

Report to: **Licensing and Enforcement Committee**

Date of Meeting: 12 February 2020

Public Document: Yes

Exemption: None

Review date for release None



Agenda item: 9

Subject: **Street Trading**

Purpose of report: Following introduction of a new street trading regime in October 2017, there have been a number of changes, including removal of application fees in 2018. Through gaining a clearer understanding of how the regime has grown there is a proposal to further revise the policy. It is also proposed to commence the necessary work to require applicants to pay fees for obtaining consent, as detailed in the report. If approved, the changes are to recover costs incurred and to ensure standards are maintained for obtaining street trading consent across the district.

Recommendation: **That the Licensing and Enforcement Committee;**

- (1) Consider charging fees for Street Trading Consents with Application and Trading Fees (Appendix B) and if approval is given, to authorise a consultation,**
- (2) Adopt the revised Street Trading Policy including new guidelines relevant to Cranbrook Town (Appendix E)**
- (3) Note the actions that will be taken as a consequence of the above being agreed**

Reason for recommendation: Having established the impact and understanding of street trading, the changes are proposed as a consequence.

Officer: Steve Saunders, Licensing Manager (Governance and Licensing)

Financial implications: If approval is granted, costs incurred would be officer time spent on the consultation and one off future cost of public notices. If approved the re-introduction of fee income would contribute towards the cost of the Council carrying out the responsibilities relating to street trading.

Legal implications: It is considered good practice to consult with the existing traders on the level of fees to be charged.

Equalities impact: Low Impact

If choosing High or Medium level outline the equality considerations here, which should include any particular adverse impact on people with protected characteristics and actions to mitigate these. Link to an equalities impact assessment form using the [equalities form template](#).

Risk: Low Risk

Click here to enter text on risk considerations relating to your report.

Links to background information:

- [Licensing and Enforcement Committee - 23rd August 2017](#)
- [Licensing and Enforcement Committee - 21st March 2018](#)

- [Current Street Trading Policy](#)

Link to Council Plan: Outstanding Council and Council services

Report in full

Background

1. In October 2017, the Council introduced a new street trading regime with the intent of facilitating economic growth and increasing footfall within the district. Prior to the changes, street trading in many locations where it would normally be beneficial (Exmouth Strand, for example) was illegal due to its previous designation as a prohibited street. The Council undertook a significant amount of public engagement in taking the decision to implement the changes, which was overall supportive of the principle of having a consent regime. The changes resulted in the whole of the district being a consent street, apart from parts of Sidmouth which remain prohibited. In the consent street areas, trading can only occur if consent is obtained first. The changes were accompanied with a new policy, new application process and with fees for obtaining consent.
2. Having introduced the scheme, and in receiving feedback from event organisers and those applying for consent in 2018, it was evident there were issues with the complexity of the initial application process and the payment of a fee for obtaining consent. Applicants for short term community based events previously reported the cost was prohibitive and that the initial fee arrangement had required two fees for obtaining trading consent when using land owned by the Council along with land hirer fees.
3. In listening to the concerns, this Committee chose in March 2018 to retain control over street trading activity by revising policy, ensuring that standards were maintained whilst removing application fees. Application forms were streamlined for short term community based events improving feedback in 2018 whilst maintaining street trading within the district. Those revisions in 2018 have seen the growth and popularity of food markets and similar community trading events in villages and towns, with many occurring under the revised block booking arrangements and often for less than the period of one day.
4. In February 2019, this Committee approved further amendments to the Street Trading policy by providing better guidance to pedlars, ensuring that commercial vendors are properly assessed having right to work in the UK, together with increasing environmental factors to reduce single use plastics and ensuring the standards of commercial trading units. The policy changes were made under Version 3 following increases in applications from commercial traders, many being in the west of the district.
5. The Street Trading policy sets out the Councils expectation of the street traders in the district and provides a clear understanding of what this Council will consider when administering applications, dealing with issues and undertaking any enforcement activities. It supports Licensing Officers in their day to day role in ensuring the Councils licensing aims within this policy are met and ensuring good minimum standards are met and maintained.

Charges

6. When setting the fees in 2017, there was a benchmarking exercise that ensured fees were reasonable, proportionate and being compared to other authorities. The fees set in 2017 were only sufficient to recover the costs for administration and enforcement of each consent. Indeed a number of commercial street trading applicants subsequently paid the original annual fee of £1200 in 2017, then being reimbursed in spring 2018 when fees were withdrawn. Notwithstanding this, other district and city councils having longer periods of established street trading regimes continue charging fees for vendors carrying out the activity.

7. In light of the above, it is proposed that this Council revert to charging fees being payable for obtaining consent. When bringing in the regime originally it was intended that the regime would be cost neutral in that it would achieve income to meet costs and removal of the fees in 2018/19 saw costs being met from within the service budget. As the regime has settled and continued to grow it is timely and necessary to recover reasonable costs for administering street trading.
8. Since 2017, the growth of trading in locations where the Council is the landowner has been managed by other services charging fees for hire of Council land with those service engaging in local consultation on each occasion with the Licensing Team being a consultee. As Licensing can only be cost neutral, it continues to be logical that it would be beneficial for Streetscene to charge maximum income from our assets and having one fee payable rather than the income coming to Licensing, or requiring double fees for events taking place on Council land.
9. When fees for obtaining trading consent were removed in 2018, the pragmatic approach was to not charge at all with the position held by this Committee that fees could be revisited in time. Through gaining a clearer understanding of how the street trading regime has grown since that time it is evident that a number of traders conduct commercial businesses without a need to pay costs that similar food sellers have to meet if operating from a building (for example planning and business rates). The rationale of the Council seeking to recover costs for receiving, consulting and determining applications for road side trading is evident and by gaining a clearer understanding of the regime over the previous two years it has identified the costs in completing this work and for managing applications that are not suitable or indeed require enforcement.
10. The Committee should note that one of the consequences of reinstating a fee for commercial trading consent is that there will be current consent holders that have operated without charges being required since 2018 and also having not being consulted previously. In May 2019, the Licensing Manager sent a letter to each commercial trader granted a street trading consent in the district outlining the proposal to introduce application fees for which there was a low return of just three written responses. One clarified they would be happy to pay a fee and with two requiring further notification and clarification for the reasons for this course of action. Respondent One outlined in summary that “a fee should only be introduced on a pro rata basis” considering frequency and number of days per week that trading occurs along with not understanding why a small business should be charged fees in a difficult economic climate. The current response is to set a pro rata weekly/monthly fee arrangement taking into consideration the feedback. Respondent Two outlined in summary that as a small business there are a number of checks in place with costs of wages and insurance to pay and that any fee setting “is unfair for those small traders trying to make a simple living.” Respondent Three clarified that they had obtained a street trading consent but had not yet started trading at that time, planning to work for two days each week and concluding “we are happy to pay the fee” but they await a right to work permit.
11. Officers have now prepared a detailed structure to allow consideration for re-introducing fees in line with the principles for setting fees. This requirement is necessary for delivering the work required to manage applications;
 - i. Supporting new applicants in the requirements of making an application (pre-application)
 - ii. Visiting proposed trading locations across the district where trading has not previously been allowed or undertaken to consider suitability (pre-application)
 - iii. Processing applications and all associated documents
 - iv. Consulting other authorities for street trading applications,
 - v. Responding to objections and representations,
 - vi. Determining new and variation applications,
 - vii. Responding to requests to appeal refusals,
 - viii. Administering new consents (up to 12 months),
 - ix. Preparing reviews and appeal on refusal where necessary,

- x. Compliance visits to traders following grant,
 - xi. Enforcement / investigation of traders operating without consent,
 - xii. Potential prosecution of unlawful traders being unwilling to engage.
12. A benchmarking exercise was carried out comparing street trading application fees set by other district and city councils when initially setting fees in 2017. Comparisons have been updated showing the fees being charged by other Councils in 2017 and in 2020 in **Appendix A**.
13. At previous meetings of this Committee members raised a need for officers to consider a further review of the street trading policy exploring options to re-introduce application charges for commercial street trading consents. The “Open for Business” guidance from LGA on locally set licence fees outlines that local authorities should consider fees that are charged for both administering and processing licences along with subsequent compliance arrangements. When taking the decision to remove fees in 2017, this Committee outlined that a future proposal may consider introducing fees along with giving sufficient notice given to those who would be affected. Further work was undertaken last year when all traders holding consent were contacted although there may be others trading now who may not have been contacted. It is now considered timely to consider introducing application fees for applicants applying to trade in new locations or when renewing existing consent granted. Legislation allows for this to happen and also for consent to be revoked in certain circumstances regarding non-payment.

Procedure

14. One of the previous criticisms made in that the process was overly complicated in 2017 has been addressed by streamlining application procedures. This does not detract from the consideration / assessment criteria and rigour that is being applied at the application stage ensuring that only relevant information is obtained and the process is not onerous. It is evident there are two general types of trading arrangements occurring in the district, these being;
- (a) Short term multiple trading at markets, community and charitable events, often promoted or requested by parish and town councils (usually lasting for a day or weekend), and
 - (b) Commercial mobile trading businesses for repeated, long term trading in single or rotational locations trading throughout the year (static/mobile food sellers).
15. To that end it is proposed that to continue retaining control over street trading activity, ensuring the nature and quality of what is being sold, where it takes place and to ensure trading is acceptable and safe for the public, that application fees should be reinstated for trading under 14 (b).
- It is not proposed to;
- a. Return Trading fees in 2020 that are in excess of the annual fees set in 2017 although the addition of an Application Fee is new,
 - b. Charge more than one fee for events on land owned by this Council, instead keeping one charge payable for hire/right to use of the land (under 8 above),
 - c. Set rigid, disproportionate fees for all and instead to structure fees on a pro-rata basis against the number of trading days each week
16. Accordingly it is recommended that the fees as shown in **Appendix B** be considered by this Committee. This includes a requirement for applicants to provide an **Application Fee**, being a payment required when submitting each new or renewal application. This fee is necessary for the costs to receive, review, input and begin the consultation process for each application.
17. **Trading Fees** are those payable upon an application being approved following the consultation process to be paid before consent is issued. Trading fees are aligned to the relevant number of days for consent sought and will be granted for each trading unit or vehicle. Where an applicant

operates two or more trading units or vehicles, the Trading Fee is relevant to each unit. The maximum Trading Fee for one trading unit with consent granted for seven days per week, for a maximum of a year, will be £1200. This acquants to the annual fee that was set in 2017.

18. By setting Trading Fees on a pro-rata basis according to the number of trading days each week, it will be proportionate to the business model of each consent holder, being a factor fed back by traders last year and starting from the lowest annual fee of £480 for trading one day weekly up to £1200 for seven days each week. The cost for a full annual fee, trading seven days per week will be equivalent to £23.07 per week or £3.29 a day. The option for traders to operate seasonally exists by charging according to the number of weekly days and months required.
19. If the proposed fees shown under Appendix B are considered appropriate by this Committee, approval will be sought to conduct a further consultation with all current consent holders to allow representations to be received. This action is necessary under the legislation as not all current holders of consent were subject of consultation last year and the proposed fees were not circulated to them either. All fees will be reviewed on an annual basis.

Policy

20. The Policy has been amended to take into account all of the points above and a revised version is attached at **Appendix C**. There are a number of consequential amendments as a result of greater understanding of the trading regime. The reasons and backgrounds to those changes that are highlighted in red font are provided in **Appendix D**.
21. Changes include a new appendix to the policy following applications that have been considered unsuitable for traders seeking consent in Cranbrook Town. The guidelines follow a coordinated approach involving Cranbrook Town Council and East Devon District Council Licensing shown in **Appendix E**.
22. In addition the policy has been changed to give greater clarity on locations which, by choice, the Council does not consider will comprise street trading. This includes trading on land or grounds of any premises licensed for the sale of alcohol or land where the public have to pass through or enter any building to gain access.
23. In light of the changes identified and if agreed, officers will progress revising the application forms, guidance and details on the website.
24. If approved, it is proposed that officers complete the necessary changes to allow the introduction of the revised policy from 1st March 2020. If consultation of new Application and Trading fees is approved by this Committee, officers will complete that work and report back when this Committee next meets.
25. The Street Trading Policy will be due for a full review in conjunction with conducting a further consultation in October 2022 to allow all residents and those affected in the district to be considered.