

BASILDON BOROUGH COUNCIL

Report to: Licensing Committee
17th January 2024

CONSIDERATION OF ADOPTION OF STREET TRADING LICENSING POLICY – POST CONSULTATION

Report by: Director of Community and Environment

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Enclosures: Enclosure No. 1 - Risk Management Implications
Enclosure No. 2 – Updated Draft Street trading Policy
Enclosure No. 3 – Consultation results and Council responses
Enclosure No. 4 – Draft Resolution

EXECUTIVE SUMMARY:

This report provides the outcome of consultation on the draft Street Trading Policy for consideration by Members and seeks agreement, in principle, for the introduction of a Street Trading Licensing Regime for the Borough of Basildon following the completion of a public consultation.

WARD(S):

All Wards

RECOMMENDATION:

- 1. That the Licensing Committee considers the merits of each response received during the consultation process (shown as Enclosures No. 3),**
- 2. That the proposed amendments as a result of the consultation undertaken on the draft proposed Street Trading policy, shown as comments in Enclosure No. 3, be agreed for inclusion in the draft policy, as shown as Enclosure No. 2, taking into account any additional views expressed by the Licensing Committee.**
- 3. Approval of the formal 28 day statutory notice advertising the intention to pass a resolution to adopt the street trading policy at Full Council (Enclosure No. 4) in a local newspaper in accordance with the required legal process. This notice will be published in advance of a Full Council meeting.**
- 4. That Licensing Committee delegates to the Head of Environmental Health in consultation with the Chair of Licensing Committee the consideration of any representations to the statutory notice. If as part of this consideration it is determined that any of the representations are significant, these will be**

brought back to Licensing Committee for consideration and determination as to whether any further action is required.

- 5. If no representations are received during the 28 day statutory notice period, or are later withdrawn, or are deemed to be insignificant in accordance with recommendation 4 above, that the revised draft policy and designation as proposed, shown as Enclosure No. 2, be recommended to Full Council for adoption.**

BACKGROUND

The power to operate a Street Trading Licensing Scheme is provided for council's under section 3 and Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982. This allows local authorities to introduce a scheme allowing the determination of where and when it will permit street trading and the criteria that it will apply. The primary purpose of such a scheme is to minimise any detrimental effects of street trading whilst allowing the legitimate pursuit of business interests by traders.

In November 1982 Basildon Council's Environment Committee resolved that from 1 April 1983, the adoptive provisions of the Local Government (Miscellaneous Provisions) Act 1982 should apply to the district, the control of street trading was included within those provisions. As a result, the Committee considered a further report on the implications of implementing street trading controls and resolved that all streets in the district be left undesignated until there is a proven need for control.

On the 13th October 2016, a report was considered by Members of the Licensing Committee seeking agreement, in principle, on the introduction of a Street Trading Licensing Regime for the Borough of Basildon. The Committee resolved:

1. That it be agreed, in principle, that a scheme in relation to street trading under schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 within the Borough of Basildon be devised to form the basis of further consultation and a future report to Council.
2. That, in order to achieve 1. above, officers be directed to:
 - a) Draft a policy that will set out the principles to be applied when dealing with applications made under the aforementioned legislation setting out what street trading will look like for the Borough, including the nature and extent of street designations;
 - b) Identify an appropriate schedule of fees associated with the dealing of applications made in accordance with this scheme;
 - c) Prepare an appropriate consultation plan taking into account the relevant legal requirements for consideration by a future Licensing Committee.

Following a number of staffing changes and the requirement to implement significant processes in relation to animal licensing legislation, and appropriate responses during COVID this action was postponed. It was brought before Members for their further consideration and the timely review of the draft policy on the 8th July 2021.

In Basildon, most street traders are mobile food sellers, providing snacks to passing traffic or the local work force. They are commonly stationed in roadside lay-bys and industrial estates. These operators often have a competitive advantage over fixed locations having

low overhead costs, no 'business rates' and currently only requiring prior approval to operate in limited circumstances.

There are currently in the region of 40 mobile food caterers who trade from a regular 'pitch' within the Borough. Eight (8) of those trade between 23.00hrs and 05.00hrs and have a premises licence granted under the Licensing Act 2003 to sell hot food and drink. However, there are 3 licensed locations that are not currently being used, preventing others from trading at those sites.

It would appear that this number remains reasonably static with around $\frac{3}{4}$ of businesses being operated by independent traders who are also residents of the Borough. However, research previously indicated that there was a market in the "sale" of a trading pitch when a mobile unit changed hands, although there was no sound legal basis on which to base that sale. The Council also continues to receive complaints regarding the impact of street trading activities on local communities and other local businesses. There needs to be a balance struck between the demands for street trading from residents and businesses alike and the impact on the wider community. The use of street trading controls would enable the council to control street trading more effectively by imposing conditions on consents issued.

All of Basildon's immediate neighbouring local authorities operate a street trading licence scheme. Basildon is one of 3 local authorities, in Essex, that do not operate such a scheme – the others being Maldon and Uttlesford.

Proposed Policy

The Council recognises the valuable contribution that Street Trading can make to the local culture and economy, and the services that Street Traders provide to residents, visitors and the local working population. The draft Policy, shown as **Enclosure No. 2**, intends to promote a flexible approach in relation to applicants seeking to operate a Street Trading business whilst endeavouring to ensure that the activities do not cause nuisance or annoyance to the people in the area. The scheme and its associated conditions aim to ensure local businesses, local communities and visitors are not adversely affected by street trading. The scheme aims to prevent the obstruction of the streets and minimise the risk to public or harm to the environment caused by street trading activities.

The purpose of this street trading policy is twofold:

- (i) To provide a fair and transparent decision making framework and process for the determination of applications for street trading consents; and
- (ii) To support the creation of a street trading environment which is sensitive to the needs of the public (including local residents) provides diversity and consumer choice, and enhances the character, ambience and safety of local environments.

This Policy sets out the criteria the council will use when considering applications for Street Trading Consents and will be referred to as part of the approval process when applications for Street Trading Consents are being considered by the authority. It sets out the grounds upon which decisions are made about applications and any enforcement actions if required. Applicants will be encouraged to consider the Policy as part of the application process.

It also highlights the council's undertaking to avoid duplication with other statutory provisions and our commitment to work in partnership with other enforcement agencies.

Designating all streets within the Basildon Borough would have some unintended consequences. Due to the wide definition of 'street' there are some areas and activities where there would be no benefit to the public and designation as a consent street would just add extra bureaucracy as other controls are already in place. This Policy has taken into account these instances, along with the number of exemptions to obtain a Consent as set out in Schedule 4 to the 1982 Act in paragraph 1 (2) – (3). These proposed exempt activities are:

□ Occasional Consents - Trading at one off events to which the public have access such as outdoor school fetes, community fundraising events, carnivals, or other non-profit making events; where such events would be run for the benefit of the community and as such any financial gain is reinvested in the community will be deemed not to require consent. However, any commercial trader attending such an event will be required to hold an occasional street trading consent.

- Those that currently hold or are applying for a premises licence under the Licensing Act 2003.
- Motor vehicles sold by a private seller of a vehicle outside the registered keepers address.
- All Parks owned by the Council as trading is controlled through Park hire agreements

Funding the Scheme

The council is entitled to recover the 'reasonable and proportionate' costs associated with the grant or renewal of a licence/consent. A proposed fee schedule is set out within the Licensing Committee fees report for 2024/25. The council may set different fees depending on the duration of a licence or consent, the street in which it authorises trading and articles to be sold. Reasonable charges may also be recovered in respect of street cleansing, collection of refuse, etc. rendered by the authority to that licence holder. These fees will be kept under close review as the licensing regime is implemented to ensure that appropriate cost recovery is being maintained. Where consent is surrendered or revoked, the council would be under a duty to refund a proportion of the licence fee. Whilst there is no strict legal requirement to consult on the fees except in certain circumstances, for transparency, it is proposed that the proposed fees for 2024/25 be added to the statutory notice at **Enclosure No. 4** in advance of publication.

Consultation

A public consultation was conducted and closed on the 14th November 2023. This included making contact with all existing known mobile traders in the borough as well as relevant responsible authorities. There were 6 responses by way of the online survey and 6 responses by email. All responses were in favour of the policy with additional comments. The responses to the survey and email comments along with responses are shown as **Enclosure No 3** along with the amended Draft Street Trading Policy shown as **Enclosure No 2**.

The power to designate a street cannot be delegated as it requires a resolution. Any designation would have to be agreed by Committee, or Full Council under the current delegation arrangements. It is proposed that the Resolution of the intention to Designate the Streets within the Basildon Borough, with certain prohibited streets and certain exemptions, be brought before Full Council for agreement following the notice of intention, shown as **Enclosure 4**, being advertised.

Conclusion

The decision to regulate street trading will enable a broader street trading scheme to be created for clarity, opportunity and consistency for traders whilst providing a control mechanism to reduce nuisance to residents and the business community. The consultation on the draft Street Trading Policy has provided the opportunity for all responsible authorities and interested parties to engage with the process and help shape the future of street trading within the Borough.

LEGISLATION/POLICY

Section 3 of the Local Government (Miscellaneous Provisions) Act 1982 provides the Council with a power to adopt schedule 4 enabling designation of streets under the street trading provisions. Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 confers on local authorities the power to operate consent schemes for street trading.

Basildon Council adopted the above legislation at Environment Committee in November 1992, therefore it remains for Basildon Council to consider whether to designate particular areas as prohibited, consented to or licensed streets as appropriate in accordance with the statutory process. Prior to resolving to designate any street in the district the Council must publish a notice of this intention in a local newspaper circulating in the area, as well as serving a copy on the chief officer of police for the area in which the street to be designated by the resolution is situated; and on any highway authority responsible for the street and where necessary obtained the relevant consents.

The Council shall consider any representations relating to the proposed resolution which have been received.

The notice must contain a draft of the resolution and state that representations relating to it may be made in writing to the council within such period, not less than 28 days after publications of the notice as may be specific in the notice.

GENERAL INFORMATION

Financial Implications

If Basildon Council was to implement a street trading scheme, it is considered that no additional staff would be required as existing staff within the Licensing and Food Safety Teams will be able to re-focus their work to incorporate street trading regulations.

The regulation of a street trading scheme is intended to be self-financing, however likely take up is not known at this time.

Risk Management Implications

The risk management implications are set out at **Enclosure No. 1**.

Diversity, Inclusion and Community Cohesion Implications

As a public authority, Basildon Borough Council is subject to the requirement under The Public Sector Equality Duty (PSED) found in s.149 of the Equality Act 2010 for the council to have due regard to the need to:

- a. Eliminate discrimination, harassment, victimisation and any other conduct prohibited by the 2010 Act
- b. Advance equality of opportunity between persons who share a relevant protected characteristic and those that do not, and
- c. Foster good relations between persons who share a relevant protected characteristic and those that do not.

The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The implementation and enforcing of the Street Trading Policy will be in accordance with the Equality Act 2010. There will be no discriminatory enforcement of this proposal in line with our PSED.

The EIA is being reviewed and considers how the proposed changes within the Street Trading Policy might impact adversely or positively on those persons with protected characteristics. It considers the PSED and also the impact of the proposed changes on human rights and wider non-legislative factors.

Other Relevant Considerations

Basildon Council has already adopted the above legislation, therefore it remains for Basildon Council to consider whether to designate particular areas as prohibited, consent or licensed streets as appropriate in accordance with the statutory process.

The power to designate a street cannot be delegated as it requires a resolution. Any designation would have to be done by Committee, or Full Council under the current delegation arrangements.

Background Papers

Local Government (Miscellaneous Provisions) Act 1982