



**WARRINGTON**  
Borough Council

## Warrington Borough Council Street Trading Policy (2021)



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# Street Trading Policy

## **1 PURPOSE AND SCOPE**

### **1.1 Introduction**

- 1.1.1 The purpose of the policy is to create a street trading environment that compliments premises-based trading, is sensitive to the needs of residents, provides diversity and consumer choice and seeks to enhance the character, ambience and safety of local environments.
- 1.1.2 The Council recognises the need for legitimate traders who operate well run businesses.
- 1.1.3 Warrington Borough Council will apply this Policy to street trading activities in its area to ensure consistency and fairness. However each application or contravention will be considered on its own merits so that individual circumstances, where appropriate, are taken into consideration.

### **1.2 Human Rights**

- 1.2.1 The Licensing Authority deal with applications for Street Trading Consents in a manner consistent with the Human Rights Act 1998. In particular, by giving due consideration to the rights under the following articles of the European Convention on Human Rights and Fundamental Freedoms:

- (i) Article 1 – property right (including the right to apply to hold a consent and operate a business);
- (ii) Article 6 – right to a fair hearing in the case of representations against applicant or consent holder;
- (iii) Article 8 – respect for private and family life.

### **1.3 Duplication**

- 1.3.1 Street Trading has the potential for the overlapping of trading activities covered by different regulatory regimes, for example food hygiene and standards, sale of alcohol or late night refreshment. In addition, street trading activities may require Planning or Highways 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 on employees and operators. Street traders are required to ensure all relevant provisions are satisfied with the relevant responsible authority in these respects

## **1.4 Equality**

- 1.4.1 Consent holders shall ensure that disabled people and wheelchair users can be adequately served. This may involve serving persons from outside the vehicle.

## **1.5 What is Street Trading?**

- 1.5.1 Street Trading is generally taken to mean the selling, exposing or offering for sale any article (including a living thing) in a street. A street includes:-

“(a) any road, footway, beach or other area to which the public have access without payment...”

The definition is wide ranging but it typically covers mobile food traders, Ice Cream/Sandwich Vans, flower sellers etc. (See **Appendix 1** for a complete definition of terms).

- 1.5.2 The following shall be considered as prohibited goods for the purpose of the policy:-

- (a) Second hand electrical goods
- (b) Medicines or treatments
- (c) Sex articles as defined by the Local Government (Miscellaneous Provisions) Act 1982
- (d) Cigarettes/tobacco
- (e) Any form of gambling
- (f) Firearms (including replicas) and ammunition
- (g) Fireworks

## **1.6 Exemptions from the need to obtain a Consent**

- 1.6.1 Some types of trade are legally exempt from the requirement to obtain a street trading consent. These include:

- (a) a person trading under the authority of a pedlar’s certificate granted under the Pedlars Act 1871 i.e. going on foot from place to place selling goods directly.
- (b) anything done in a market or fair the right to hold which was acquired by virtue of a grant (including presumed grant) or acquired or established by an enactment or order.
- (c) trading in a trunk road picnic area provided by the Secretary of State under section 112 of the Highways Act 1980.
- (d) trading as a news vendor, selling newspapers or periodicals. (Big Issue vendors will no longer require permits).
- (e) trading which:
  - i. is carried on at premises used as a petrol filling station; or

- ii. is carried on at premises used as a shop or in a street adjoining premises so used and as part of the business or shop;
- (f) trade carried out by a “roundsman” , e.g. Milkmen;
- (g) the use for trading under Part VIIA of the Highways Act 1980 of an object or structure placed on, or in or over a highway;
- (h) the operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980;
- (i) the doing of anything authorised by regulations made under Section 5 of the Police, Factories, etc. (Miscellaneous Provisions) Act 1916.

With regard to point (f) above it has been established in law that mobile ice cream sales **will not** be deemed to be exempt from Street Trading controls on the grounds that they are not roundsmen.

## **1.7 Street Trading for which consent is not required**

1.7.1 The following activities are not normally conducted on the highway, however, in so far as they may occur on a street, or land adjoining the street, they have been deemed **to not** require the consent of the Council under this Policy. Event organisers must, however, ensure that commercial traders on the street, e.g. hot food or ice cream vendors, are in the possession of a current street trading consent issued by the Council.

1. Non-Commercial Car Boot Sales.
2. Fetes, Carnivals, Charitable Events and similar community based and run events.
3. Events covered by the market charter.
4. Sales of articles by householders within the boundary of their properties.
5. Farmers markets (producer-managed marketplace for local producers to sell their own produce direct to local people).
6. Any event where there is a requirement for members of the public to pay a fee in order to enter the street, highway or premises where street trading is taking place.
7. Food Festivals (that support the look and appeal of the local area).
8. Any trading on Council owned land for which permission has been obtained and for which a separate agreement is in place with the Council; proof of which must be provided.

## **2 GENERAL PRINCIPLES OF MAKING AN APPLICATION**

### **2.1 Introduction**

2.1.1 In considering any application for the grant or renewal of a street trading consent, the following issues will be taken into account before determination:

- Public order;
- Public nuisance;
- Public safety;
- Crime and disorder;
- Needs of the area.

2.1.2 Street trading consents will be issued for a period of one year from the date of issue.

2.1.3 All applications will be considered on their relative merits.

### **2.2 Disclosure and Barring Service (DBS)**

2.2.1 Applicants applying for a new street trading consent will be expected to obtain a DBS certificate. Apply at <https://www.gov.uk/request-copy-criminal-record> which must be one month in date when submitted to the Licensing Authority.

2.2.2 The DBS certificate must be in the name and address of the applicant as detailed on the application form.

2.2.3 A copy of the original certificate may accompany the application form.

2.2.4 The Licensing Authority will ask for a new DBS certificate from an applicant every third year beginning with the year after the issue of a new consent.

2.2.5 The DBS certificate will be expected to accompany a renewal application and the third anniversary of the renewal.

### **2.3 Employees**

2.3.1 You are required to check the residency status and right to work of anyone who you employ to trade under your street trading consent before including their names on an application form. For more information on the Immigration Act, and the duties of employers to check the rights of their employees to work, please review the Home Office guidance.

2.3.2 Consent holders may have up to three employees registered to work on a particular licensed pitch. The Consent holder must apply to the licensing service to register additional employees to work on a licensed pitch or vehicle either via the original application or by way of a variation. Additional employees registered will be subject to the same statutory provisions and consent conditions as consent holders.

2.3.3 At the time of original application the consent holder must produce the following for each additional employee to be registered on the consent:

- Name Address and Date of Birth,
- Passport Photograph,
- Basic Disclosure (DBS) Certificate which cannot be more than a month old
- DVLA driving licence (if the person will be driving a vehicle in their duties as an employee)
- Evidence of employment

2.3.4 Up to date DBS Certificates will be required upon the third anniversary of the original application or by way of variation for additional employees. Temporary employees who do not hold a valid DBS certificate must work, at all times, under the supervision of the consent holder and only for a maximum period of 3 weeks.

2.3.5 A register shall be kept by the consent holder detailing the name and address of the temporary employee in addition to the hours and days they have worked.

## **2.4 Subletting and transfers.**

2.4.1 A Street Trading Consent cannot be sublet.

2.4.2 A Street Trading Consent cannot be transferred or sold to another person. However, in the event of the Consent Holder's death or incapacity, an existing consent or one that lapses during probate, can be amended to name the new consent holder by way of a written request to the Authority.

2.4.3 Other business commitments, holidays and family or social engagements will not be considered. In these circumstances the consent holder may have up to three employees registered to operate the stall subject to approval by the licensing authority and the terms of this policy.

2.4.4 Applications to take over existing consents will be treated as new applications. These will be treated on a 'first come first served basis' basis following the expiry of an existing consent. Any application will be treated on its relevant merits in accordance with the policy requirements for a new application.

## **2.5 Fire Safety**

2.5.1 It is a requirement under the Gas Safety (Installation and Use) Regulations 1998 that at least annually but ideally every 6 months, an inspection, test and servicing of the mobile gas installation should be undertaken by a competent engineer who is registered by Gas Safe to work on mobile catering units. This is to ensure gas soundness of pipe work and correct operation of appliances, flues and ventilation.



- 2.5.2. It is therefore a requirement of the Street Trading Conditions that each applicant provides a copy of the last inspection certificate (Current within the last 12 months) with either new, renewal, day permits or short-term consent applications. This certificate can only be produced by an authorised engineer who is Gas Safe Registered for LPG - Commercial Catering - Mobile Catering. A list of Engineers/Businesses who are registered to carry out the test/inspection and certification has been provided by Gas Safe.
- 2.5.3. When selecting a contractor to undertake Gas Safety checks you must make sure that they are registered with “Gas Safe” to work with your particular appliances. This will usually be Commercial Liquefied Petroleum Gas appliances.
- You can find appropriately registered contractors nearby by using the Gas Safe website <https://www.gassaferegister.co.uk/>
  - You can select to search for **Commercial** engineers by postcode and then filter your search by appliance type to select LPG/Bottles
  - Gas Safe can be contacted on: 0800 408 5500
- 2.5.4. A suitable fire extinguisher and fire blanket must be provided on the vehicle when selling hot food.

### **3 NEW APPLICATIONS**

#### **3.1 Specific Requirements**

3.1.1 New applications will be determined following a 21 consecutive day consultation period. Applicants will be required to provide the following documents and fees with their application form:

- (a) A completed and signed street trading consent application form.
- (b) The application form should be accompanied by an appropriate fee.
- (c) Where the proposed street trading activity is from a fixed position, a site plan (to scale) showing the precise trading position and its proximity to other similar retail outlets within a 100 metre radius. The proposed position and orientation of the stall, van, barrow, cart etc. is to be shown on the plan. The plan shall also include any additional vehicles that will be parked on the site.

(Ice Cream Vans and Mobile Sandwich Vans are exempt from providing location plans unless the van is stationary).

- (d) One colour photograph of the stall, van, barrow, cart etc. that will be used for the street trading activity. The photograph shall show any proposed awnings fully extended, whether integral or not.
- (e) One passport size colour photograph of the applicant.
- (f) An original certificate of insurance that covers the street trading activity for third party and public liability risks of £5,000,000. (This may be provided following confirmation that the application has been granted but the consent will not be issued until the certificate has been provided).
- (g) If the land is in the ownership of Warrington Borough Council, written permission from the Estates and Valuation Service will be required.
- (h) If the land is privately owned, written permission from the land owner.
- (i) Details of any permissions or consents already granted with regard to the proposed operation, e.g. planning consent, late night refreshment premises licence, food premises registration, and waste disposal agreement.
- (j) All applicants will be expected to have an up to date Standard Disclosure Barring Service (DBS) Certificate. A copy may be produced with the application form and must be submitted within one month of issue.
- (k) Each applicant must provide a copy of their last Gas Safety inspection certificate (Current within the last 12 months). This certificate can only be produced by an authorised engineer who is Gas Safe Registered for LPG -

Commercial Catering - Mobile Catering. (Please see 2.5.3 for guidance on Gas Safety).

- (l) A List of goods/articles to be sold should be provided.
- (m) A copy of the waste carriers licence should be provided.
- (n) Details of up to three employees to include the information specified in 2.3.4.

## 4 RENEWAL APPLICATION

### 4.1 Specific Requirements

- 4.1.1 Applicants should submit their application at least two months prior to the expiry of their consent if they wish to continue to trade. The Council takes no responsibility for reminding existing holders of the expiry of the consent and it remains the responsibility of the holder to reapply to renew the consent before the expiry date. Failure to submit a correctly completed renewal application and the requisite documents prior to expiry date will result in the consent lapsing and the applicant will need to complete a new application form for the grant of a Street Trading consent. The applicant will be unable to trade until the new application has been consulted upon and the consent granted.
- 4.1.2 Where a renewal application has been made and there have been no justifiable complaints, no enforcement issues and all fees have been paid on time, the consent will normally be renewed.
- 4.1.3 Where a renewal application has been made and there have been complaints or enforcement issues, then the application may be rejected.
- 4.1.4 Applicants will need to submit the following documents and fees with the application form:
- (a) A completed and signed street trading consent application form.
  - (b) The appropriate fee
  - (c) An up to date certificate of insurance that covers the street trading activity for third party and public liability risks of £5,000,000. This must be provided with the application form.
  - (d) If the land is in the ownership of Warrington Borough Council, written permission from the Estates and Valuation Service will be required.
  - (e) If the land is privately owned, written permission from the land owner.
  - (f) Details of any change in employees and the information required in 2.3.4 for these new staff.
  - (g) Each applicant must provide a copy of their last Gas Safety inspection certificate (Current within the last 12 months). This certificate can only be produced by an authorised engineer who is Gas Safe Registered for LPG - Commercial Catering - Mobile Catering. (Please see 2.5.3 for guidance on Gas Safety).
  - (h) On the third year of renewal, applicants will be required to obtain a new DBS certificate which must be one month in date when submitted. A copy of the original certificate will be required. The Licensing Authority will notify applicants when they are required to obtain a new DBS with their renewal application.

- 4.1.5 Applicants **will not** be required to provide passport or vehicle photographs unless any changes have been made at the time of renewal.
- 4.1.6 Applicants should note that any changes to trading location, increase/decrease in hours, or increase in trading days will require an application to vary. Those applicants wishing to sell on their business; potential consent holders will be dealt with by way of a new application.

## **5 DAY PERMITS**

### **5.1 Specific Requirements**

- 5.1.1 An applicant or company may apply for a day permit up to a maximum of 12 times in a calendar year.
- 5.1.2 Applications will normally only be accepted up to a minimum of 7 working days before the first trading day commences. A waiver to the 7 day consultation period may be granted, in exceptional circumstances, where it can be proved that there is a clear business case and that the day consent will not have a material impact having regard to the criteria in 2.1.1. Any application for a waiver will be considered by officers on its relative merits.
- 5.1.3 Day permits will expire on the date specified in the consent. -Please notify the Highways Authority of your intention to trade as they may refuse permission to trade under their own provisions. If complaints are received then it is likely that applications for day consents under the same terms will be refused. The decision will be at the discretion of the Licensing Officer.
- 5.1.4 Applicants will need to submit the following documents and fees with their application form:
- (a) A completed and signed street trading consent application form.
  - (b) The appropriate fee.
  - (c) An up to date certificate of insurance that covers the street trading activity for third party and public liability risks of £5,000,000. This must be provided with the application form.
  - (d) If the land is in the ownership of Warrington Borough Council, written permission from the Estates and Valuation Service will be required.
  - (e) If the land is privately owned, written permission from the land owner.
  - (f) Details of any existing permissions already granted with regard to the proposed operation e.g. planning consent, late night refreshment premises licence, food premises registration, and waste disposal agreement.
  - (g) A location plan detailing the exact position of any cart, van, barrow etc. (Ice Cream Vans and Mobile Sandwich Vans are exempt from providing location plans unless the van is stationary).
  - (h) Each applicant must provide a copy of their last Gas Safety inspection certificate (Current within the last 12 months). This certificate can only be produced by an authorised engineer who is Gas Safe Registered for LPG - Commercial Catering - Mobile Catering. (Please see 2.5.3 for guidance on Gas Safety).

## **6 Short Term Consent**

### **6.1 Specific Requirements**

- 6.1.1 The Council recognises the need to trade in items of a seasonal nature and wants to support where possible this type of activity within the Street Trading scheme.
- 6.1.2 The Council will therefore accept applications from an applicant or company for a short term consent for a maximum of 3 consecutive weeks per calendar year.
- 6.1.3 A short term consent is for those applicants trading in items of a seasonal nature e.g. Christmas trees during December.
- 6.1.4 Applications will normally only be accepted up to a minimum of 14 working days before the first trading day commences. A waiver to the 14 day period may be granted, in exceptional circumstances, where it can be proved that there is a clear business case and that the consent will not have a material impact having regard to the criteria in 2.1.1. Any application for a waiver will be considered by officers on its relative merits.
- 6.1.5 Short term consents will expire on the date specified on the consent.
- 6.1.6 An application for a short term consent will be determined following a 7 consecutive day consultation period.
- 6.1.7 Applicants will need to submit the following documents and fees with their application form:
- (a) A completed and signed street trading consent application form.
  - (b) An appropriate fee.
  - (c) An up to date certificate of insurance that covers the street trading activity for third party and public liability risks of £5,000,000. This must be provided with the application form.
  - (d) If the land is in the ownership of Warrington Borough Council, written permission from the Estates and Valuation Service will be required.
  - (e) If the land is privately owned, written permission from the land owner.
  - (f) Details of any existing permissions already granted with regard to the proposed operation e.g. planning consent, late night refreshment premises licence, food premises registration and waste disposal agreement.
  - (g) A location plan detailing the exact position of any cart, van, barrow etc. (Ice Cream Vans and Mobile Sandwich Vans are exempt from providing location plans unless the van is stationary).

- (h) Each applicant must provide a copy of their last Gas Safety inspection certificate (Current within the last 12 months). This certificate can only be produced by an authorised engineer who is Gas Safe Registered for LPG - Commercial Catering - Mobile Catering. (Please see 2.5.3 for guidance on Gas Safety).



## **7 VARIATIONS**

### **7.1 Specific Requirements**

7.1.1 Should any of the following changes need to be made at any time, an application to vary the consent will be required.

- Adding or removing a street trading employee
- Removing or altering the appearance of a vehicle/stall/trailer attached to the consent
- Reduction or increase in trading hours or days
- Adding a new vehicle/stall/trailer to the consent
- Changes to the goods to be sold.

7.1.2 Please note that the Licensing Section will consult with the appropriate consultees of your intention to vary an existing consent. The period of consultation will be 14 days.

## 8 CONSULTATION

### 8.1 Consultation Requirements

Before a street trading consent is granted, the Council will consult with and seek written observations from:

- The Licensing Authority
  - The Highways Authority
  - Estates and Valuations
  - Environmental Health (Noise)
  - Environmental Health (Food Health & Safety)
  - Development Control
  - Cheshire Constabulary
  - Cheshire Fire Service
  - The Town Centre Manager (where applicable)
  - The Warrington Market Manager (where applicable)
  - The land owner of the proposed street trading site
  - Ward members [excluding Ice Cream and Mobile Sandwich Traders]
- i. The Council will consult with the above consultees on behalf of on an applicant for a new application where appropriate to do so.
  - ii. The consultation period for a new application will be 21 consecutive days beginning the day after the application is received by the Council.
  - iii. The consultation period for a short term consent will be 7 consecutive days beginning the day after the application is received by the Council.
  - iv. Any objection from consultees and interested parties will be assessed against the criteria in Section 9.
  - v. A relevant objection is one made by a person, business or body that is likely to be directly affected by the proposal. In addition, the objection must not be vexatious or frivolous and should concern itself only with matters relevant to the objectives arising from the application. The relevant Delegated Officer will determine whether an objection is relevant and not vexatious or frivolous.

## 9 DETERMINATION OF THE APPLICATION

### 9.1 Suitability of the site

9.1.1 The vehicle, van, trailer, stall or other device to be used for the proposed street trading activity can be inspected by an Authorised Officer (Food Hygiene or Highways) of the Council at any time.

9.1.2 Street trading consents for site locations **will not** normally be granted where any of the following may apply:

- (a) any effect on road safety, either arising from the location of the pitch, or from customers visiting or leaving the site,
- (b) there would be any likelihood of nuisance from noise, light, smells, litter or fumes to households and businesses in the vicinity of the proposed street trading site,
- (c) there is already adequate provision in the immediate vicinity of the proposed street trading site,
- (d) any conflict with existing Traffic Orders such as waiting restrictions,
- (e) any potential obstruction of pedestrian or vehicular access,
- (f) any obstruction to the safe passage of users of the footway or carriageway,
- (g) the safe access and egress of customers and staff from the pitch and immediate vicinity,
- (h) the pitch interferes with sight lines for any road users such as at road junctions, or pedestrian crossing facilities,
- (i) the site does not allow the Consent Holder, staff and customers to park in a safe manner,
- (j) 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.
- (k) The trader is within 100 metres of any business, whether mobile or fixed premises between the hours of 7am and 6pm, where that business trades in items of a similar nature.

### 9.2 Suitability of the applicant and Employees

9.2.1 In considering whether an applicant and their employees are fit and proper person to hold a street trading consent or to work in connection with one the Council will consider unspent convictions or conduct of such persons and will take into account the following:

- a) Whether the conviction/incident is relevant;
- b) The seriousness of the offence/incident;
- c) The length of time since the offence/ incident occurred;
- d) Whether there is a pattern of offending behaviour/similar conduct;
- e) Whether that person's circumstances have changed since the offence/incident occurred; and
- f) The circumstances surrounding the offence / incident and the explanation offered by that person

### **9.3 Needs of the Area**

9.3.1 It is important that street trading complements the area. Each application will be considered on its merits, however a consent **will not** normally be granted on sites that are within:

- Residential areas or where there is likely to be an unacceptable impact on residential amenity.
- 100 metres of the boundary of any hospital, nursing or residential care home.
- 100 metres of the boundary of any school and where granted may be subject to conditions (see condition 30).
- any Council owned pay and display or park and ride car parks.
- 100 metres of the boundary of any business, whether mobile or fixed premises, between the hours of 7am and 6pm.

9.3.2 Other key considerations will be:

- The speed limit of the road unless the area is segregated from live traffic lanes, or there is evidence that the mean traffic speed is significantly below the posted speed limit.

### **9.4 Trading at, or near to, Schools**

9.4.1 Warrington Borough Council recognises that a healthy start in life is vital for all children and young people to realise their full potential. This Policy seeks to support the Council's commitment to reducing obesity and improving dental health and accordingly the Council are likely to attach a condition to a Street Trading Consent that states there will generally be a 100 metre exclusion zone around the curtilage of the school or college, as measured from the main site entrance, in which street traders are not allowed to trade. This restriction would only apply during term time and then between the hours of 12 noon to 2.00pm and 3.00pm to 5.00pm on any school day. The restrictions would apply to all food street trading consents, regardless of whom the consent holders are targeting and whether or not the application is new or for a renewal of an existing consent.

### **9.5 Preservation of the Street Scene**

9.5.1 The number of traders in any one street will be limited; to avoid any undue concentration of outlets and to ensure that excessive trading does not compromise the amenities of the area.

9.5.2 Mobile traders, such as ice cream vans, may trade at a particular location only for as long as it takes to serve customers.

### **9.6 Permitted Trading Hours**

- 9.6.1 Hours of street trading will be assessed in terms of public order, public nuisance, public safety, crime and disorder and avoidance of nuisance and the needs of the area criteria detailed in 9.3.
- 9.6.2 If trading includes the supply of hot food or drink after 11.00pm and before 5.00am, the trader will need to ensure that they obtain a premises licence to cover late night refreshment under the Licensing Act 2003, from the Council.
- 9.6.3 The Council retains the right to specify permitted hours of trading if local circumstances require it.

**9.7 Persons under the age of 17 years**

- 9.7.1 The Council will not grant street trading consents to persons under the age of 17 years.

## **10 APPROVAL OF APPLICATIONS**

### **10.1 Issue of Street trading consents**

- 10.1.1 Street trading consents will be issued for a maximum period of 12 months beginning on the date on which the consent is first granted.
- 10.1.2 Street trading consents will need to be submitted for renewal at least two months prior to the expiry as specified on the consent.
- 10.1.3 Day permits can be issued up to a maximum of 12 occasions in a calendar year per applicant or company. These permits will expire on the date specified on the consent.
- 10.1.4 Short Term Consents can be issued for a maximum of 3 consecutive weeks per calendar year per applicant or company. These consents will expire on the date specified on the consent.
- 10.1.5 In all cases where a consent has expired, and a renewal application has not been received by the Council, a new application will have to be submitted. In such cases the applicant will be required to go through the full process outlined in this Policy.
- 10.1.6 Consents may be revoked by the Council at any time. In the event of the consent being revoked, surrendered or lapsing without being renewed then the Council will accept new applications for the vacant location(s).
- 10.1.7 When granting or renewing consent, the Council may attach any reasonable condition. Furthermore the Council can, at any time, vary the conditions attached to the consent. Any such variations will be notified in writing to the named person in receipt of the Consent to trade and will take effect on the date of the notification letter.
- 10.1.8 The Licensing Committee, Licensing Sub-Committee, or Delegated Officers may approve applications, with regard to the criteria contained within this Policy. On approving the application the Council will issue a street trading consent.
- 10.1.9 The conditions attached to the consent form part of the approval to carry out street trading in the Borough of Warrington and **MUST** be complied with at all times. Failure to do so could constitute an offence, and/or the consent could be revoked or not renewed (**See Appendix 2**).

## **11 REFUSAL OF APPLICATIONS, REPRESENTATIONS AND APPEALS**

### **11.1 Refusal**

11.1.1 Applications that are considered by delegated officers as being unsuitable under this Policy will be rejected.

11.1.2 Applications that receive representations will be considered by a delegated officer and the representation(s) will either be accepted or rejected.

11.1.3 If representations are accepted, the delegated officer will determine the application in accordance with this policy.

11.1.4 If an application is not granted, the Council will inform the applicant in writing of its reasons for not granting the application, and will enclose a copy of any representations received.

### **11.2 Appeal**

11.2.1 The Local Government (Miscellaneous Provisions) Act 1982 does not accord applicants the right of appeal. Refusals by a Local Authority do not have to be supported by a declaration of reasons. However, Warrington Borough Council recognises the rules of natural justice and that this Policy should include an appeals mechanism.

11.2.2 Applicants will be therefore be given a 14 consecutive day period in which to make a request to formally appeal the delegated officers decision. The first day of that 14 day period will be the day on which the decision was notified to them in writing.

11.2.3 If an applicant chooses to appeal a decision, they will be invited to attend the Licensing Sub-Committee and offered the opportunity of addressing members of the Committee, to support their application.

11.2.4 The representee(s) will also be invited to attend the Licensing Sub-Committee, and also offered the opportunity to address members to support their representation.

11.2.5 Members of the Licensing Sub-Committee will then determine the application as follows:

- Uphold the appeal and grant the consent;
- Refuse the appeal;
- Uphold the appeal and grant consent with conditions;
- Uphold the appeal and grant consent with changes to days/hours requested.

11.2.6 The Council will then issue a notice of determination of the application to the applicant and any representees in writing.

11.2.7 There is no further right of appeal against the decision of the Licensing Sub-Committee.

11.2.8 Persons dissatisfied thereafter must seek redress by way of Judicial Review.



## **12 FEES**

### **12.1 Setting of Fees**

12.1.1 The fees will be set by Licensing Committee following consultation.

### **12.2 Payment of Fee**

12.2.1 Applications for annual Consents should be accompanied by a non-refundable fee as set out in the Council's fees and charges. If the application is approved, the balance of the fee will be due before the Consent is issued. If the application is not successful a proportion of the fee will be retained to cover the cost incurred in processing the application.

### **12.3 Failure to Pay**

12.3.1 Payment will be made by debit/credit card where ever possible but where a cheque is received and the bank dishonours a cheque, this will result in the revocation of the street trading consent or the rejection of the application by the Council, unless payment of the outstanding fee(s) is made by credit/debit card.

12.3.2 Payment by instalment is not permitted for a street trading consent.

### **12.4 Refunds**

12.4.1 Applications that are rejected either by delegated officers of the Council or by members of the Licensing Sub-Committee, will be entitled to a refund of the application less an administration fee.

12.4.2 Partial year refunds will not normally be offered for those applicants whose consents are surrendered or revoked part way through the consent. However, consideration will be given on a case by case basis. Any decision made leading to a partial refund, will be subject to an administration fee.

## **13 Enforcement of Street Trading**

### **13.1 General Principles**

13.1.1 Warrington Borough Council will actively enforce the provisions of the street trading scheme within its area in a fair and consistent manner in accordance with the Public Protection's Enforcement Policy.

13.1.2 Persons trading without a consent or certificate and who are not exempt will be the subject of enforcement action.

13.1.3 Each trader issued with a consent will be the subject of compliance checks. The Council will endeavour to respond to complaints from other traders, residents, Ward Members and other interested parties about the operation of a trader as soon as practicable.

13.1.4 Consent holders must 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 identification.

### **13.2 Food Hygiene**

13.2.1 In relation to mobile food vendors, if an Authorised Officer identifies conditions that result in a non-compliant food hygiene rating being issued i.e. 2 or lower, then the street trading consent will be revoked and the street trading activity will immediately be required to cease. An additional fee will be charged for the Authorised Officer to revisit, re-assess the hygiene rating. A fresh application will have to be made for a new consent and the applicant will be unable to trade until the consent has been approved.

13.2.2 All food businesses must be registered as a food business with the local authority

### **13.3 Employees -and ID badges**

13.3.1 It is the consent holder's responsibility to ensure that anyone working under the consent is a fit and proper person. Details of up to 3 employees need to be submitted to and approved by the Licensing Authority. The ID badge should be worn by the Employee and be available for inspection by an Authorised Officer or a Police Officer.

13.3.2 If the consent holder is found to allow an illegal employee to work as part of their trading activities (see 2.3 employees) their street trading consent shall be revoked subject to any extenuating circumstances by an authorised officer.

### **13.4 Waste**

13.4.1 Section 111 of the Water Industry Act 1991 makes it illegal to permit any substance, which may interfere with the free flow of the sewerage system, to pass down any sewer or drain connecting to a public sewer. Further

information about disposal of waste oils from catering premises can be found on the Food Standards Agency website. All waste water from the trading vans sinks must be collected and disposed of correctly.

13.4.2 The Consent holder shall take reasonable steps to ensure that litter arising from their own trade is minimised as far as possible, for example by making a bin available for customers to use.

13.4.3 The Environmental Protection Act 1990 places a duty of care on businesses to dispose of their trade waste in an appropriate manner. Trade waste must be stored appropriately and be disposed of by a licensed waste carrier.

### **13.5 Nuisance**

13.5.1 The holder must not use or permit to be used any ancillary equipment e.g. generators, televisions, radio receivers etc. in such a manner as to cause a disturbance or nuisance. The consent holder must take sufficient steps at the request of an authorised officer to prevent any impact on amenity.

13.5.2 Street consent holders must not solicit for trade by approaching the general public; who must be free to approach the trader directly for any goods/articles.

### **13.6 Prices**

13.6.1 The holder must ensure that a current price list of articles is prominently displayed at all times so that it can be easily read by customers.

### **13.7 Temporary vehicles**

13.7.1 The consent holder shall only trade from a vehicle, stall, trailer or other unit specified in the consent. A consent holder may only use an alternative vehicle or trailer in an emergency situation, and then only having notified the Council in advance and after receiving authorisation to do so. If a vehicle, stall, trailer or other device specified in the consent is to be permanently replaced part way through the consent period, the holder must notify the Council and apply for a variation. Approval must be received before trading takes place.

## **14 Complaints against the Service**

### **14.1 Introduction**

14.1.1 Warrington Borough Council has an agreed procedure for dealing with complaints about the services it delivers. If you wish to complain about the delivery of Street Trading Services you should contact us on 01925 442517. If the matter cannot be resolved, advice will be given on how to further your complaint under the Council's Complaints Scheme.

**Definitions of terms used in this Policy**

Within the terms of Warrington Borough Council's Street Trading Consent Scheme the following definitions apply:

**The Council** means the Warrington Borough Council

**"Street Trading"** is defined in paragraph 1 of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982-hereinafter "the Act" as:

The selling or exposing or offering for sale of any article (including a living thing) in a street.

**Street** - The Act defines the term "street" as including:

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

Any part of a street is a "street" for the purposes of the Act

**Consent Street** means a street in which street trading is prohibited without the consent of Warrington Borough Council

**Prohibited Street** means a street in which street trading is prohibited

**Consent** means consent to trade on a street by Warrington Borough Council

**Consent Holder** means the person or company to whom the consent to trade has been granted by Warrington Borough Council

**Static Street Trader** means trader granted permission by Warrington Borough Council to trade from a specified position

**Mobile Trader** means a trader who moves from street to street

**Authorised Officer** means an officer employed by Warrington Borough Council and authorised by the Council to act in accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1982

## APPENDIX 2

### WARRINGTON BOROUGH COUNCIL STREET TRADING CONDITIONS



#### GENERAL

1. The grant of a street trading consent shall not be deemed to give any approval or consent which may be needed under any byelaw, enactment or regulation other than Part 3, Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982. For the avoidance of doubt this includes the requirement to seek and obtain planning permissions and/or advertisement consent.
2. A street trader shall have legibly and prominently displayed upon his/her receptacle a notice showing their name and the consent number of his/her street trading consent.
3. The consent holder shall notify the *Licensing Section* of the Council immediately of any convictions or proceedings arising out of the use or enjoyment of the consent.
4. Traders shall notify the Council of any permanent change of address as soon as it occurs.
5. The trader shall not assign, under let or part with his/her interest or possession under this consent or any part thereof but may surrender it to the Council at any time.
6. The consent holder shall observe and comply with any directions in relation to the use of the street or public place by a duly authorised officer of the Council.
7. Nothing contained in these conditions shall relieve the consent holder, his/her employees or agents from any legal duty or liability and the consent holder shall indemnify the Council in respect of all claims, actions, demands or costs arising from this consent.
8. If the street trading site is located on private land, including forecourts, satisfactory written evidence must be provided to the Council that permission of the land owner or lessee has been obtained to carry out the street trading activity.
9. Only those goods specified on the consent may be sold on the licensed street trading area. All commodities must comply with relevant legislation.
10. A street trader shall not lend or allow any other person to use his/her licence or his identification badge.
11. A street trader shall not in any way alter, erase or deface his/her consent or his identification badge.
12. Trading may only take place on the dates and during the times specified on the consent.

13. Each consent holder shall ensure that disabled persons and wheelchair users can be adequately served. This may involve such customers being served from outside the vehicle/stall.
14. A consent holder shall not undertake any action or activity on the street, including trading from the site in a manner which, in the opinion of the Council, causes an obstruction in the street or constitutes a danger, nuisance, annoyance or inconvenience to the Council or to the owners or occupiers of any adjacent or neighbouring premises or to members of the public.
15. No advertisement shall be displayed on the licensed pitch which relates to any goods, commodities or services other than those offered for sale or provided on that pitch.
16. An employee will allow an authorised officer to carry out an inspection of the consented unit or vehicle upon request.
17. Consent holders are required to produce their consent for inspection upon request of an authorised officer of the Council or Police Officer.
18. No water or waste material shall be discharged onto the highway or any adjacent property.
19. The consent holder's vehicle/stall shall be kept in a clean, safe and well maintained condition.
20. At least one refuse container shall be provided by the consent holder and placed on the pavement near to his/her vehicle/stall and be available for use by his/her customers. A notice shall also be displayed requesting customers to deposit litter in a waste container.
21. The consent holder shall ensure that the area in the vicinity of his/her vehicle/stall shall be kept clear at all times of all refuse originating from his/her trade and from customers, and in particular, shall leave the site clear of such refuse at the completion of trading.
22. The consent holder shall ensure that his/her vehicle/stall is positioned only in the allocated area of the consent for which he/she holds a street trading consent.
23. Any stall, container, vehicle or other article used for street trading shall be removed from the trading location no later than one hour after the end of trading period and shall not return until trading commences the next day unless otherwise authorised by the Council.
24. Any consented stall, vehicle or trailer must be capable of being immediately removed at the request of emergency services or an authorised officer of the Council.
25. Where any vehicle or structure contains a portable or fixed heat producing appliance, the street trader shall provide a 1 x 2.5 kilogram dry powder fire extinguisher sited adjacent to the exit from the vehicle or structure, the extinguisher to be maintained in accordance with British Standard 5306; Part 3.

26. The Consent Holder's vehicle shall be maintained in a roadworthy condition, taxed, insured and with a current MOT Certificate
27. Notwithstanding the other terms and conditions relating to this consent, every street trader shall comply with any order or instruction given by any Police Officer in uniform:-
  - (i) for the prevention of obstruction or danger or annoyance to the public or to the occupiers of any premises; or
  - (ii) in connection with any emergency or disturbance; or
  - (iii) on any occasion when such officer in his discretion may consider it necessary in the public interest to give such an order or instruction.
28. Traders selling food shall not trade within 100 metres of a school as measured from the curtilage of the main entrance. This restriction would only apply during term time and then between the hours of 12 noon to 2.00pm and 3.00pm to 5.00pm on any school day. The restrictions would apply to all street trading consents, regardless of whom the consent holders are targeting and whether or not the application is new or for a renewal of an existing consent.
29. The consent holder may terminate this consent by written notice to the Council.
30. The consent is personal to the consent holder and is not transferable.
31. If a consent holder fails to comply with any of the conditions attached to the consent he/she will risk the consent being revoked and risk prosecution.
32. These general conditions may be varied by any special conditions relating to a particular location as listed on the consent certificate.
33. If you are convicted of any offence(s), given a formal caution(s) for any offence or have any fixed penalty notice(s) imposed, you shall write to the Council giving full details of the offence(s), caution(s) or fixed penalty notice(s).
34. Nothing contained in these conditions shall relieve or excuse the consent holder or his/her employees or agents from any legal duty of liability.
35. At all times the consent holder shall comply with the legislation in force.
36. This consent may be revoked by the Council at any time and the Council shall not in any circumstances whatsoever be liable to pay any compensation to the holder in respect of such revocation.



37. The holder of a street trading consent plate shall return the said plate to the Council immediately on revocation or surrender of the consent or confirm its destruction by post or email.
38. The consent holder shall confirm by post/email to Warrington Borough Council immediately that the consent has been destroyed on revocation or surrender of the consent.
39. Mobile units may sound chimes but NOT before 12 noon and after 7.00pm, on any day.
40. Trading in the Town Centre is prohibited unless a street trading consent has been granted by the Council.
41. Trading on Warrington Walking Day is prohibited by all street traders without the written permission of the Council.
42. Trading at the Halliwell Jones Stadium area(s) as defined by the plan in **Appendix 3** of this policy is not permitted by any street trader on match days.
43. Each applicant must provide a copy of the last Gas Safety inspection certificate (Current within the last 12 months). This certificate can only be produced by an authorised engineer who is Gas Safe Registered for LPG - Commercial Catering - Mobile Catering.
44. The consent holder must not trade within any area that will conflict with the trade of any business, whether mobile or fixed premises, that is located within 100 metres of the trading site as measured from the edge of the consented unit. This restriction will apply between the hours of 7am and 6pm and will apply to any trader trading in items similar to businesses within the area.
45. Consent holders shall have and maintain third party insurance in accordance with the requirements of this policy.

**APPENDIX 3**



**MAP LINK OF THE HALLIWELL JONES AREA**

<https://www.warrington.gov.uk/street-trading>