

BARNSELY METROPOLITAN BOROUGH COUNCIL

REPORT OF: EXECUTIVE DIRECTOR OF GROWTH & SUSTAINABILITY

TITLE: STREET TRADING POLICY – RESOLUTION TO DESIGNATE CONSENT STREETS

REPORT TO:	Cabinet
Date of Meeting	24 January 2024
Cabinet Member Portfolio	Regeneration and Culture
Key Decision	Yes
Public or Private	Public

Purpose of report

To ensure that the Council has in place a clear framework through which to make decisions to authorise and regulate Street Trading within Barnsley town centre and boroughwide.

Council Plan priority

Street Trading aligns with all five of the Council's key corporate responsibilities of:

- Healthy Barnsley – Greater social interaction and improved benchmark food safety standards of street traders.
- Learning Barnsley – Economic growth could positively affect training opportunities for street traders and staff.
- Growing Barnsley – Increased opportunities for independent businesses, complementing not competing with the high street.
- Sustainable Barnsley – Opportunity to increase waste recycling of street traders and decrease car use of customers to access services.
- Enabling Barnsley – Increased footfall on high streets, safeguarding jobs, and enabling job growth.

Recommendations

That Cabinet:-

- 1.** Approve the consultation process for the adoption of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
- 2.** Approve all streets within the Barnsley borough be designated as Consent Streets to enable effective management and control of Street Trading within Barnsley town centre and the wider borough.

3. Approve the draft Street Trading Policy (attached as Appendix 1) for consultation purposes.
4. Approve the draft proposed fees and charges (attached as Appendix 1) for street trading permissions.
5. Approve the draft Notice of Intention To Pass A Resolution on Street Trading and the Designation of Consent Streets (attached as Appendix 2).

1 INTRODUCTION

1.1 The Council is committed to developing the Barnsley borough and its high streets as attractive and vibrant places to live, work and conduct business. Street traders animate high streets and enhance the permanent offer of our local businesses.

1.2 The draft Street Trading Policy aims to support economic growth within the borough by opening opportunities for small independent businesses and traders, stimulating a vibrant and diverse economy, and complementing permanent businesses.

1.3 If resolved, Barnsley Council has power under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 to regulate Street Trading through the designation of streets, setting of fees, the administration of licences and consents, and enforcement in the event of non-compliance.

2 PROPOSAL

2.1 All streets covered by the policy must be identified under one of three statutory designations:

- 'Prohibited Street' means a street in which street trading is prohibited.
- 'Licence Street' means a street in which street trading is prohibited without a licence granted by the Council.
- 'Consent Street' means a street in which street trading is prohibited without the consent of the Council.

2.2 Where a street has not been designated as either Prohibited, Licence or Consent, the Council has no regulatory responsibility under Street Trading legislation and therefore, no permissions are required from the Council.

2.3 It is illegal to trade in those streets designated as Prohibited Streets and the Council cannot subsequently give permission without removing the prohibition.

2.4 It is proposed that all streets within the borough are designated as Consent Streets. This will provide the council with the most flexibility to regulate street trading.

2.5 The policy also aims to maintain sensible levels of public protection, protect the safety of highway users, prevent nuisance, and regulate the number and location of street traders within the Barnsley borough. The Street Trading Policy allows for

Consent(s) to be reviewed and conditions imposed on an individual basis. This allows for consideration of other surrounding residents and pedestrians.

2.6 The policy requires that the applicant complies with all other legal and council requirements regarding food hygiene registration, food storage, waste disposal, planning, footway accessibility, and similar. The individual application can be granted with conditions that can be used to take account of potential nuisance to residents, businesses, or other highway users.

2.7 The policy will enable the council to:

- Take leadership in supporting and promoting economic activity.
- Demonstrate transparency and integrity by providing a framework for the Council to administer and regulate street trading to ensure a consistent approach is taken when making decisions.
- Deliver high quality services by responding to changing needs through constant evolution and innovation.
- The policy will be used in conjunction with the applied legislation and sets out the framework within which the Council will exercise its control of Street Trading and enforcing the regime in accordance with the law.

2.8 Prior to submitting a Street Trading application, the applicant must ensure they have permission to use the land from the landowner. This includes Barnsley Council's Highways Service or the Highway Authority for the Strategic Road Network (SRN) (Highways England) where the land is a highway. The permission to use the land is separate from gaining permission to trade.

2.9 There are several lawful exemptions removing certain activities from the need to obtain a street trading licence or consent, including:

- Any person who holds a Pedlars Certificate under the Pedlars Act 1871 and is acting as a pedlar. Pedlars Certificates are issued and regulated by the Police, and it is an offence to act as a pedlar without a certificate.
- Trading in a market or fair.
- Trading in a trunk road picnic area.
- Trading as a news vendor.
- Trading which is carried on at premises used as a petrol filling station.
- Or is carried on at premises used as a shop or in a street adjoining premises so used and as part of the business of the shop.
- Selling things etc as a roundsman.
- Trading or provision of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980 [pavement cafes].
- Street collections under section 5 of the Police, Factories, etc. (Miscellaneous Provisions) Act 1916.

3 LEGISLATIVE PROCESS

3.1 To resolve that Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 shall apply and that Schedule 4 (known as the 'street trading code') shall come into force, Barnsley Council must carry out a public consultation.

- 3.2 It is intended that this consultation follow the standard public consultation format and that additional direct consultation be focused on business users.
- 3.3 As required by the legislation, the Highway Authority and South Yorkshire Police will be served notice. Other council departments who may be affected by the proposed changes will be consulted with.
- 3.4 A notice will be published in the Barnsley Chronicle. The statutory consultation period for representations to be made is at least 28 days from publication of the notice. All comments will be carefully considered and amendments to the policy will be made if appropriate.
- 3.5 Officers will prepare a further report for Cabinet to enable members to consider the results of the public consultation.
- 3.6 The Street Trading Policy and the resolution to designate identified streets for legal street trading will then go to Full Council for final decision.
- 3.7 Following the passing of a resolution at Full Council there is a standing period of at least one month before designation comes into force.
- 3.8 The council must publish a notice in the Barnsley Chronicle for two consecutive weeks that a resolution has been passed.
- 3.9 The first publication of this notice must not be later than at least 28 days before the day specified in the resolution.

4 TIMELINE

4.1 Permission to consult:

- 24 January 2024: Cabinet decision to authorise a public consultation
- 5 February 2024: Publish in the Barnsley Chronicle a notice to of intention to resolve that Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 shall apply and that Schedule 4 shall come into force from 15 September 2024. Include details of the implementation timeline.
- 5 February 2024: Launch a public consultation on the Barnsley Council website at <https://www.barnsley.gov.uk/consultations/>. Include a copy of the draft Street Trading Policy and the proposed resolution.
- 11 March 2024: Close the public consultation on the Barnsley Council website.

4.2 Outcome of consultation and resolution:

- 17 April 2024: Licencing Committee
- 29 May 2024: Cabinet consideration of representations and decision on the outcome of the consultation.
- 25 July 2024: Full Council decision to resolve that Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 shall apply and that Schedule 4 shall come into force from 15 September 2024.

- 5 August 2024: Publish in the Barnsley Chronicle for two consecutive weeks that a resolution has been passed.
- 15 September 2024: Date of designation coming into force.

5 IMPLEMENTATION PHASES

5.1 It is proposed to implement the Street Trading Policy on a phased basis starting with Barnsley town centre and then to the rest of the borough six months later.

5.2 This will give the current street traders in the borough six months' notice from the Street Trading Policy going live to consider, apply, and to make any amendments necessary for their business needs to enable them to meet the Street Trading criteria within the Barnsley borough.

6 IMPLICATIONS OF THE DECISION

6.1 Financial and Risk

6.1.1 Consultations have taken place with representatives of the Director of Finance (S151 Officer).

6.1.2 The administration of Street Trading includes the determination of Consent Streets, the setting of fees, the administration of licenses and consents, and enforcement in the event of non-compliance. It is envisaged that this can be met within existing staffing levels for year 1 within the scope of the town centre. It is expected additional resource will be required from year 2 when implemented boroughwide.

6.1.3 There will be cost implications for advertising the intention to designate streets and the decision to resolve the designation, although these can be contained within the existing Urban Centres budget.

6.1.4 As a result of street traders being able to trade in Barnsley town centre and the rest of the borough, this may be a new income stream.

6.1.5 A resourcing, income & funding paper will be submitted to the appropriate governance channels for a decision on this in due course, once the details of the policy, projected volumes and fees are agreed. This results in no appendix A required at this stage.

6.2 Legal

6.2.1 Legal has been consulted and a preliminary review of the draft Street Trading Policy (attached as Appendix 1) has been carried out.

6.2.2 Following approval, continued liaison with legal colleagues to ensure that the consultation process remains compliant with applicable laws and to uphold the integrity of the Street Trading Policy throughout its implementation and subsequent operational phases is recommended.

6.3 Equality

representations from affected parties to contact officers by email. A copy of the Street Trading Policy and the proposed resolution will be included to download and view.

- 6.6.3 It is proposed that promotion of street trading activity is a shared responsibility between with Marketing and Communications Manager for the town centre and the Marketing and Communications Manager for the Principal Towns.

7 CONSULTATION

- 7.1 Sections 3 and 4 provide details of the consultation process and timeline.

8 ALTERNATIVE OPTIONS CONSIDERED

- 8.1 The council could choose not to resolve Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982. This would represent a missed opportunity to regulate street trading and support economic growth within the borough.

9 REASONS FOR RECOMMENDATIONS

- 9.1 By resolving Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 and accepting the Draft Street Trading Policy it will support economic growth within the borough by opening opportunities for small independent businesses and traders, stimulating a vibrant and diverse economy, and complementing permanent businesses.

10 GLOSSARY

- 10.1 Street trading means the selling or exposing or offering for sale of any article (including a living thing) in a street. A street is defined as any road, footway, beach, or other area to which the public have access without payment, which includes private land.

11 LIST OF APPENDICES

- Appendix 1: Draft Street Trading Policy, including draft fees & charges.
Appendix 2: Draft Notice of Intention to Pass a Resolution

12 BACKGROUND PAPERS

If you would like to inspect background papers for this report, please email governance@barnsley.gov.uk so that appropriate arrangements can be made.

13 REPORT SIGN OFF

Financial consultation & sign off	Senior Financial Services officer consulted and date <i>Ashley Gray – Strategic Finance Business Partner 22/11/2023</i>
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Legal consultation & sign off	Legal Services officer consulted and date <i>Bob Power – Senior Legal Officer (Locum)</i> <i>02/01/2024</i>
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