

# Taunton Deane Borough Council

## Licensing Committee – 22<sup>nd</sup> February 2017

### Review and update of policy for street trading in particular in respect of itinerant traders

This matter is the responsibility of Executive Councillor Patrick Berry

Report Author: Mark Banczyk-Gee, Licensing Officer

#### 1 Executive Summary

- 1.1 Members are asked to consider the amendment of the street trading policy which addresses the operation of itinerant traders, removing the requirement for them to have a street trading consent whilst operating from street to street.

#### 2 Recommendations

- 2.1 That members approve an amendment to the street trading policy whereby itinerant traders can go street to street and operate without a consent.

#### 3 Risk Assessment

##### Risk Matrix

Description	Likelihood	Impact	Overall
Appeal of subcommittee decision by licence holder, which could result in Taunton Deane Borough Council being made liable for legal costs and compensation were the Magistrates' Court to overturn the decision	5	2	7

##### Risk Scoring Matrix

Likelihood	5	Almost Certain	Low (5)	Medium (10)	High (15)	Very High	Very High (25)
	4	Likely	Low (4)	Medium (8)	Medium (12)	High (16)	Very High (20)
	3	Possible	Low (3)	Low (6)	Medium (9)	Medium (12)	High (15)
	2	Unlikely	Low (2)	Low (4)	Low (6)	Medium (8)	Medium (10)
	1	Rare	Low (1)	Low (2)	Low (3)	Low (4)	Low (5)
			1	2	3	4	5
			Negligible	Minor	Moderate	Major	Catastrophic
			<b>Impact</b>				

Likelihood of risk occurring	Indicator	Description (chance of occurrence)
1. Very Unlikely	May occur in exceptional circumstances	< 10%
2. Slight	Is unlikely to, but could occur at some time	10 – 25%
3. Feasible	Fairly likely to occur at same time	25 – 50%
4. Likely	Likely to occur within the next 1-2 years, or occurs occasionally	50 – 75%
5. Very Likely	Regular occurrence (daily / weekly / monthly)	> 75%

## 4 Background and Full details of the Report

### Background

- 4.1 Taunton Deane Borough Council has adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 in order to control street trading. 'Street trading' is defined as the 'the selling or exposing or offering for sale of any article (including a living thing) in a street and a 'street' is further defined as being 'any road, footway, beach or other area to which the public have access without payment; and a service area as defined in section 329 of the Highways Act 1980'. The definition of 'street' is broad and would encompass public open spaces, the highway and private land such as industrial estates.
- 4.2 The Council adopted the Act in such a way that all 'streets' within the district were designated as 'consent streets'; meaning that street trading could only lawfully take place where the trader held consent from the Council.
- 4.3 There are a number of exemptions specified within the Act, where trading would not need consent, such as trading as a news vendor, trading by a person acting as a pedlar with a pedlars certificate granted under the Pedlars Act 1871 and 'selling things, or offering or exposing them for sale, as a roundsmen'. The latter is an interesting exemption, in that there is no further statutory definition or explanation of a roundsman, however there is legal precedent in case law, specifically the case of Kempin t/a British Bulldog Ice Cream V Brighton and Hove Council, where Lord Justice Latham ruled that a roundsman was someone who delivered pre-ordered goods within a locality.
- 4.4 Within the Kempin t/a British Bulldog Ice Cream V Brighton and Hove Council case, Lord Justice Latham also ruled that an ice cream salesman driving around an area was not a roundsman because he/she would not be delivering pre-ordered goods. It is due to this ruling that the Council has historically treated mobile ice cream salesmen as street traders and therefore consent is required to lawfully trade within any street in the Taunton Deane district.
- 4.5 An itinerant trader is defined as a trader who travels from place to place (itinerant) to sell (trade). We as an authority do not classify or verify what an itinerant street trader is however it has been done by the London Local Authorities Act 1990 which defines "Itinerant ice cream trading" as ice cream trading from a vehicle which goes from place to place remaining in any one location in the course of trading for periods of 15 minutes or less and not returning to the same location or any other location in the same street on the same day.

- 4.6 This description can be applied to any mobile street trader and in Taunton Deane we can identify mobile sandwich /coffee vendors as businesses as such (along with mobile ice cream vendors). More often than not these are operating from business car parks i.e. private land and have historically never been controlled. Albeit on private land often it is land the public can access without payment. Therefore by definition they should be controlled. Having never done this we are now in a position to address this area of licensing and decide whether we control them or exempt them. There is a clear anomaly as we control mobile ice cream vendors who fit the same criteria.
- 4.7 A complaint has been received from a licensed ice cream vendor in which several other ice cream vendors have been identified by the complainant as operating in the Taunton Deane borough council area. Research has shown they do not have consent's with Taunton Deane as they should be if operating in the Taunton Deane area as mobile ice cream vendors.
- 4.8 This has led to a review and the request held within this report.

## **5.0 Report**

- 5.1 Currently mobile ice cream vendors in Taunton Deane borough council are treated as street traders, for which they can obtain a consent which lasts 1 day, 1 week, 1 month or 1 year. However should such vendors trade from a venue that requires payment to enter they will not need a consent.
- 5.2 On checking the computer system used by Taunton Deane Borough council, only three businesses have had a consent in the last year to sell ice cream and only two were mobile ice cream vendors.
- 5.3 So in effect last year there were only two mobile ice cream sales van operating in Taunton in the summer of 2016. A complaint by one of those vendors identified six other vans operating during this time, one of which had an out of date consent displayed.
- 5.4 The licensing department has recently undergone some change, which is still being implemented and it has been identified that enforcement of licensing legislation is an area that the department have not been able to carry out across all the areas they cover. In particular enforcement of any kind in respect of itinerant street traders is difficult as they may have a route they follow but this is open to change by the nature of their business and would clearly be time consuming and inefficient to wait to see if someone is operating with or without a consent.
- 5.6 As a result, research has been carried out looking at other licensing authorities and how they treat mobile ice cream vendors. It is clear that if they are at a venue in a fixed spot they will require a permission unless it is an event that requires payment to enter. However if they are mobile, there is no uniform approach. It is apparent that some have treated them as roundsmen, South Somerset District Council is a case in point. However *R v Bulldog*, which was an ice cream sales company who challenged Brighton Council, states from the court ruling that ice cream vendors could not be treated as roundsmen.
- 5.8 Hillingdon Council have been identified as a council who deal with them as itinerant vendors and therefore do not issue them with a licence or consent unless they are static. The same can be said of North Somerset Council and Sedgemoor District Council.

- 5.9 The only issue that would need to be clarified is how long a trader can stay in one place to be regarded as static. This is a common sense issue I believe and we would consider 15 minutes long enough in one road. As identified previously this is the time limit used by London local authorities.
- 5.10 In conclusion I believe that any sort of control by the licensing department of mobile street vendors which are not static or part of an event is not necessary, and the reasons for and against I hope will now be clear on reading this document for you to make a balanced decision.

## **6 Links to Corporate Aims / Priorities**

- 6.1 The licensing department represents the borough council with a responsibility to the public of Taunton Deane to ensure their safety and welfare. By being licensed the public can be reassured that the business is safe and legal. Any food business has to register with environmental health who manage the food and safety aspects of the business. Licensing cover the legality of the act that the business is conducting.

## **7 Finance / Resource Implications**

- 7.1 As stated we currently have income from one ice cream vendor whom we can identify as an itinerant tradesmen and this is limited to the summer months. Licensing is broadly speaking cost neutral as we are legally only able to recover reasonable costs associated with the administration of an application and carrying out compliant visits.
- 7.2 An argument can be made to say that as there are several vendors operating who do not have consents the council is losing money. However as a cost neutral operation this argument does not exist. However there is a clear workload issue should we chose to impose the street trading consents on itinerant vendors operating in Taunton Deane.
- 7.3 By deciding to not control our itinerant street traders we actually do not lose anything as we as a licensing department will not have to enforce legislation and in turn this will allow officers to concentrate on other licensing areas without being concerned that street trading vendors are operating illegally. By not issuing consents we are also supporting small businesses by reducing the amount of bureaucracy they need to complete for them to operate. Clearly when these vendors are operating, common sense prevails in respect of where they operate from, so there is a limited risk to the public which even if we issued consents would make no difference to the operation of the vendors. Therefore the value in controlling them is minimal.

## **8 Legal Implications**

- 8.1 None

## **9 Environmental Impact Implications**

- 9.1 None

## **10 Safeguarding and/or Community Safety Implications**

- 10.1 None

## **11 Equality and Diversity Implications**

11.1 There are a number of protected characteristics identified in the Equality Act 2010, which are; age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation and members need to demonstrate that they have consciously thought about the three aims of the Public Sector Equality Duty as part of the decision making process. The three aims the authority must have due regard for are;

- Eliminate discrimination, harassment, victimisation;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

## **12 Social Value Implications**

12.1 None

## **13 Partnership Implications**

13.1 None

## **14 Health and Wellbeing Implications**

14.1 None

## **15 Asset Management Implications**

15.1 None

## **16 Consultation Implications**

16.1 None required.

## **17 Scrutiny Comments**

17.1 The purpose of the Licensing Committee is to act for the Council in respect of licensing and registration functions. The Committee's powers include the power to discharge licensing functions on behalf of the licensing authority, outside of the usual democratic process

### **Democratic Path:**

- **Scrutiny / Corporate Governance or Audit Committees – No**
- **Cabinet/Executive – No**
- **Full Council – No**

Reporting Frequency:  Once only     Ad-hoc     quarterly  
 Twice-yearly     annually

**Contact Officers**

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