



MENDIP DISTRICT COUNCIL

REGULATORY SERVICES / LICENSING

STREET TRADING POLICY

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1. Geographical Area Covered by this Policy

Mendip is a local government district in the county of Somerset in the South West of England. The Mendip district covers a largely rural area of 285 square miles from the Mendip Hills through to the Somerset Levels. It has a population of approximately 110,000. The administrative centre of the district is Shepton Mallet but the largest town (three times larger than Shepton Mallet) is Frome.

2. Map of the district

The Map below shows the area covered by Mendip District Council:-



3. Consultation on Draft Policy

In producing this Policy the Council will consult with the following:-

Avon and Somerset Constabulary,
Devon and Somerset Fire and Rescue Authority,
Somerset County Council,
Highways Agency Area Office,
Parish and Town Councils in the Mendip District area,
Ward Councillors of Mendip District area,
Planning, Building Control, Environmental Health, Legal Department and
Business Support Teams at Mendip District Council.

The Council will ensure thorough consultation with both residents and businesses of the Mendip district area.

4. Introduction

This policy sets out how Mendip District Council (the Council) will control and manage street trading to prevent obstruction of the streets, ensure the safety of persons using them and prevent nuisance to neighbouring residents and businesses. The Council recognises the importance of licensed businesses to the local economy and the character of the area, and seeks to create a street trading environment that complements premises based trading. It also wishes to ensure that the activities do not cause nuisance or annoyance to the people of the area.

However, the following principles must be upheld at all times:-

- The right of any individual or body to apply for a permission is not undermined and that each application will be determined on its merits;
- The statutory right of any person to make appropriate representations.

The statutory function of licensing is primarily concerned with the regulation of activities within the legislation concerned and that any terms and conditions will focus on:-

- Matters within the control of individual licence/ consent holders who are granted any relevant permissions,
- The premises and places being used for licensable activities,
- The direct impact of the activities taking place at the relevant premises on the public living, working or engaged in normal activity in the area concerned.

This document will guide the Licensing Authority (the Authority) when it considers applications for street trading licences/ consents and it will inform applicants and other stakeholders of how it will carry out its responsibilities.

Street trading is controlled under the provisions in Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (1982 Act).

5. What is Street Trading?

The 1982 Act states that street trading is 'the selling or exposing or offering for sale of any article (including a living thing) in a street.'

Street trading includes the following activities:-

- Trading from mobile and static structures, including kiosks
- Ice-cream vans (static and mobile)
- Mobile artists and musicians who sell their recorded work on the street
- Sale of Christmas Trees and other festive items
- Sale of arts, crafts and jewellery
- Sale of food and drink

[Any sale of alcohol will also require separate permission under the Licensing Act 2003].

Street trading does not include:-

- The contractual sign up of gas, electricity or other domestic services.
- Subscriptions being sold for motor breakdown services.
- Handing out promotional literature for goods, services and venues.

The suitability of goods to be sold will be considered on a case by case basis with reference to the principle aims of this legislation. The Council will be mindful and take account of all relevant matters, including local shopping needs, diversity, balance and conflict with nearby commercial shops and trading vehicles.

Applicants and licence/ consent holders should ensure that the articles being offered or exposed for sale are not of a nature that may cause harm or offence and that the manner of offering or exposing the articles for sale is not of a nature that may cause harm or offence.

6. Types of Street Trading

The types of consents issued by this Authority are detailed below:

- **Static Consents**

This permission is for those wishing to trade on a street, at one location. This use of land is likely to require planning permission.

- **Short Term Mobile Consents**

This will be for those wishing to trade regularly at the same location, not more than twice a week and less than 4 hours a day. Each such consent can apply to 5 or less different locations, but each additional location will be charged as provided for in the scale of charges. These activities will not usually require planning permission.

- **Hawker (sometimes known as 'itinerant' or peripatetic')**

This will be for those wishing to trade at different locations within the district, for no longer than 20 minutes and do not return to the same location or within 200m, on the same day. No planning permission is required.

7. Designation of Streets

In carrying out its responsibilities the Council will designate the area(s) or streets to be controlled in respect of street trading. We propose to do the following:-

Within the District of Mendip, all streets will be designated as consent streets. This means that anyone who wishes to trade on a street, highway or other area to which the public has access without payment, must hold a street trading consent. Applicants would have to make a request for a street trading consent to be considered by the Council's Licensing Team.

8. Exemptions

The 1982 Act contains a number of exemptions from the control of street trading. The following activities are exempt from the requirements:-

- Pedlars acting under the Pedlars Act 1871
- Trading in a charter market or statutory market or fair
- Trading on a trunk road picnic area under Section 112 of the Highways Act 1980
- News vendors selling only newspapers or periodicals
- Petrol filling station forecourts
- Premises used as a shop or in a street adjoining premises so used and as part of the business or shop
- Rounds men who have defined customers and defined routes
- Trading in a kiosk placed on, in or over a highway under the Highways Act 1980
- Operation of facilities for recreation or refreshment under the Highways Act 1980
- Undertaking a permitted street collection on behalf of a charity

9. Street Trading on Private Land

Street trading consents/ licences are required to trade in 'streets' as defined by the 1982 Act which includes private land, including (but not limited to) land owned, leased or maintained by the Council, private roads, lay bys, car parks and industrial estates:-

"street" includes—

any road, footway, beach or other area to which the public have access without payment; and

a service area as defined in section 329 of the Highways Act 1980.

The issue of whether a specific place is subject to control by street trading control will be a legal question that will be considered on the individual circumstances concerned.

10. Local Exemptions

The Council has decided to exempt trading that takes place in certain circumstances. This means that the Authority will not ordinarily require its consent for street trading to take place in those situations. To benefit from this exemption, the trading must be carried out with the express written permission of the event organiser or be carried out by the householder concerned. The exemption applies to trading taking place in the following circumstances:-

- fetes, carnivals or similar community based and run events, organised for charitable purposes and/ or where there is no private gain by the organisers,
- non-commercial or charitable events,
- farmers markets, including 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,

This local exemption is provided to support both community based and charitable events enabling them to flourish. (The Authority may exempt trading in other similar circumstances, at the discretion of an Authorised Officer of the Council).

However, notwithstanding this exemption the Authority does reserve the right to require consent where it is in the public interest to do so and in circumstances where it sees fit. Therefore, the Authority will maintain a register of all such activities. Full details of any trading that would otherwise require consent must be notified to the Authority in good time beforehand. This must be done in writing or by email to the Licensing Team and will ensure that this exemption is only provided in appropriate circumstances.

In addition, the Council will exempt any street trading that takes place on privately managed shopping centres. This exemption is provided due to existing checks that are carried out.

11. The Application Process

A person wishing to obtain or renew a street trading consent must use the designated application form to do so. The contact details for the Licensing Team are given below:-

Mendip District Council
Licensing Department,
Cannards Grave Road,
Shepton Mallet.
Somerset.
BA4 5BT

Telephone: 0300 303 8500
Email: licensing@mendip.gov.uk
Internet: www.mendip.gov.uk

Applicants must allow sufficient time for their application to be processed and considered by the Authority before starting to trade, processing times are shown at ANNEX 2.

An application must be complete, properly made out and accompanied by the relevant fee to be accepted as duly made by the Licensing Team. Applicants must satisfy all the requirements listed at ANNEX 2.

Once an application is accepted, the consultation process will start from the working day following receipt, and will last for the periods set out in ANNEX 2. Applicants must advertise the making of their application by displaying two notices adjacent to the proposed site for street trading for the duration of the objection period. These notices must be in the format designated by the Council and be clearly legible, and displayed in order that the public can easily view them without hindrance. Static consents and short term mobile consents must be advertised accordingly at all locations proposed for trading purposes. Hawker applications will be advertised solely on the Council's website.

The Council will give notice of accepted applications on a weekly basis on the Council's website and will consult with the following on all applications that it receives:-

- Avon and Somerset Constabulary,
- Somerset County Council,
- Devon and Somerset Trading Standards,
- District councillor for the ward concerned,
- Town or parish council responsible for the location concerned,
- Planning, Neighbourhood Services - Markets and Environmental Health Teams at Mendip District Council.

If objections to an application are not received within the relevant consultation period, the application will be determined within 5 working days from the day following the ending of that period. However, if objections are received, the application will be determined within 10 working days from the end of the consultation period. All of these decisions will be made by an officer on behalf of the Licensing Authority and are final. There is no right of appeal against the decision, and an aggrieved applicant may consider obtaining independent legal advice on the likely success of a Judicial Review of it.

No person under the age of 17 years can be granted a street trading consent under the 1982 Act. However, Central Government has indicated that this may be changed. If that does happen, then any such amendment will take primacy on this issue.

Where gas fuelled appliances are used by a trader, the complete gas installation should be examined for soundness at least once per year. The correct operation of each gas appliance, including any safety devices fitted, must be checked annually by a competent person. This person must be Gas Safe registered for the type of equipment they are testing and they type of gas supply being used e.g. commercial mobile catering equipment and LPG gas supply. A copy of the competent person's report must be given on new applications and with a renewal application.

12. Grounds for Considering Applications

The 1982 Act does not specify the grounds for considering applications for consents. However, it does specify grounds for considering licence applications. Further, the Department for Business Innovation and Skills considered compliance with the EU Services Directive in 2014. In any event, it seems appropriate to remove the grounds that are considered non – compliant with that Directive:-

(a) that there is not enough space in the street for the applicant to engage in the trading in which he desires to engage without causing undue interference or inconvenience to persons using the street;

~~(b) that there are already enough traders trading in the street from shops or otherwise in the goods in which the applicant desires to trade; REMOVED~~

(c) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;

(d) that the applicant has at any time been granted a street trading licence by the Council and has persistently refused or neglected to pay fees due to them for it or charges due to them under paragraph 9(6) below for services rendered by them to him in his capacity as licence-holder;

(e) that the applicant has at any time been granted a street trading consent by the Council and has persistently refused or neglected to pay fees due to them for it;

~~(f) that the applicant has without reasonable excuse failed to avail himself to a reasonable extent of a previous street trading licence. REMOVED~~

The Authority will consider these issues when it determines an application for a consent. The Authority may exercise its discretion and consider other issues, these would include the following:-

1. Prevention of crime and disorder,
2. Prevention of public nuisance,
3. Public safety and
4. Protection of children from harm

Street trading can extend and/ or vary the 'offer' of a town (in terms of products/ price/ quality) and it can enhance competition. This can make the town or area more attractive to the consumer and even attract other businesses.

However, unfair competition can damage the local economy and can be counterproductive for the consumer in the longer term. It can upset the economic equilibrium of a town, harm sustainable development and can even lead to a longer - term reduction in the offer of a town. If the potential impact of unfair competition is not considered fully, it could adversely affect the consumer and town in the longer term.

Therefore, the Council will assess whether an application presents such benefits whilst considering the potentially negative impacts. The Council will consider whether the potential competition created would be unfair and the detrimental impact that may have on existing businesses. It will refuse or restrict applications for consent to avoid unfair competition and/or to protect the harmonious, balanced and sustained development of economic activities.

Street trading should add to the prosperity of an individual town and/ or the Mendip district area. It should not have a detrimental impact on employment or long term job opportunities. Street trading should enhance competition but not in a way that could lead to a reduction in availability of the products/ items concerned in the longer term. Ultimately, it should enhance the quality of life for those living and working in a town or area.

The Council will consider the following in carrying out this assessment:-

1. The specific products sold by an applicant and the availability/ proximity of those products in the town/ area,
2. The existing level of quality of the products concerned,
3. Employment related to the existing provision,
4. The potential for harmonious, balanced and sustainable enhancement of the offer of the town/ area,
5. Whether the application will give the consumer more choice in terms of products/ quality/ price in a sustainable manner,
6. The potential for adverse impacts through unfair competition on existing businesses.

Where there are applications for consent that conflict or compete with one and other and/ or existing businesses, the assessment on this issue will likely be the determining consideration.

13. Renewals

Street trading licence/ consents are issued for a period of up to one year. Applicants must submit a renewal application, at least four weeks before the expiry of their current consent, but not earlier than 8 weeks before the expiry, if they wish to continue to trade. If they apply late, their renewal may not be processed before their licence/ consent expires and so they will not be able to trade until it is granted.

If there have been justified complaints against the trader in question in the period of the existing licence/ consent, then the renewal will be subject to full consultation again (as if it was a new application). If there have been no such complaints then the licence/ consent will be renewed without any consultation.

If a renewal is not received before the expiry of the current consent, a new application will be required, with full consultation. (The trader will not be permitted to trade until the new one is issued.)

The complete gas installation should be examined for soundness at least once per year. The correct operation of each gas appliance, including any safety devices fitted, must be checked annually by a competent person. This person must be Gas Safe registered for the type of equipment they are testing and the type of gas supply being used e.g. commercial mobile catering equipment and LPG gas supply. A copy of the competent person's report must be given on new applications and with a renewal application.

14. Decisions

All decisions will be given to applicants in a timely fashion, as laid down in this policy.

If an application for a street trading consent is refused, the application fee will be refunded to the applicant minus an administrative charge of £50. However if the fee paid for the Consent is £50 or less, then no refund shall be given.

There is no statutory right of appeal against refusal to issue a street trading consent.

15. Fees

The fee charged for a street trading consent will be dependent on a number of factors:-

- The total period of the consent.
- The type of trading provided.

ALL FEES MUST BE RECEIVED IN CLEARED FUNDS PRIOR TO THE CONSENT BEING ISSUED

16. Complaints and Compliance

Where issues of concern arise or justified complaints are received by the Authority, a review of a street trading consent will be carried out by an Authorised Officer. The Officer Review will focus on the principles and objectives stated in the Introduction section of this policy.

Following such a review an authorised officer may do the following:-

- Take no further action;
- Give a consent holder a written warning;
- Impose additional conditions on the consent;
- Revoke the consent with immediate effect.

17. Transfer of Consent

There is no legal provision for the transfer of a consent. However, where a consent holder dies, becomes incapacitated or cannot continue to trade in other exceptional circumstances the Authority may look sympathetically on such situations. In these instances, an authorised officer will determine whether the consent will be allowed to continue for a period of time, whilst a new application is made to the Council to continue trading.

18. Surrender of Consent

If a consent holder no longer wishes to hold a street trading consent they can surrender it by returning to the Licensing Team and it shall cease to be valid.

The administration charge for issuing the Consent is £50, therefore if the fee paid is £50 or less, no refund will be given. Where the fee paid for the consent is more than £50, the remainder of the fee (calculated on a monthly pro rata basis) minus the £50 administration charge will be refunded.

19. Review of the Policy

This Policy will be reviewed at least once every three years. However, the Council may carry out a formal review of it at any time, and it will then follow the complete consultation process.

However, where minor changes are required due to changes to legislation or otherwise in the interests of good governance the Licensing Board may amend this Policy, where a limited consultation exercise would be carried out.

20. Enforcement

Persons trading without a consent and who are not exempt will be the subject of enforcement action in accordance with Council Policy. This also applies to any person who holds a certificate granted under the Pedlars Act 1871, but who fails to operate in accordance with the Act and/or established case law.

STANDARD CONDITIONS

1. Street Trading shall be conducted in such a manner as not to cause:-
 - a. Obstruction of the street or danger to persons using it. It should be noted by traders that the holding of Street Trading Consent does not preclude the Highway Authority or Police from taking action to remove any obstructions on the highways;
 - b. Nuisance or annoyance (whether to persons using the street or otherwise).
2. The Consent Holder shall only street trade in goods specified by the Consent.
3. Street trading must only be carried out during the hours of the Consent.
4. A Consent Holder shall not trade in any street designated by the council as a 'Prohibited Street'.
5. A Consent Holder is restricted to street trading in the locations identified on the Consent.
6. Short Term Mobile Street Trading within Consent Streets is restricted to a four hour duration, after which the van/cart/barrow or vehicle must be moved a minimum distance of 200 metres before Street Trading again. Return is prohibited within 24 hours. Amendments to these time restrictions may be considered with prior written approval from the Licensing Team.
7. At the end of each Street Trading period the van/cart/barrow or other vehicle shall be removed from the Street Trading location within one hour of the end of the Street Trading time shown on the Consent. If a Consent holder wishes to leave the van/cart/barrow or other vehicle overnight, prior approval from the Licensing Department must be obtained.
8. The Street Trading Consent should be displayed on or in the van/cart/barrow or other trading vehicle during all Street Trading activity and available for inspection by a police officer or other officer authorised by the Council.
9. The Consent Holder shall immediately notify the Council of any changes affecting the terms of the original Consent.
10. Consent Holders are prohibited from setting out their goods or advertising material on the surface of the carriageway or pavement.
11. The Consent Holder shall provide sufficient containers as may be necessary for the depositing of all litter arising from their trade.

12. The Consent Holder must ensure that the immediate vicinity of their Street Trading activity is kept free from litter at all times during trading and all sites must be left free from litter and waste when trading has ceased.
13. Consent Holders must not damage in any way, either wilfully or negligently, any part of the Consent Street where they trade.
14. All Street Trading units must be equipped with safe and adequate lighting when trading during the hours of darkness.
15. The use of loud speakers, horns, flashing lights or any other instruments used to attract the attention of potential customers is not permitted, with the exemption of ice cream vans.
16. The holder of a Street Trading Consent must hold Public and Product Liability Insurance for the minimum sum recommended to the trader in writing by a person that can demonstrate competence on such matters. The proof of said insurance and written recommendation from that competent person must be available to the Police and officers authorised by the Council.
17. If the Consent Holder Street Trades from any Council land, he/she shall indemnify the Council from and against all loss, damage, costs, liabilities and claims whatsoever arising from the use and occupation of the land.
18. Mobile ice cream vans and fast food takeaways are not permitted to trade within 100 metres of any school or education establishment.

LIST OF REQUIREMENTS OF APPLICATIONS

Each application must be accompanied by the relevant application fee. An application will not be considered as duly made until the prescribed application fee has been received.

The following will also be required to be submitted with the application:-

- Where the proposed street activity is from a fixed position at one or more locations, a copy of a map of at least 1:1250 scale. The map should clearly identify the proposed site position by marking the site boundary with a red line. The map should also indicate the locations of other street traders and outlets trading in similar commodities to those proposed; ~
- Dimensions of the vehicle/stall/stand and it's orientation and position within the boundary line above
- Details of the proposed activity, including the type of goods being sold, dates, times and days of operations ;
- Confirmation that adequate levels of public liability insurance is, or will be, in place during street trading activity. This should include product liability.
- Written permission from landowner, if on private land;
- Colour photographs of the stall/ unit to be used from 4 elevations – front, back and both sides;
- Colour photograph of applicant must be produced which satisfies the UK Passport criteria (the photograph may be endorsed by a Licensing Officer);

If an applicant dishonestly enters information or makes a statement that they know is, or might be, untrue or misleading, and intends by doing so to make a gain for themselves or another person, or to cause loss or the risk of loss to another person, they may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years imprisonment or an unlimited fine, or both.

Consultation Process

Once an application is duly made to the Authority it must be subject to a period of consultation before it will determine the application. It will consult with those listed in this Policy and will require that public notice is given of applications.

Static Consent

Consultation period of 14 calendar days for a consent of 1 week or less.

For any longer period of consent there will be a consultation period of not less than 28 calendar days

Short Term Mobile Consents

Consultation period of not less than 28 calendar days

Hawkers

Consultation period of not less than 28 calendar days