consultations, which have to be made. Unfortunately, this is unavoidable and no trading is allowed during this time. If your application is unsuccessful, 50% of the deposit will be returned to you.

7. The Balance of £667.00 is payable if your application is successful. This will need to be paid before your licence can be issued.

8. Where food is sold, a food registration is also required. You should contact the Environmental Health Section on 01353 665555.

Street Trading Fees and Charges (Current)

Street trading consent fee schedule (for Jubilee Gardens)

Type of Consent Fee

Annual (12 month) £740

Summer Season (1st April-31st August) £400

One week £50

2 day £25

Street Trading licence for permitted streets

Annual (12 month) £740.00

Table to compare Licensed Street and Consent Street Licensing

Licensed Street Trading	Consent Trading
District Council obliged to grant a licence unless the application ought to be refused on one or more of the grounds specified in the Act.	District Council under no duty to grant a street trading consent and need not specify statutory grounds for refusal. There is no right of appeal on refusal to the magistrate's court. The applicant has no right to make representations, although the Council does have the discretion to hear representations
District Council may only revoke or refuse to renew a licence on the statutory grounds	No statutory limitation on a District Council's power to revoke or refuse to renew a street trading consent
Before a District Council may vary a principal term of a street trading licence, or before it may refuse to grant or renew or revoke a street trading licence, it must first invite the applicant/licence holder to make representations and then afford that person a reasonable opportunity to make those representations	No notice requirements apply to a street trading consent
Statutory grounds of appeal against the refusal, revocation or variation of a principal term of a street trading licence are contained in the Schedule	There is no right of appeal against the refusal to grant or renew a consent or against the revocation or variation of a consent
A licence holder may be prosecuted for a breach of the 'principal terms' which relate to the street in which, the days and times upon which, and the articles in which the holder trades	A street trading consent holder may only be prosecuted for a breach of a condition where he trades from a stationary van, cart, barrow, vehicle or from a portable stall in a place or at a time not included in the consent, or for breach of a condition relating to the positions and times in which he may trade, but not for a breach of a condition relating to the type of article to be sold
A District Council may recover from a licence holder such reasonable charges as they may determine for the collection of refuse and the cleaning of streets etc	A District Council may not charge the holder of a street trading consent for the collection of refuse and cleaning of streets etc, however, licence conditions can require adequate refuse and street cleansing. A consent can be reviewed and/or revoked if these conditions are breached.
Where a licence is surrendered or revoked, the Council has a discretion to remit or refund any fee paid to it	Where a consent is surrendered or revoked, a Council is under a duty to remit or refund the whole or part of any fee paid for the consent
The consent of the highway authority is necessary for the designation of a street as a licence street	Highway authority consent is not required before the designation of a street as a consent street.

<p>The Council can make exemptions to the consent scheme for certain types of activity, such as street trading events run by charities and not for profit organisations and Council run events not covered by a market charter.</p>

Impact and Needs/Requirements Assessment (INRA)

Name of Policy:	Review of Street Trading Licensing within East Cambridgeshire.
Lead Officer (responsible for assessment):	Mrs E A Bailey
Department:	Environmental Services
Others Involved in the Assessment (i.e. peer review, external challenge):	
Date INRA Completed:	030811

'Policy' needs to be understood broadly to include all Council policies, strategies, services, functions, activities and decisions.

(a) What is the policy trying to achieve? i.e. What is the aim/purpose of the policy? Is it affected by external drivers for change? What outcomes do we want to achieve from the policy? How will the policy be put into practice?

The aim of the policy would be to provide the council with a revised street trading procedure for the district, introducing a (potentially) single system, with relevant fees and conditions to be attached to street trading consents. Administrative costs would be reduced through the adoption of a consent system of licensing, and enforcement would be improved, by reviewing the district as a whole and ensuring licensing provision applies across the district. The current system for street trading is very prohibitive, in that there are not many pitches available to trade from, and many parts of the District remain undesignated.

(b) Who are its main beneficiaries? i.e. who will be affected by the policy?

Current persons who hold a street trading licence.

Persons wishing to trade in the District, who are currently prohibited by the limited scheme in existence.

(c) Is the INRA informed by any information or background data (quantitative or qualitative)? i.e. consultations, complaints, applications received, allocations/take-up, satisfaction rates, performance indicators, access audits, census data, benchmarking, workforce profile etc.

(d) Does this policy have the potential to cause an impact (positive, negative or neutral) on different groups in the community, on the grounds of (please tick all that apply):

Ethnicity
Gender
Disability

X
X
X

Age
Religion and Belief
Sexual Orientation

X
X
X

Please explain any impact identified (positive, negative or neutral): i.e. What do you already know about equality impact or need? Is there any evidence that there is a higher or lower take-up by particular groups? Have there been any demographic changes or trends locally? Are there any barriers to accessing the policy or service?

Applications for street trading licences (consents or licensed streets) are open to all persons within the community. By reviewing the current street trading licence system, and introducing a more flexible system, it can only serve to enhance the district as a whole and increase diversity within trading.

(e) Does the policy have a differential impact on different groups?

YES

(f) Is the impact *adverse* (i.e. less favourable) on one or more groups?

YES

(g) Does it have the potential to disadvantage or discriminate unfairly against any of the groups in a way that is unlawful?

NO

(h) What additional information is needed to provide a clear picture of how the activity is impacting on different communities and how will you collect this information, i.e. expert groups, further research, consultation* etc? Where there are major gaps in information that cannot be addressed immediately, these should be highlighted in your recommendations and objectives at the end of the INRA.

It is proposed that a consultation exercise be carried out with regard to a draft proposed street trading policy. Consultation would take place with those existing street traders, the public, business communities, police and highways, as well as internal and external departments, such as planning, environmental health and corporate development. The consultation would seek views of the proposed scheme, including proposed fee structures.

* The Consultation Register is available to assist staff in consulting with the Council's stakeholders. If you are consulting on a new or revised policy contact the Principal HR Officer.

(i) Do you envisage any problems with these methods of information collection? i.e. not accessible to all, timescale not long enough to obtain all of the necessary information, translation facilities not available, insufficient resources etc.

No problems envisaged. The documents would be available in the Council's reception, on the web site and would be sent to all relevant parties by post.

(j) If it has been possible to collect this additional information, summarise the findings of your research and/or consultation (please use a separate sheet if necessary).

(k) What are the risks associated with the policy in relation to differential impact and unmet needs/requirements? i.e. reputation, financial, breach of legislation, service exclusion, lack of resources, lack of cooperation, insufficient budget etc.

There needs to be consultation with those persons currently licensed, so that in the event of a different licence having to be applied for existing traders are aware of the Council's proposals to change the current licensing system, and the Council's Legal obligations (if any) Consultation with the wider community and trade, will also seek to ensure that comments and representations are given a fair hearing and are taken in to consideration when finalising the policy, to reduce risks associated with reputation, and breach of legislation.

(l) Use the information gathered in the earlier stages of your INRA to make a judgement on whether there is the potential for the policy to result in unlawful discrimination or a less favourable impact on any group in the community, and what changes (if any) need to be made to the policy.

Option 1:	No major changes, the evidence shows no potential for discrimination.	
Option 2:	Adjust the policy to remove barriers or to better promote equality.	
Option 3:	Continue the policy despite potential for adverse impact or missed opportunity to promote equality.	
Option 4:	Stop and remove the policy – if the policy shows actual or potential unlawful discrimination it must be stopped and removed or changed.	

(m)Where you have identified the potential for adverse impact, what action can be taken to remove or mitigate against the potential for the policy to unlawfully discriminate or impact less favourably on one or more communities in a way that cannot be justified? Include key activities that are likely to have the greatest impact (max. 6). Identified actions should be specified in detail for the first year but there may be further longer term actions which need to be considered. To ensure that your actions are more than just a list of good intentions, include for each: the person responsible for its completion, a timescale for completion, any cost implications and how these will be addressed. It is essential that you incorporate these actions into your service plans.

Through the Consultation process and development of the street trading policy, the consideration of existing licences and licensees would be considered and relevant legal advice would be taken as to the correct process to adopt to ensure that any rights of the existing traders are not compromised.

This completed INRA will need to be countersigned by your Head of Service. **Please forward completed and signed forms to Nicole Pema, Principal HR Officer.**

All completed INRAs will need to be scrutinised and verified by the Council's Equal Opportunities Working Group (EOWG) and published on the Council's Intranet to demonstrate to local people that the Council is actively engaged in tackling potential discrimination and improving its practices in relation to equalities. Please be aware that you will be asked to attend a half-an-hour session to summarise the findings of the INRA to the EOWG Verification panel.

Signatures:

Completing Officer: _____ **Date:** _____

Head of Service: _____ **Date:** _____