



# **EAST DEVON DISTRICT COUNCIL**

## **Street Trading Policy**

**Draft 2023**

Version 2

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## 1 OVERVIEW

- 1.1 East Devon District Council (“the Council”) has adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 with regards to street trading within its area. The Council can properly regulate those traders who sell articles without the use of ordinary business premises and those traders who move from place to place.
- 1.2 In 2017 the Council designated all of its administrative area as a Consent Street for street trading purposes, although street trading has remained prohibited in a small part of Sidmouth. This means that in the consent streets anyone wanting to street trade must obtain consent from the Council first.
- 1.3 The purpose of this policy is to provide a framework for applicants looking to gain consent to trade within the district. The requirement to obtain a consent for any street trading is wide-ranging and would include, for example, all hot and cold food vendors selling burgers, kebabs, doughnuts, ice cream, drinks etc., and all vendors of non-food products from any vehicle, stall, barrow, trailer, bike or any other moveable or static structure. It sets out the standards for determination of applications and the enforcement of street trading activities to ensure a consistent approach.
- 1.4 Each application will be considered on its merits. Public **Health and** safety will be a key consideration with each application as well as the prevention of crime, disorder, and nuisance.
- 1.5 This policy supports a street trading experience that is diverse, vibrant and adds to the social and cultural fabric of East Devon that maintains, protects and enhances our environment. The policy aims to ensure that it meets the needs of traders, residents, businesses and visitors to East Devon

## 2 WHAT IS STREET TRADING

Within this document the following definitions apply:

<b><i>Street Trading</i></b>	Means the selling or exposing or offering for sale of any article (including a living thing) in any street. From this definition, any person offering purely a service e.g. a shoeshine (where there are no tangible goods such as a picture or sketch) will not be subject to the street trading legislation.
<b><i>Street</i></b>	Includes: <ol style="list-style-type: none"><li>a) Any road, footway, beach or other area to which the public have access without payment.</li><li>b) A service area as defined in section 329 of the Highways Act 1980,</li></ol> and also includes any part of a street.
<b><i>Consent Street</i></b>	Means a street in which street trading is prohibited without the consent of East Devon District Council.
<b><i>Consent</i></b>	Means a consent to trade on a street by East Devon District Council.
<b><i>Consent Holder</i></b>	Means the person or company to whom the consent to trade on a street has been granted by East Devon District Council.
<b><i>Authorised Officer</i></b>	Means an officer employed by East Devon District Council and authorised by the Council to act in accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1982

### 3 EXEMPTIONS (Statutory and Local)

3.1 The following are legally exempt from the need to obtain street trading consent;

- (a) Shops and petrol filling stations (including selling in the street adjoining such premises provided it is part of the business of the premises).
- (b) Operating properly as a Pedlar (see our [Guidance for pedlars selling on the streets of East Devon - East Devon](#)),
- (c) Markets or fairs where the right is granted through any enactment or order,
- (d) Trading in a trunk road picnic area,
- (e) News vendors (unless the stall exceeds a certain size) and
- (f) Roundsmen, for the purposes of exemption, being defined as a person who regularly travels a set route making deliveries to regular customers. The legal precedent in case law (Kempin t/a British Bulldog Ice Cream V Brighton and Hove Council), ruled that a roundsman was someone who delivered pre-ordered goods within a locality.

3.2 The following are exempt from the need to obtain a street trading consent as a matter of policy choice;

- (a) School, church or village fetes or fetes organized by town or parish Councils (or similar such events) where the event is not in close proximity to a commercial area.
- (b) Funfairs or circuses where the primary purpose is the funfair or circus and the street trading activity is ancillary to the purpose, related to and in close proximity to the funfair or circus.
- (c) Non-commercial car boot sales (where the event organiser whether an individual or company does not profit).
- (d) Residential properties selling items which are surplus to domestic requirements (e.g. home grown / produced jams, fruit, vegetables, eggs etc) provided the sale is within the curtilage of the property or immediately adjacent to it and it is not a commercial concern.
- (e) Those activities that are so minor in nature that in the opinion of the Strategic Lead (Governance and Licensing) or Licensing Manager a street trading consent is not justified.

3.3 The following activities do not fall within the requirement for a street trading consent;

- (a) Educational / information / charity stands not selling any articles.
- (b) Charitable street collections (there is a separate policy for this) including those with one or two tables selling items which solely benefit ~~the~~ a registered charity.

### 4 LOCATIONS, PERMISSIONS

#### 4.1 East Devon District Council Owned Land

When deciding where to trade, you must consider which permissions you may need

- (a) Any trading from any parks, car parks, open spaces, beaches or other land owned by East Devon District Council will require prior consent to hire the land and to conduct the activity before trading can be approved. The Council aims to ensure that only one fee is charged for use of land, although other chargeable contracts, permits or licenses may be required.
- (b) Consent for trading on the Councils land should be sought and initial confirmation received from Events/Property & Estates before any consideration to receiving a street trading application. The licensing team reserve the right to decline the commencement of Stage 3 consultation for street trading that does not have the initial approval to use the land.

- (c) Officers cannot contact other departments on your behalf. All permissions should be in place before you submit your street trading application **or an enquiry submitted to the events team for permission is principle.**
- (d) Public Liability Insurance which will not be provided by the Council. The responsibility for reviewing and confirming all necessary insurance cover, including trading will be required by the Events team ensuring sufficient insurance cover exists for any events occurring on EDDC land.

## 4.2 Privately Owned And Enclosed Land

If you wish to trade on **private land**, written approval from the land owner must be obtained prior to making an application. Trading on privately owned land that abuts or joins any highway will usually require consent and persons wishing to trade from such areas should contact the licensing team prior to submitting an application or commencing trading. Trading on privately owned land may also require Street Trading Consent.

Street trading consent may not be required for privately owned land where access is restricted to the public as a result of;

- (a) The public being required to make payment for entering, or
- (b) Permanent, raised structural boundaries surrounding the trading location (walls, fencing and gates), or where access is gained by entering a building or premises, or
- (c) On land within the approved plan of any premises being licensed for sale of alcohol, for example public house gardens and other licensed outdoor areas. Licensing reserve the right to review areas of land sought for trading that are outside the defined plan (for example beside, nearby and otherwise not part of a currently licensed area).
- (d) Caravan and camping sites where the public do not have free or unobstructed access will be reviewed on a case by case basis. Where public access is restricted and where trading is not conducted on to a public area, trading consent will not be required.
- (e) Where existing businesses seek to allow trading or traders directly outside that premises selling products of the same nature or by providing access to their staff. The circumstances will be reviewed to consider inviting an application as commercial trader outside the premises.
- (f) Consent for trading from privately owned land and all land other than EDDC land should be confirmed in writing to the licensing team. Licensing may decline commencement of street trading consultation for trading that does not have the written approval to use the land.
- (g) Where trading is conducted directly onto any road or highway from an unrestricted location, street trading consent will be required. It is the responsibility of each applicant, in the first instance, to identify the location(s) they wish to consider trading from as there is no designated list of street trading 'pitches' provided by the licensing team.

## Consents

- 4.3 In the case of mobile street traders where there is a genuine need to ply trade in many locations, being those who move from street to street in residential areas/housing estates in a way that involves continuously moving around, but trade for less than 15 minutes at any one point and who don't return to a similar trading position within 24 hours (e.g. an ice-cream van).
- 4.4 Mobile street traders must adhere to relevant traffic legislation and conduct business in a safe manner. Conflict with an existing business in the immediate vicinity will not support trading under these circumstances.
- 4.5 Consents may be granted on a daily, weekly, monthly, seasonal or yearly basis. No consent shall be longer than 12 months. All consents will expire on the expiry date and further trading will require a new application to be made and granted. It is advised that a new application is applied for sufficiently in advance of the expiry date.

## 5 SUITABILITY OF APPLICANTS

When determining an application for the grant or renewal of a street trading consent, or a block booking consent the Council will consider all relevant information relating to the suitability of the applicant to hold such a consent. Street Traders are subject to minimum levels of supervision, they interact closely with members of the public and it is important that the public, especially vulnerable people are protected from harm, and from those who may harm them, wherever possible.

The Council will determine whether the applicant is a suitable person to carry on business as a street trader and may not issue a consent unless satisfied that the applicant is suitable. In determining this, the Council may have regard to any information, which it considers relevant including:

- (a) Relevant responses received during each consultation
- (b) Whether the applicant has been convicted of a relevant offence outlined in the policy appendix
- (c) Refusal or neglect in paying fees due to the Council for a street trading consent, or for any other charges due for other services rendered by the Council to the applicant as the holder of a street trading consent;
- (d) Any previous enforcement action;
- (e) Any previous refusal of an application for the grant or renewal of a Street Trading Consent;
- (f) Any previous revocation of a Street Trading Consent
- (g) Any abusive, offensive, aggressive or insulting language or behaviour towards reception or licensing staff will not be tolerated. It will lead to contact ceasing instantly and the licensing process stopped.

## **6 APPLICATION PROCEDURE**

- 6.1 The council will only accept and validate applications in the prescribed format. Contact can be made with the Council's Licensing Team by emailing [licensing@eastdevon.gov.uk](mailto:licensing@eastdevon.gov.uk). Licensing officers cannot provide landowner permission to trade.
- 6.2 The application and approval procedure comprises certain stages, detailed below. Applications must be submitted no earlier than one calendar year of the proposed trading date. The Licensing team reserves the right to consult closer to the date requested. Applicants are advised to apply no later than 6 weeks prior to the proposed trading date.
- 6.3 There is no statutory requirement to consult before determining street trading consent, however, to ensure openness and transparency the Council has chosen to carry out consultation in relation to applications that meet the criteria for consideration.

### **STAGE 1 - SUBMISSION OF THE APPLICATION**

- 6.4 In addition to a completed and signed street trading application applicants will need to submit a fully completed application and with the following documents (payable at the applicants own expense):
  - (a) 1 copy of a map of the trading site. The map should clearly identify the proposed site position by marking the site boundary with a red line. The map should include the nearest residential and commercial properties to the trading site. Applications for mobile trading consents (e.g. fish and chip vans) must provide specific routes and the locations they wish to trade from.
  - (b) Evidence of a current Food Hygiene Rating Scheme score of at least 3 from the relevant home Authority (to include which authority) where there is the sale of food or drink.
  - (c) A copy of the certificate of insurance that covers the street trading activity for third party and public liability risks with an appropriate level of cover (this will usually be a minimum cover level of ~~£2,000,000~~ **£5,000,000**).
  - (d) Consent holder to provide photographic ID and evidence of right to work in the UK (not being relevant to applications under block bookings below)
  - (e) A Basic Disclosure with your application form being no older than 3 calendar months from date of issue, which can be obtained from the Disclosure and Barring Service

<https://www.gov.uk/government/publications/basic-checks> (not being relevant to applications under block bookings below). An update will be necessary after 3 years from obtaining or if circumstances change, when the Licensing team should be notified.

- (f) Any assistant staff working alone at a consent location must be a minimum of 17 years old and have a sound understanding of the conditions outlined on the consent document. You will need to complete their details on the application form and supply a Basic DBS check (no more than three months old).
- (g) A colour photograph showing the stall, vehicle or barrow which is to be used from the front back and sides. It is not necessary to show what is being sold (being a discretionary requirement to applications under block bookings below).
- (h) Traders gaining consent for at least one location for the period of one year, may provide notification to Licensing to allow consent for trading at other temporary events if trading will be for less than 24 hours and the number of the trading days are less than 7 each year.
- (i) Written approval from the land owner must be obtained prior to making an application

## **BLOCK BOOKING APPLICATIONS**

- 6.5 An event organiser may apply for a single block consent for a short term event where there is to be a number of traders (e.g. farmers markets) using the application form. The event organiser will need to obtain confirmation from all stall holders carrying out a street trading activity that they comply with the requirements of 6.4 (b) and 6.4 (c) above, along with the details of what is being sold. A traders list will need to be provided to the Council as part of the application at least 10 working days prior to the event commencing. Event organiser(s) in receipt of a block consent will be expected to take reasonable responsibility for trading activities by ensuring compliance with the block consent conditions.
- 6.6 Compliance with laws and legislation (Food Hygiene, Health and Safety, waste disposal and so on) will be the responsibility of each trader and failure to comply may result in the trader consent being revoked, subsequent applications being refused and enforcement action occurring.

## **FEES**

- 6.7 The fees set by the District Council for the grant, variation or renewal of a street trading consent must be paid to validate and process the application. Council services may set different fees relating to nature of each contract, concession, licence or consent upon application. Market forces may be taken into consideration to a certain extent in determining the different fee levels for concessions.
- 6.8 Application fees will be reviewed annually on a cost recovery basis and any variation will be approved by Council. Details of the current fees can be found on the Council's website via this link [[add here](#)].
- 6.9 Application fees must accompany the application for grant or renewal of the consent. If an application does not proceed to commencing Stage 3 Consultation, a refund will be repaid by the Council to the applicant. Failure to make payment may result in the consent not being renewed. If an Applicant does surrender their consent or the consent is revoked, the Council shall not refund the application fee being paid for work undertaken to consult, determine, grant or renew the consent.
- 6.10 It is not possible to process incomplete or unpaid applications or applications not received via the online portal.

## **STAGE 2 – CONSULTATIONS**

- 6.11 Before a street trading consent is granted, the council will carry out a consultation process with:
  - The Highways Authority (Devon County Council) / Highways England



- Devon and Cornwall Police
- Devon and Somerset Fire & Rescue Service (DSFR) where appropriate
- The Council's Environmental Health (Commercial and Environment Protection) Teams
- The relevant Ward Members (unless they are the applicant)
- The appropriate Parish or Town Council (unless they are the applicant)
- Other appropriate organisations or businesses that may have a relevant need to be consulted being considered on a case by case basis.

6.12 Where practicable, 28 days will be given for representations to be received, where appropriate consultation may conclude sooner. Tacit consent does not apply. Trading cannot begin without consent as it is in the public interest that applications are processed before they can be granted.

6.13 Consultation for street trading applications will be separate to those consultations by other council services (for example for use or hire of council owned land).

### **SAFETY ADVISORY GROUP**

6.14 The popularity and increase of live musical and similar entertainment in the open with associated trading can provide opportunities for community involvement, civic pride and attracts visitors to East Devon. The success of such events depends upon the quality, levels of safety and consideration for the rights of people who live or work in the vicinity and the standard of provision of facilities for those coming to enjoy the event. The council has established a multi-agency Safety Advisory Group (SAG) to assist organisers co-ordinating events comprising of agencies having an interest in, or legislative role relevant to, such events together with representatives of the emergency services.

6.15 Where necessary a SAG meeting will consider any issues that will require to be addressed and to open up lines of communication with organisers. This is important as it will assist with measures that organisers need to put in place to plan the event. Risks can be adequately mitigated by the submission of an up to date, relevant, detailed and complete Event Management Plan specific to the proposed event on each separate occasion. It is a requirement when planning events on EDDC land.

6.16 The Council recommends that organisers of public trading events should contact the Safety Advisory Group coordinator at least six month before any event being considered emailing [SafetyAdvisor.group@eastdevon.gov.uk](mailto:SafetyAdvisor.group@eastdevon.gov.uk)

6.17 Stage 2 consultations may be delayed or not progressed in circumstances where an event organizer has not consulted or attended the SAG in advance of submitting an application.

### **STAGE 3 – SITE ASSESSMENT**

6.18 Officers will assess the suitability of the site for the street trading activity to occur.

6.19 Street trading consents from static locations will generally **not** be granted where;

- A significant effect on road safety would arise either from the siting of the trading activity itself, or from customers visiting or leaving the site, or
- There are concerns over the recorded level of personal injury accidents in the locality where the street trading activity will be sited, or
- There is a conflict with Traffic Orders such as waiting restrictions, or
- The site or pitch obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use for street trading purposes, or
- The trading unit obstructs the safe passage of users of the footway or carriageway through the existence of any trading vehicle on a road or highway increasing risks to road users, or
- The pitch interferes with sight lines for any road users such as at road junctions, or pedestrian



crossing facilities, or

- The site does not allow the consent holder, staff and customers to park in a safe manner, or
  - The street trading activity is carried out after dusk and the site is not adequately lit to allow safe access and egress from the site for both customers and staff.
  - The siting and operation of any stall, barrow etc. operated by a consent holder or people employed by them causes problems of highway safety, obstruction to users of the highway, or conflict with the requirement of emergency vehicles
  - Street trading requests for certain areas of Exmouth Seafront may not be considered suitable, due to health and safety and highway issues. Each application will be considered on its own merit.
  - The impact of proposed trading within an area managed under Public Spaces Protection Orders - East Devon will be considered on its own merits at the application stage. Where trading consent is subject of anti-social behavior and/or breaches of a PSPO, the council reserves the right to revoke trading consent and to refuse future trading consents.
  - Street trading requests for locations in Cranbrook will be considered on their merits. Emergence of issues including the growth of the town and transport identified that most roads are unsuitable for the purposes of street trading. Cranbrook is a designated healthy New Town (HNT) and that status is recognized by Licensing when receiving applications in the town. East Devon District Council and Cranbrook Town Council have prepared guidelines when considering new applications (see document Policy Guidelines – Cranbrook).
- 6.20 In certain circumstances and for larger events or markets, it may be necessary for a road closure order to be obtained by the event organiser to mitigate risks to safety.

#### **STAGE 4 – INSPECTION OF STREET TRADING UNIT**

- 6.21 The vehicle, van, trailer, stall or other device to be used for the proposed street trading activity may be inspected by an Authorised Officer of the Council, prior to the determination of any street trading consent. The unit to be used for the street trading activity shall comply in all respects to the legal requirements relating to the type of street trading activity proposed. In particular the proposed business shall comply with the following legislation;
- Food Hygiene (England) Regulations 2013
  - Food Safety Act 1990 and any Regulations made under this act
  - Health and Safety at Work etc. Act 1974 and any Regulations made under this Act.
  - Environmental Protection Act 1990.
  - Control of Pollution Act 1974
  - Anti-social Behaviour, Crime and Policing Act 2014
  - The Modern Slavery Act 2015
  - Immigration Act 2016

Further advice on any of the above requirements can be obtained from Environmental Health Teams by emailing [environmentalhealth@eastdevon.gov.uk](mailto:environmentalhealth@eastdevon.gov.uk).

- 6.22 Evidence of compliance with any legal requirement may be requested by the Council at any time.

#### **STAGE 5 – CONSIDERATION OF APPLICATIONS**

- 6.23 Any comments received from the consultation process which are relevant will be taken in to account as part of the consideration of the application at this stage.
- 6.24 The criteria listed below will be used to consider whether or not an application should be approved. All the criteria should normally be satisfied, and equal weight will be applied to the criteria listed. Each case though will be assessed on its merits and individual circumstances, where appropriate, may be taken into consideration;

##### Site safety

- 6.25 The location of the proposed street trading activity should not present additional risks to the public in

terms of road safety, obstruction and fire hazard. The term “public” refers to both customers frequenting the street trading activity, and other members of the public using the location. In particular reference will be made to the guidelines set out in Stage 3 on site safety assessment criteria and observations made by the Highways Authority. Trading consent should not be granted where there is insufficient space, undue interference to pedestrians/road users, where the existence of trading will cause heightened risk or where it would be prejudicial to highway safety.

#### Public Order

- 6.26 The street trading activity should not present a risk to public order in the locality in which it is situated. Observations from the Devon and Cornwall Police will be taken into consideration under this heading. Traders will conduct themselves in a professional manner, having respect for, and treating other traders, council staff and the public fairly and courteously.

#### Avoidance of Annoyance

- 6.27 The street trading activity should not cause annoyance from noise, smells, fumes or litter to households, ~~and~~ businesses and public land in the vicinity of the proposed street trading site. Observations from Council’s Environmental Health Teams shall be taken into consideration under this heading.
- 6.28 Generators may be used or permitted at some locations. Where use of a generator is sought at a trading site the application will require details of the noise rating, the fuel type and the storage arrangements and conditions may be imposed to control their use.

#### Conflict with other like trading outlets and school premises

- 6.29 The presence of other like trading outlets and proximity of schools shall be taken into consideration as follows:
- The Council will not normally permit a new consent for the sale of goods or services which conflicts with those provided by nearby traders (whether street trading or in business premises).
  - Factors include the articles for sale and the geographical location of the proposed site. Each application will be considered on its own merits and on a case by case process.
  - Mobile food vendors will not normally be permitted to trade within 500m of a school during the school opening hours.
  - On lay-bys there shall only be one street trading consent granted.

#### Compliance with Legal and Environmental requirements

- 6.30 The proposed street trading activity should be carried out from a trading unit that complies with the relevant legislation. Observations made on the compliance with the requirements of Food Safety and Hygiene, Health and Safety, Environmental Protection and fire safety legislation shall be taken into consideration.
- 6.31 The impact of the proposed street trading activity on the local environment including street surfaces, power supply, coastal and inland waters, carbon footprint, supply chain, packaging, waste minimisation, waste disposal and waste generated by customers. Provision of adequate measures to minimise the environmental impact of the proposed operation.
- 6.32 The Council Plan for 2020 to 2024 highlights key priorities, principles and values including working towards reducing our carbon footprint and enhancing our environment, along with supporting initiatives that promote the health and well-being of our residents. The Licensing team works in support of the Council Plan noting the potential impact to the environment from time limited, outdoor licensed events and will expect applicants to be familiar with initiatives that reduce and mitigate the impact upon the environment. For example the relevance of avoiding of single use plastic drink containers, avoidance of materials that have a detrimental effect to the environment and similar initiatives. The use of biodegradable materials and packaging wherever possible not relying on single use plastics in support a reduction in plastic waste.

### Permitted Trading Hours

- 6.33 All street trading consents will normally be limited to daily trading hours between 8.00 am and 10.00 pm. However in the case of hot food takeaways and fresh produce sellers trading hours will be determined on a case by case basis on their own merits. Any trading between 2300 – 0500 hours must be subject to a separate application under the Licensing Act 2003 where hot food and drink is proposed to be sold.
- 6.34 The Council retains the right to specify permitted hours of trading that are less than those applied for if local circumstances require it.

### Compatibility of the proposed street trading operation

- 6.35 The proposed trading operation should complement the trading area in which it is situated and/or be compatible with the character of the event to which the consent is related. In assessing this criterion consideration should be given to the type and nature of locality, the type of street trading that will be carried out and the visual appearance of the trading operation being proposed (including any associated equipment or structures). Consents should not be granted when there already exists sufficient retail outlets in the area.
- 6.36 The stall or vehicle must be maintained in good condition, smart appearance and meet criteria, including size, laid down in the standard Consent conditions. Photographs including dimensions, must be provided with all new applications and requests for approval of changes to or replacement of a stall or vehicle. The general appearance of the vehicle or stall will also be considered in order to determine that the unit will not detract from the appearance of the surrounding area. A trading or towing vehicle must be compliant with DVSA MOT standards being maintained in a roadworthy condition to include tax and insurance.

### Avoidance of duplication

- 6.37 Street Trading has the potential for the overlapping of trading activities covered by different regulatory regimes and services within the Council, for example food charitable collections, sale of alcohol or late night refreshment. In addition, street trading activities may require Planning, Highways or land owner permissions depending on the nature of the trading location. So far as is reasonably practicable the Council will avoid duplication with other regulatory regimes that already place obligations. Street traders are required to ensure all relevant provisions are satisfied with the relevant responsible authority in these respects.

- 6.38 Pavement licences require a separate application, approval and fee procedure.

### General

- 6.39 Refusal or withdrawal of street trading consents will be normal in the following circumstances where:
- There are not enough suitable street trading locations available in the street for the applicant to engage in the trading in which they desire without causing undue interference or inconvenience to persons using the street.
  - There are already enough consent holders or people employed by them trading in the street from shops or otherwise, in the goods in which the applicant desires to trade.
  - A consent holder or people employed by them have failed to comply with the conditions attached to any consent.
  - The street trading may damage the structure or surface of the street.
  - Adverse comments are received from the statutory organisations which cannot be overcome.
  - The imposition of conditions is not adequate to control potential problems.
  - Extreme weather conditions when street trading may present a risk to the applicant, their staff or other people.
  - There has been the selling of psychoactive substances.

### Varying a consent

- 6.40 The Act gives the council the power to vary the conditions attached to a consent at any time. Should the holder of a consent wish to change any of the conditions on their consent, they can, at any time, submit a written request to vary the consent. This would be required where the consent holder wishes to change the operating days and/or times or from a different location. A fee will apply to the variation.

6.41 The Council will determine a request to vary a condition or conditions in the same way it would consider a new application by carrying a consultation and making a decision based on the criteria listed in this policy.

6.42 There is no provision for transferring a street trading consent in the Act.

## **STAGE 6 – DETERMINATION OF APPLICATION**

6.43 Applications will be determined by officers under delegated authority, although officers have the absolute discretion to refer any application to the Licensing and Enforcement Sub-Committee.

6.44 Where there are relevant objections then officers will be permitted to try and overcome the objections through negotiations with the relevant parties and the applicant.

6.45 Where the decision of the officers is to refuse an application or grant it in terms substantially different than applied for (in this regard a change to the hours will not normally be viewed as substantial), the applicant will have the right to request a review of that decision by a more senior officer by making a written request within 10 working days. The review will be completed and the applicant notified of the outcome within 10 working days of the request.

6.46 The applicant and anybody objecting to the application will be notified of a referral to the Sub-Committee, the date when the application will be considered and the procedure to be followed. The appropriate Ward Member will also be notified. Unless special circumstances apply the Sub-Committee meetings are open to the public.

### Outcome

6.47 The reasons for refusal (whether a decision made by officers or the Sub-Committee) will be conveyed to the applicant. There is no right of appeal to the Magistrates' Court against the Council's refusal to issue a consent.

6.48 In respect of any application which is approved the Standard Conditions will be attached to the consent, together with any other conditions deemed to be necessary. Conditions will require the street trading operation to be carried out as detailed in the application (e.g. the nature of the goods to be sold, trading hours / days and the unit from which they are to be sold).

6.49 Conditions attached to the consent form part of the approval to carry out street trading in East Devon. They **MUST** be complied with at all times and failure to do so could lead to the consent being either revoked or any subsequent application not granted. It is the responsibility of the applicant / consent holder to familiarise themselves with the conditions relevant to their consent and to abide by them.

### **Enforcement**

6.50 The Council has a duty to carry out enforcement where it becomes aware of or receives allegations which concern unauthorised trading (trading in a street without first obtaining a consent) or non-compliance with street trading consents that have been granted.

6.51 The Council will actively enforce the provisions of this Policy and street trading within its area in a fair and consistent manner. In doing so all enforcement activities will comply with the Council's [Regulatory Enforcement and Prosecution Policy - Principles of Enforcement - Policy - East Devon](#) The Council may at any time revoke a consent or vary the conditions of an existing consent where there are reasonable grounds for so doing.

6.52 Consent holders should allow access to authorised officers of the Council and Police Officers at all reasonable times. Council officers will carry with them and produce on request official identity cards issued by East Devon District Council. If you have any doubts about a person claiming to be from East Devon District Council ask to see their official identification card. If you remain uncertain please contact the Council on 01404 515616 to confirm the identity of an employee.

6.53 East Devon District Council has an agreed [Complaints procedure](#) for dealing with complaints about the services it delivers.

## **Cranbrook**

### Introduction

- 6.54 East Devon District Council is the licensing authority for street trading and Cranbrook Town Council will be consulted when applications for new licences or renewals come forward.
- 6.55 East Devon District Council's policy statement is to create a street trading environment which complements premises-based trading, is sensitive to the needs and amenities of residents, provides diversity of consumer choice and seeks to enhance the character and ambience of local environments.
- 6.56 Town Council experience to date has identified that there are a number of issues which have emerged in connection with previous consultations. These include the fact that the Main Local Route (MLR), now experiences increased vehicle movements including more buses per hour, is unsuitable as a street trading location and that no applications on the MLR could be supported and the fact that residential (in parcel) streets are generally narrow and are unsuitable as locations for street trading. Equally, street trading in residential parcels is likely to lead to impacts on residential amenity. These factors were confirmed by East Devon District Council and the Town Council in December 2019.
- 6.57 Cranbrook is a designated Healthy New Town (HNT) and one of ten NHS pilots. The basic aim of the HNT project was to reduce the impact on the NHS by encouraging lifestyle changes leading to a healthier population. Whilst it is an argument that people should have a choice about what they purchase and consume, the reality is that the pressures on the NHS created by unhealthy lifestyles is unsustainable. Cranbrook Town Council therefore takes the view that health and lifestyle considerations are material in this context.
- 6.58 In considering the balance of established shops and street traders, it is noted that the number of take-away premises in existing shops is limited by planning condition to no more than two. The Town Council therefore takes the view that the number of street trading permissions should be commensurate with this restriction.

### Guidelines

- 6.59 Both the District and Town Council will consider each individual application on its merits. The Street Trading Policy adopted by the District Council includes criteria listed under 'Stage – 5 Consideration of Applications' that allow licensing officers to accept relevant factors received from the consultation process. The current criteria includes:
- Site Safety
  - Public Order
  - Avoidance of Annoyance
  - Conflict with other like trading outlets and school premises
  - Compliance with legal and Environmental requirements
  - Permitted Trading Hours
  - Compatibility of the proposed street trading operation

### General Factors

- 6.59 Emergence of the issues identified in this report may add further weight to the Stage 5 criteria already listed in the Street Trading policy providing further grounds to refuse approval of an application. Where any of the following factors sit outside the Stage 5 criteria, due consideration will still be given by licensing officers. The following factors will be taken into consideration:
- 6.60 Location
- Is there enough space for the applicant to trade in the manner proposed without causing undue interference or inconvenience to persons using the street?
  - How many traders are already trading in the vicinity (from shops or other stalls) in the type of goods in

which the applicant desires to trade?

- Is there undue concentration of traders trading in the street in which the applicant desires to trade?

#### 6.61 Residential Amenity

- Will the consent, if granted, result in nuisance to members of the public, residents and local businesses due to the likely noise, smell, litter, disturbance or other problems which will be caused by granting the consent?

#### 6.62 Highway Safety

- Is the proposed location on a main local route and likely to result in highway obstruction?
- Is the proposed location likely to result in highway obstruction caused by parking of customers' vehicles?
- Is the size, nature or appearance of the proposal (and any associated signage or equipment) appropriate for the proposed location in terms of amenity or public or highway safety?

#### 6.63 Economic considerations

- Are the proposed trading hours outside the usual business hours of shops in the vicinity?
- How close is the proposed location to established shops trading similar goods?
- Would the proposal lead to the number of traders exceeding the number of permitted established shops trading in similar goods?

#### 6.64 Health Considerations

- Is proposal consistent with the aspiration of Cranbrook as a Healthy New Town?

#### 6.65 Operating History

- Is there a history of complaints or any other issues which might impact on a decision to grant or refuse an application?

#### 6.66 Potential acceptable sites

- Town Council may wish to work with the Licensing Authority in identifying potential sites which may be acceptable as venues for street trading. In doing so, it is proposed that this be based on the provision of services to those parts of the town which are not as well served because they are located remotely from established services, are sufficiently removed from existing established providers to mitigate unfair competition and are situated away from locations which might give rise to highway or amenity issues. For example, until the town centre comes forward there may well be locations in that part of the town which are acceptable in all respects and meet the needs of residents. Such potential locations may have a lifespan and require revision as the town builds out.

## 7 Appendices

### Street Trading Application Fees East Devon District Council

Application Fees		
Application fees are non-refundable, being the administrative payment to the Council to receive, review and start consultation. Payment will be required when submitting each application to Licensing using the online portal		
<b>New Consent to Trade</b>	<b>£45</b>	Payable for each location.  When applying for more than one location, an additional fee of £45 for each location.
<b>Renewal of Existing Consent upon Application</b>	<b>£45</b>	When applying for renewal (previously granted location).  Where an application is sought for any new location the fee payable is that for a new application (above).
<b>Application for Block Booking (multiple trading)</b>	<b>£45</b>	Payable for any public area, highway or open space (not falling under EDDC ownership).  *Fees for hiring any EDDC gardens or open spaces to hold an event will incur a charge payable under <a href="#">Event Fees 2022/2023 - East Devon</a>
<b>Variation</b>	<b>£25</b>	If applying to vary an existing Consent for the same unit/vehicle in the existing granted location.
<b>Late submission (Traders List)</b>	<b>£25</b>	Provided late as part of an application at least 10 working days prior to the event commencing.

#### Additional Notes:

- a) Fees are payable where trading in any location where the public can access freely.
- b) Fees will be reviewed annually and any variation will be approved by Council
- c) \*This fee will be charged by StreetScene for land hire (owned by EDDC).
- d) **Fees are none refundable once the consultation processes has been started.**



## **Relevant Convictions**

### **Determining suitability of an applicant for street trading consent**

Each case will be decided on its own merits. Although an applicant may have convictions that would fall under the guidelines in this policy, the Council will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision. The overriding consideration is the safety of the public.

### **Dishonesty**

A street trading consent will not be granted unless 4 years have lapsed since a conviction for an offence that involves dishonesty, for example theft or fraud, or completion of any sentence imposed whichever is the later.

### **Violence**

If an applicant has been convicted for an offence for violence which involves loss of life, a street trading consent will not be granted. In other cases a street trading consent will not be granted unless 10 years have lapsed since a conviction for an offence relating to violence or completion of any sentence imposed whichever is the later.

### **Drugs Offences**

A street trading consent will not be granted unless 10 years have lapsed since a conviction relating to the supply or importation of controlled drugs or completion of any sentence imposed whichever is the later. A Street trading consent will not be granted unless 5 years have lapsed since a conviction for an offence relating to the possession of drugs or completion of any sentence imposed whichever is the later.

### **Sexual and Indecency Offences**

A street trading consent will not be granted where there are convictions for rape, indecent assault, any sexual offence involving children and any conviction for an offence under the Sexual Offences Act 2003, or for indecent exposure.

### **Exploitation**

A street trading consent will not be granted if there are convictions relation to exploitation of another individual. This will include slavery, child sexual exploitation and grooming.

### **Motoring Convictions**

In most cases, motoring offences are unlikely to be relevant when considering a street trading consent application. However, there may be instances where the offences are of a very serious nature or may be relevant to the type of street trading activity. In those cases a street trading consent will not be granted unless 5 years have lapsed since any such convictions or completion of any sentence imposed whichever is the later.

### **Street Trading Legislation**

The Council takes a serious view on applicants who have been convicted of street trading offences under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982. In particular, a street trading consent will not be granted unless 2 years have lapsed since any offence under the 1982 Act or if there is more than one conviction unless 5 years have lapsed.

### **Formal Cautions and Fixed Penalty Notices**

For the purposes of these guidelines, the Council will treat Formal Cautions issued in accordance with Home Office guidance and fixed penalty notices as though they were a conviction before the courts.

### **Existing Consent Holders Convicted Of An Offence**

The Council may consider revoking the consent if the consent holder is convicted of an offence and in particular there will be concern if the offence falls into one of the categories detailed above.

# STREET TRADING CONSENT

## STANDARD CONDITIONS & TERMS



### STANDARD CONDITIONS

1. A copy of this consent shall be displayed by the consent holder in a conspicuous position that is visible to members of the public and shall be produced for inspection if requested by an authorised officer of the Council or the Police.
2. In the case of a block consent where the application did not contain all of the required information for all stalls, it is the responsibility of the consent holder to ensure that the Council has given its written approval to all stalls prior to the event commencing.
3. The consent holder shall comply with all relevant legislation applicable to the street trading activity and ensure that where applicable the consent holder has and maintains a current Food Hygiene Rating Scheme score of at least 3 and gas safety inspection certificate.
4. The consent holder must notify the Licensing Manager immediately of any convictions or proceedings arising out of the consented activity.
5. The consent holder shall not assign his interest in this consent or any part thereof nor allow any person or trading unit, other than a person employed to assist the holder, to rely on it.
6. The consent holder shall observe and comply with any directions in relation to the consented activity or use of the street / public place by a duly authorised officer of the Council or the Police.
7. The consent holder shall for the duration of the consent maintain a valid Third Party Public Liability Insurance Policy for a minimum of £2,000,000 to the satisfaction of the Council and shall produce a valid certificate of such insurance at any time upon request by an authorised officer of the Council.
8. This consent does not imply or grant exclusive rights to the holder for use of the location specified in the permission. If at any time at the permitted trading location other statutory bodies or organisations require access and use of the location to carry out emergency or other remedial works, they shall be afforded such access for such time as is necessary.
9. The consent holder shall not carry out any street trading activities other than those permitted by the consent and is expressly prohibited from;
  - (i) selling Psychoactive Substances,
  - (ii) holding an Auction Sale
  - (iii) selling, displaying or wearing any article which is or is intended to be offensive either in writing or pictures.
10. The consent holder shall not trade outside of the permitted location / route and the permitted times and days.
11. The consent holder shall not trade in such a way that is likely to cause;
  - (i) undue obstruction to any part of any street or public place, or
  - (ii) injury to any person using the street or public place, or
  - (iii) damage to any property in the street or public place, or
  - (iv) annoyance to persons using the street or public place, or occupiers of premises in the vicinity.
12. The consent holder shall at all times conduct their business in a clean, honest, civil and businesslike manner so as not to interfere with the business of other traders and consent holders.
13. Music may be played subject to having appropriate PRS and PPL licenses provided that the music

shall not be audible outside the vehicle or beyond the boundary of the consented area without prior consent in writing from the Council.

14. The consent holder shall not place on the street or in a public place any furniture or equipment other than as permitted by the Council and he must maintain the same in a clean and tidy condition and not place them so as to obstruct the entrance or exit from any premises.
15. Outside of the consented area the consent holder shall not place on or in any street or public place, or affix to any equipment placed on the street or public place, any advertising of any description whatsoever except with the prior consent in writing from the Council
16. At the expiry of the consent, all stalls, vehicles or other equipment associated with the street trading activity must be removed within 30 minutes of the expiry of the trading hours.
17. The consent holder when operating on a static site shall have access to suitable and sufficient sanitary accommodation for anyone carrying out the street trading activity.
18. With respect to litter and waste the consent holder shall;
  - (i) provide and maintain refuse receptacles for litter and shall remove waste arisings from the site on a daily basis and dispose of them in an approved manner,
  - (ii) keep their trading position and the area within 25m of the pitch in a litter free condition during the permitted hours and also leave the same in a litter free condition at the end of each daily period permitted by this consent,
  - (iii) make such provision as is necessary to prevent the deposit in any street or public place of solid or liquid refuse and shall not discharge any water or effluent from the street trading activity to street surface drainage or other watercourse.
19. Consent holders must notify the Licensing team of any variation to trading times or frequency, including absence in excess of 4 weeks. The reasons for any absence will be treated according to the individual circumstances provided.
20. The Council reserves the right to withdraw consent at any time should the land be required by the land owner. The requirement of the landowner approval is specific to this consent being in place.
21. The Council reserves the right to withdraw consent at any time should new development surrounding the trading location impact on the suitability of the location.
22. Should a gazebo or marquee be permitted by the Street Trading Consent and used by the Consent holder the following conditions apply:
  - i. Heavy ballast weights must be used at each leg to withstand uplift forces from wind. Calculations from the manufacturer, supplier or installers to show the weight requirements for each leg must be obtained and complied with.
  - ii. Anchorage should also prevent lateral movement of the structure. Ropes to anchorage points must not obstruct movement around or within the structure
  - iii. The Consent holder should be aware of the design wind load of the structure, and have a procedure for monitoring weather forecasts, and making safe by removal of covers any structure likely to be put at risk by high winds
  - iv. The structure must be British fire-rated BS 5438 and/or BS 7837 (or any replacement standard) and marked accordingly, the Licensee must carry out a fire risk assessment of the structure.
  - v. Domestic garden gazebos and old style market gazebos cannot be accepted as they are not structurally safe for use in public areas.
  - vi. Gazebos/stall coverings/marquees must be kept visually appealing and compliment the character of the area
23. All drinks served for shall be served in reusable Plastic/Polycarbonate or similar containers, no glasses or bottles are to be permitted.
24. The Consent holder must ensure that the area where the street trading activity takes place is kept clean and clear of refuse and litter throughout the operating times. Refuse and litter deposited on the highway in the vicinity of the street trading unit/s and other objects must be removed at the Consent holder's expense under the Environmental Protection Act 1990. The Consent holder must ensure that the street surfaces are kept clean at all times and should have particular regard to the

removal of grease, fat deposits and similar to ensure that the surface does not present a hazard to users.

25. It is a condition of this Consent that clear routes of access around the street trading unit and the highway must be maintained, taking into account the needs of disabled people, and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of <https://www.gov.uk/government/publications/inclusive-mobility>. The Licensee must comply with the Guidance of the Secretary of State with regard to the needs of disabled people and the recommended distances required for access by disabled people, such guidance being shown at the following address or such other updated guidance as may be issued <https://www.gov.uk/government/publications/pavement-licences-draft-guidance/draft-guidance-pavement-licences-outdoor-seating-proposal>

## **VARIATION OF CONDITIONS**

The Council may vary any of the conditions attached to a consent or add new conditions at any time, subject to reasonable notice being given to the consent holder.

## **REVOCAION OR SURRENDER OF CONSENT**

This consent may at any time be revoked by the Council or surrendered by the consent holder.

The holder shall return this consent to the Council immediately on revocation or surrender of the consent. The Council shall not in any circumstances whatsoever be liable to pay any compensation to the holder in respect of such revocation.

## **LEGAL PROVISIONS**

Nothing contained in these conditions shall relieve the consent holder or his employees or agents from any legal duty or liability and the consent holder in carrying out the consented activity agrees to indemnify the Council in respect of all claims, actions, demands or costs arising from this consent.

## Currently designated as Prohibited Streets

It is proposed to change the designation of the following Prohibited Streets (where street trading is at all times forbidden by law) to designate as Consent Streets;

- All Saints Road
- Bedford Square and including the un-named street leading from Bedford Square to the Esplanade
- Blackmore View
- Chapel Road
- Chapel Street
- Church Street
- Coburg Road - between Coburg Terrace and Church Street
- Dove Lane - and the lane between Dove Lane & New Street
- Fore Street
- Fortfield Place
- Fortfield Terrace
- Glen Road, - south of Manor Road
- Ham Lane and East Street - from the Esplanade to Fore Street
- High Street
- King Street
- Manor Road
- Market Place
- Mill Street, - west of its junction with Russell Street
- Millford Road, - north of the ford
- New Street
- Old Fore Street
- Peak Hill Road – east from its junction with Cotmaton Road.
- Prospect Place
- Radway, - south of the Post Office
- Salcombe Road
- Sid Road, - south of Redwood Road
- Station Road - between Knowle Drive and The Esplanade
- Streets adjoining the Three Cornered Plot (Known as The Triangle)
- The Beach – from the mouth of the River Sid westwards to a point opposite Clifton Cottage.
- The un-named street between Elizabeth Hotel and Marlborough Hotel (now Dukes)
- Vicarage Road, - south of Connaught Road
- York Street
- Vicarage Road, - south of Connaught Road

**The following is a Consent Street but shall only be granted during a period annually from 1<sup>st</sup> May to 1<sup>st</sup> September;**

- Esplanade & Promenade