

**WELWYN HATFIELD DISTRICT COUNCIL  
STREET TRADING POLICY  
APPROVED BY FULL COUNCIL 19/11/18**

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## **1.0 INTRODUCTION**

### **1.1 The Policy**

1.1.1 This document states Welwyn Hatfield Borough Council's, (to be referred to subsequently as WHBC) policy on Street Trading as defined by the Local Government (Miscellaneous Provisions) Act 1982 (Section 3 and schedule 4).

### **1.2 The Objectives of this Policy**

1.2.1 This Policy has been adopted with view to securing the following objectives:

- (i) to enhance the town centres of Welwyn Garden City, and Hatfield;
- (ii) to protect public health through the control of street trading within the District of Welwyn Hatfield;
- (iii) to ensure that traders operate within the law and act fairly in their dealings with the public; and
- (iv) to prevent nuisance, unsafe practices and anti-social behaviour.

### **1.3 The Law**

1.3.1 The Local Government (Miscellaneous Provisions) Act 1982 (Section 3 and Schedule 4) provides the legal framework for the control of street trading in England and Wales. The legislative framework, however, is not an automatic entitlement and councils must formally adopt the legislation if they wish to regulate street trading in their areas.

Other relevant legislation includes Food Safety Act 1990, Antisocial Behaviour, Crime and Policing Act 2014, Health and Safety at Work etc. Act 1974 and associated regulations, Environmental Protection Act 1990, Trading Standards legislation, and this Street Trading Policy

1.3.2 WHBC has resolved to make all streets within Welwyn Hatfield prohibited streets, with the exception of any streets designated as consent streets. This came into effect on 1<sup>st</sup> April 1993.

1.3.3 Street trading is defined as *“the selling or exposing or offering for sale of any article, including a living thing, in a street.”*

1.3.4 Streets are further defined as *“any road, footway, beach, or other area to which the public have access without payment or any service area as defined by section 329 of the Highways Act 1990.”*

1.3.5 WHBC does not issue street consents to traders who have made arrangements with owners of private land such as business car parks providing they are not on the Highway and have the land owner's permission. However these traders still have to register with Environmental Health if they are providing food. WHBC will not be liable for any agreements/disputes between the landowner and the trader.

1.3.6 The main purpose of this legislation is to establish an appropriate licensing regime which prevents undue nuisance, interference or inconvenience to the public brought about by street trading. This legislation provides local authorities with the power (but not duty) to designate specific areas within their administrative boundaries as either:

- (i) **Prohibited Streets:** those which are not open to street traders;
- (ii) **Consent Streets:** where street trading is prohibited unless it has been given local authority consent;
- (iii) **Licence Streets:** where trading is prohibited without a local authority licence.

1.3.7 Local authorities can place conditions on any Consent or Licence. The Act also creates offences associated with trading in Consent or Licence Streets without the necessary authority: the person guilty of such an offence may be liable, on conviction, to a fine not exceeding Level 3 on the standard scale. WHBC has not adopted street trading licences only street trading consents.

Any person who, in connection with an application for a street trading consent, makes a false statement which he knows to be false in any material respect, or which he does not believe to be true, shall be guilty of an offence.

1.3.8 There are a number of exemptions provided in the Act that are not to be considered street trading:

- (i) trading as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871;
- (ii) a market trader operating at a Charter or licensed market venue;
- (iii) trading at a Charter Fair;
- (iv) trading in a trunk road picnic area provided by the Secretary of State under section 112 of the Highways Act 1980
- (v) trading as a news vendor selling only newspapers and /or periodicals;
- (vi) trading at a petrol filling station or as part of a the business of a shop adjoining a petrol station;
- (vii) trading carried on in a street linked to an adjoining shop where the street trading is an extension of the shop's ordinary business;
- (viii) trading as a roundsman;
- (ix) where permission has been granted from the Highway Authority pursuant to Section 115 of the Highways Act 1980 to trade from an object or structure placed in, on, or over the highway;
- (x) charitable street collections authorised by the Police, Factories, etc Miscellaneous Provisions) Act 1916.

## 1.4 Additional matters relating to street activity

1.4.1 Tables and chairs and 'A' boards. The granting of permissions for the placing of tables and chairs outside of a business providing refreshment, or the

placing of advertising boards outside of any business, is provided for by section 115 of the Highways Act 1980.

- 1.4.2 The licensing powers provided by section 115 of the Highways Act 1980 is designed to ensure that highways are kept free of obstructions and nuisance, WHBC is of the opinion that Hertfordshire Highways, acting as the Highway Authority on behalf of Hertfordshire County Council, is best placed to administer this function in conjunction with WHBC's planning department.
- 1.4.3 Leaflet distributors may get permission to distribute free literature on WHBC land or highways by contacting our Town Centre Teams. If leaflets are seen to cause defacement to the street we can exercise our powers as a principal litter authority to control such distribution under the Environmental Health Protection Act 1990 by way of enforcement and designating streets for consent.
- 1.4.4 Direct debit collectors are required to book their collection date with the licensing team prior to their visit. We only accept bookings for two weekdays each week in the town centres to protect the residents from over exposure to this type of collection. We do not accept bookings on a Saturday or Sunday as these are reserved for registered charities who wish to carry out cash collections. Where possible they will be allocated one of the town centres or villages for their collections and in some cases they operate throughout the whole district. Some stores also allow collectors to stand on their premises but these need to be approached directly as they are then collecting on private land not the highway. Appendix H.
- 1.4.5 Party political stalls can be granted permission by approaching the town centre teams if the land is owned by WHBC. In the case of private land the owner of the land would need to give permission.
- 1.4.6 Buskers do not require a licence but should approach the town centre teams for permission to perform and arrange a suitable location dependant on other activities taking place on any day.
- 1.4.7. Markets consist of 5 stalls or more [Local Government (Miscellaneous Provisions) Act 1982 Part XII section 37 (6)] and further information can be obtained by contacting our Corporate Property/Estates department.
- 1.4.8. Fairs – Charter fairs are allowed but any complaints will be directed to the police or town centre teams.
- 1.4.9 Street collections can collect cash or sell articles for the benefit of charitable or other purposes if a street collection permit is issued. There is no cost for the issuing of the permit but there are rules to be followed in applying. These can be found at Appendix F.
- 1.4.10 House to house collections, a permit can be granted for any period up to one year. Collections generally take place from door to door or from one public house to another. These can be found at Appendix G.

- 1.4.11 Roundsman a person who makes rounds selling, offering or exposing for sale his product is exempt from street trading. This includes ice cream/sandwich vans as they can claim exemption as a roundsman if they are moving from place to place. Stationary vehicles would need to either be on private land with the owner's permission or be trading under a street trading permit.
- 1.4.12 Commercial promoters are classed as street traders on the basis that a contract is formed for the sale of goods. The town centre team may give permission under their town centre permit. (Once adopted).
- 1.4.13 Fetes, carnivals or similar community based events will not be charged for street trading provided the land owner has given permission and an Event Notification Form (ENF) has been submitted to the licensing team. All other legal requirements such as road closures, alcohol or music licences are the responsibility of the organiser.

## **1.5 Policy Duration**

- 1.5.1 This Policy will take effect from 20th November 2018 for a maximum period of five years.
- 1.5.2 Prior to the end of the five year period, if changes are to be made a consultation will be undertaken with a view to publishing a new Policy to take effect no later than 20<sup>th</sup> November 2023.
- 1.5.3 The Policy will be kept under constant review to ensure that it meets the policy objectives. Additionally, it will be amended as and when necessary to reflect changes in best practice, legislation and case law.

## **2.0 DESIGNATION OF STREETS FOR THE PURPOSES OF STREET TRADING**

### **2.1 Prohibited Streets**

- 2.1.1 It has been decided to regulate the opportunity for street trading within the two towns and, therefore, there are currently only five consent streets designated within Welwyn Hatfield. These consents are contained in Appendix A.

### **2.2 Consent Streets**

- 2.2.1 All other streets, with reference to the wide statutory definition in paragraph 1.3.4 above, within the borough of Welwyn Hatfield have been collectively determined to be prohibited streets for the purpose of the Local Government (Miscellaneous Provisions) Act 1982. Some areas of private land which are not a highway have private arrangements with the land owner.
- 2.2.2 WHBC will continually monitor the impact of street trading on its consent streets with a view to promoting the objectives of this policy

2.2.3 Before a new Street Trading Consent is created WHBC will carry out the process as defined in the Local Government (Miscellaneous Provisions Act 1982 Schedule 4 section 2.

2.2.4 WHBC will take the following matters into account when deciding on whether a new street trading consent should be created.

- (i) 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
- (ii) where there are concerns over the recorded level of personal injury accidents in the locality where the street trading activity will be sited; or
- (iii) there would be a significant loss of amenity caused by traffic, noise, rubbish, potential for the harbourage of vermin, odour or fumes; or
- (iv) there is already adequate like provision in the immediate vicinity of the site to be used for street trading purposes; or
- (v) there is a conflict with Traffic Orders such as waiting restrictions; or
- (vi) 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
- (vii) the trading unit obstructs the safe passage of users of the footway or carriageway; or
- (viii) the pitch interferes with sight lines for any road users, for example at road junctions, or pedestrian crossing facilities; or
- (ix) the site does not allow the Consent Holder, staff and customers to park in a safe manner; or
- (x) 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.

2.2.5 Where a consent is surrendered or revoked, the council shall remit or refund, as they consider appropriate, the whole or a part of any fee paid for the grant or renewal of the consent. There will be no refunded fee where there has been a breach of the conditions of the consent and the licence is revoked.

## **2.3 Undesignated Streets**

2.3.1 All streets are designated either prohibited or consent streets. New streets will become prohibited streets unless expressly designated as consent streets.

## **3.0 APPLICATIONS FOR A STREET TRADING CONSENT**

### **3.1 How new applications will be decided**

3.1.1 Due to the very limited number of consent street pitches it is rare for a street trading pitch to become available. Therefore once an existing pitch becomes

available or a new pitch is proposed the details will be available on the WHBC's website for six weeks. Once all declarations of interest have been received the licensing subcommittee will meet to determine which application is the most suitable for the proposed pitch. Reserve applicants will also be chosen where appropriate in the event that the first applicant is no longer able to proceed.

3.1.2 Those on the current waiting list will be advised of the new system once this policy has been adopted. WHBC can also provide advice in relation to other requirements of a new licence holder, for example, food safety, planning permission or building control approval.

## **3.2 Applications**

3.2.1 All applications must be made on WHBC's prescribed application forms at Appendix A

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

- (i) A description and photograph of the container from which the proposed trading will take place. The description to include, size, colour, signage, method of transport, number of staff and products to be sold.
- (ii) Confirmation that adequate levels (at least 5 million pounds) of third party and public liability insurance is, or will be, in place during street trading activity.
- (iii) Where food is being sold, the applicant must also be a registered food business
- (iv) Any trader selling food must achieve a minimum Food Hygiene Rating Score of [3] in order to be eligible for a consent. The consent would be revoked where the trader falls below this minimum rating of [3.]
- (v) Where a street trading consent or licence has previously been revoked, either by WHBC, or any other authority, WHBC may refuse an application for consent.

## **3.3 Processing of an Application**

3.3.1 Once all applications have been received and judged relevant (correct documentation and site applied for) a licensing subcommittee will be arranged.

3.3.2 An officer may visit the applicant and inspect the vehicle, barrow, cart, van, portable stall or other vehicle or premises which the applicant intends to trade from.

3.3.3 The applications will be:



- (i) considered by the licensing subcommittee and the most appropriate applicant will be granted a trading consent with conditions attached once the appropriate fee has been received; or
- (ii) if the appropriate fee is not received within two weeks the consent will be offered to the second choice applicant and so forth
- (iii) Once a consent has been granted all other applicants for that particular pitch will have their application refused.

3.3.4 WHBC may have regard to the number, nature and type of traders already trading within a consent area when determining an application.

3.3.5 A street trading consent may be granted for any period not exceeding 12 months but may be revoked at any time

3.3.6 There is no right of appeal against a variation of a condition, or refusal to grant or renew a Street Trading Consent.

### **3.4 Consents**

3.4.1 Consents may be issued for a period of up to twelve consecutive months, or quarterly if paid for in that manner.

3.4.2 All Consents that have not been renewed by their expiry date will automatically cease to exist and trading must cease until such time as a new Consent has been granted.

3.4.3 Once a Consent has lapsed for four weeks the pitch will be advertised as an available pitch open to applications from interested parties.

3.4.4 WHBC acknowledges that overly burdensome regulation and cost will discourage town centre community and cultural activity, particularly the requirement for each individual trader to obtain their own Consent. In order to encourage town centre activity. Therefore WHBC have developed multiple user Consents that will simplify this process (see sections 3.5, and 3.6).

### **3.5 Town Centre Consents**

3.5.1 WHBC may administer on behalf of our town centre teams consents that cover areas of land in our town centres that are suitable for street trading use. Each Town Centre Consent will be accompanied by a plan clearly identifying those areas covered by the consent. This will remove the need for each individual trader to obtain a consent as they can apply directly to the town centre team for permission to trade and this should encourage town centre activity.

3.5.2 The consents can be issued for a maximum period of twelve months and will be to a named individual from the Town Centre Teams at WHBC.

3.5.3 Town centre consent areas are decided by the council before the adoption procedure can be carried out for a consent street. This process is defined in

the Local Government (Miscellaneous Provisions) Act 1982 Schedule 4 section 2.

- 3.5.4 Traders wishing to use the town centre consent will need to complete the multi user application form at Appendix A and submit it to the town centre team and must be age 17 or over.
- 3.5.5 The consent holder will be responsible for ensuring compliance with the conditions attached to the consent at all times whilst the consent is being used to facilitate street trading.
- 3.5.6 The consent holder, will be able to allow his/her consent to be used by commercial or not-for-profit organisations, however, no charge can be made for the use of the consent by not-for-profit organisations. There is a fee payable to Licensing for the administration of the consent which is contained in the fees table in Appendix B.
- 3.5.7 The consent holder will be required to keep records of all traders that use the Town Centre Consent including: date, trading location, name and company name (where appropriate), address, vehicle registration and contact telephone number.
- 3.5.8 Applicants wishing to use the town centre consent will need to provide the following with their application.
- (i) A description and photograph of the container from which the proposed trading will take place. The description to include, size, colour, signage, method of transport, number of staff and products to be sold.
  - (ii) Confirmation that adequate levels (a minimum of 5 million pounds) of third party and public liability insurance is, or will be, in place during street trading activity.
  - (iii) Where food is being sold, the applicant must also be a registered food business.
  - (iv) Any trader selling food must achieve a minimum Food Hygiene Rating Score of [3] in order to be eligible for a consent. The consent would be revoked where the trader falls below this minimum rating of [3.]
  - (v) Where a street trading consent or licence has previously been revoked, either by WHBC, or any other authority, WHBC may refuse an application for consent.
  - (vi) There is no right of appeal against a variation of a condition, or refusal to grant or renew a Street Trading Consent.
- 3.5.9 The consent holder will be required to keep records of all traders that are refused use of the Town Centre Consent including, date, name and company name (where appropriate), address, contact number and reason for refusal.

Town Centre Consents provide exclusive control over trading in the designated area by WHBC town centre teams.

### **3.6 Special Events / Markets / Temporary markets**

3.6.1 If there are five or more stalls at any one time this constitutes a market and is therefore exempt from this policy. See 1.48

### **3.7 Annual Consents with Quarterly Payments**

3.7.1 WHBC acknowledge that the cost of an annual consent can sometimes prove prohibitive to new and small street trading businesses.

3.7.2 To assist such commercial activity WHBC will offer the grant of a twelve month Street Trading Consent, subject to quarterly fee payments in advance.

3.7.3 Each consent will be issued for a three calendar month period upon the payment of the quarterly fee. Provided that the subsequent quarterly fees are paid prior to the expiry of each quarterly consent, a further consent for three calendar months will be issued until such time as the total consent period has reached twelve consecutive calendar months.

3.7.4 Once a consent period of twelve consecutive calendar months has been reached, a renewal application will be required which will be subject to the normal process of submitting a renewal application.

3.7.5 If the requirements of section 3.7.3 above are not complied with, the annual consent will automatically cease to have effect, save for exceptional circumstances at WHBC's written discretion, and no further trading in connection with that consent will be permitted until such time as a new Consent has been granted.

3.7.6 Once a consent has lapsed for four weeks the pitch will be advertised as an available pitch open to applications from interested parties.

## **4.0 CONSENT CONDITIONS**

4.1 Any Street Trading Consent issued by WHBC from 20<sup>th</sup> November 2018 will be subject to the consent conditions detailed in **Appendix D** of this Policy.

4.2 In response to changing circumstances, WHBC may wish to add, alter or amend the conditions on a trading Consent. Any amendments or variations to consents or conditions that are requested by consent holders must be made in writing. An administration fee will be charged to the consent holder for any amendments or variations made. There is no right of appeal against the WHBC's decision to refuse to grant, amend or vary a consent.

4.3 In the event of a breach of any of the conditions attached to a Consent, the Head of Public Health and Protection may revoke the consent forthwith. In the event of a revocation, WHBC will not be liable to pay any compensation arising from the revocation nor will the Consent Holder be entitled to a refund of any of the Consent fee.

## **5.0 ENFORCEMENT**

- 5.1 It is recognised that well-directed enforcement activity by WHBC benefits not only the public but also responsible members of the trade.
- 5.2 In pursuing its objectives detailed in this Policy, WHBC will operate a proportionate enforcement regime in accordance with WHBC's Enforcement Policy.
- 5.3 The responsibility for the overall supervision of street trading lies with the Head of Public Health and Protection.

## **6.0 DEPARTURE FROM POLICY**

- 6.1 In exercising its discretion in carrying out its regulatory functions, WHBC will have regard to this Policy document and the principles set out therein.
- 6.2 Notwithstanding the existence of this Policy, each application will be considered on its own merits based on the licensing principles detailed in this Policy.
- 6.3 Where it is necessary for WHBC to depart substantially from this Policy, clear and compelling reasons for doing so will be given in writing. The Head of Public Health and Protection may authorise a departure from the Policy in accordance with this section if he/she considers it necessary in the specific circumstances and will advise Councillors via the Members Information Service.

## **7.0 AMENDMENTS TO THIS POLICY**

- 7.1 Any significant amendment to this Policy will only be implemented after consultation with existing consent holders, relevant stakeholders and the public. All such amendments to this Policy will be undertaken in accordance with the WHBC's Constitution. For the purpose of this section, any significant amendment is defined as one that is likely to have:
- (i) a significant financial effect on licence holders; or
  - (ii) a significant procedural effect on licence holders; or
  - (iii) a significant effect on the community.
- 7.2 Any minor amendments to this Policy may be authorised by the Head of Public Health and Protection and undertaken in accordance with the WHBC's Constitution. For the purpose of this section, any minor amendment is defined as one that does not fall within the scope of a significant amendment defined in paragraph 7.1.

## **8.0 FEES AND CHARGES**

- 8.1 The fees charged by this WHBC for Street Trading Consents should cover the reasonable cost of administering and enforcing the service.

- 8.2 The fees will be reviewed on an annual basis and published on the WHBC's website.
- 8.3 Should the consent holder wish to vary the Consent at any time during the life of the Consent, an administration fee will be charged.
- 8.4 Where a trading consent is surrendered during the life of the Consent no refund will be made by WHBC.
- 8.5 At its absolute discretion WHBC may charge different fees for consents or products sold that are for different durations or locations, such as town centre consents. Not-for-profit organisations will be exempt from application fees.

## 9.0 DEFINITIONS

<b>TERM</b>	<b>DEFINITION</b>
Authorised Officer	an officer of WHBC authorised by it to act in accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1982.
Consent	a consent to trade on a street granted by WHBC, pursuant to Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
Consent Holder	the person or company to whom the consent to trade has been granted by WHBC.
Consent Street	a street that is not prohibited from street trading with the consent of WHBC.
Head of Public Health and Protection	the current post holder (or the Head of Service of the appropriate Service Area following any subsequent restructure), or any nominated Deputy authorised by the WHBC's Scheme of Delegation
Portfolio Holder	for the Elected Member responsible for Licensing (or the appropriate Environmental Health Service Area following any subsequent restructure), who is a member of Cabinet.
Street	includes: any road, footway, beach or other area to which the public have access without payment; and a service area as defined in section 329 of the Highways Act 1980, and also includes any part of a street.
Street Trading	the selling or exposing or offering for sale of any article (including a living thing) in a street.
WHBC	Welwyn Hatfield Borough Council

## **Decision records**

30<sup>th</sup> March 2000 – Review of street trading policy – 6 pitches to remain

15<sup>th</sup> September 2014- Consent site removed junction of Peartree Lane and Bridge Road East

12<sup>th</sup> September 2016 – Multi user consent Hatfield Town Centre agreed.

20<sup>th</sup> July 2017 – Additional condition added to consents that they are not transferable