

BARNSELY METROPOLITAN BOROUGH COUNCIL

REPORT OF: EXECUTIVE DIRECTOR OF GROWTH & SUSTAINABILITY

TITLE: STREET TRADING – OUTCOME OF CONSULTATION AND RESOLUTION TO DESIGNATE CONSENT STREETS

REPORT TO:	CABINET
Date of Meeting	11 June 2024
Cabinet Member Portfolio	Regeneration & 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. Note the outcome of the consultation process for the adoption of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
2. Approve the amended Street Trading Policy (attached as Appendix B).

3. Approve the amended fees and charges for street trading permissions (attached as Appendix B).
4. Recommend to Full Council to pass a resolution to designate all streets in the Barnsley borough as Consent Streets from 15 September 2024 as per Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (attached as Appendix C).

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 On 24 January 2024, Cabinet approved the consultation process for the adoption of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 to regulate Street Trading within the Borough and approved a draft Street Trading Policy (Cab.24.1.2024/10).
- 1.3 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.
- 1.4 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.
- 1.5 The public consultation opened on Friday, 9 February and closed on Monday, 11 March 2024. A notice was placed in the Barnsley Chronicle for two weeks from Friday, 9 March 2024. Details of the consultation were published on the Council's website and were promoted on the Council's social media.
- 1.6 As required by the legislation, officers undertook formal consultation with the Highways Authority (the Highways service in Barnsley Council), National Highways, and South Yorkshire Police. Around 30 comments and questions were received from business owners and members of the public.
- 1.7 In addition, officers undertook consultation through the Council's place governance structure, namely the Urban Centres Operational Management Group and the Town Centre and Principal Towns Strategy Group. Services across the Council are represented in these groups.

2 AMENDED STREET TRADING POLICY

- 2.1 This section details the amendments made to the Draft Street Trading Policy due representations made during the consultation process. A copy of the final Street Trading Policy can be found in Appendix 1.

- 2.2 Amendments to the policy review process, acknowledging that significant changes to the policy will only be implemented after a formal consultation process has been undertaken. Examples of a significant changes would be any amendments that have a financial or procedural effects on Consent Holders (Section 1.5).
- 2.3 Additional exemptions from the need to obtain a Street Trading Consent omitted from the Draft Street Policy specifically referenced in Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982. This omission included shops trading on the street directly in front of their premises as part of the business of that shop e.g. flower sellers placing displays outside on the street (Section 2).
- 2.4 Introduction of a section on Community and Special Events, including a Special Events Consent. Traders at community and special events in the borough will require Street Trading Consent e.g. food festivals and Christmas markets. It is recognised that for most of these events, a third-party organiser controls access to pitches at community and special events. It is proposed to introduce a Special Events Consent that will cover several traders at once, the fee determined by the number of traders and the duration of the event. The third-party organiser will be required to apply for the Special Events Consent, pay the appropriate fee, and it will be their responsibility to ensure that traders meet and maintain the standards required. Events run for charitable purposes will be exempt from the requirement for Special Events Consent. Events with a concourse of five or more traders, such as a Craft Fayre or Car Boot Sale, will require permission from the Market Authority in addition to the requirement for a Special Events Consent (Section 4).
- 2.5 Clarification on the requirements for obtaining and maintaining a food hygiene rating. Street traders who sell food must be registered with the appropriate Food Authority before applying for Street Trading Consent and hold a Level 2 Food Hygiene Certificate. They must maintain a food hygiene rating of 3 or above. If this falls below a 3, Street Trading Consent will be suspended automatically and may result in the Consent being terminated (Section 5.5).
- 2.6 Clarification on the requirements for mobile traders, or itinerant traders, such as ice-cream vans. Mobile traders must move from position to position, remaining stationary for no longer than 20 minutes to attract customers and thereafter maintaining position only long enough to serve customers present. Itinerant trading is not permitted in the town centre. Mobile traders must not stop within 100m of the main entrance to the school grounds, during the school day from an hour before and an hour after without the written consent of the school. Any written consents obtained from the school must be provided at application stage. The Street Trading Policy incorporates the full Code of Practice on Noise from Ice Cream Van Chimes Etc. in England 2013 (DEFRA). Mobile ice cream vans are defined as vehicles adapted for the sale of ice cream and only sell ice cream, cold soft drinks, cold sandwiches, confectionary, crisps, and frozen lollipops (Section 6).

- 2.7 Clarification on the requirements for static street traders, defined as trading in one site for longer than 20 minutes. Static street trading has a defined pitch, and a trader is granted Consent based on detailed plans. It will not be possible for static traders to move a pitch, even a short distance, without prior Consent from the Council (Section 7).
- 2.8 Clarification on the requirements for street traders operating on private land. Street traders must seek permission from the appropriate landowner if proposing to trade on private land that is free for the public to access. Confirmation of this permission is required as part of the application process for Street Trading Consent. It is recognised that some private land is unregistered and there may be no clear title or evidence of ownership. Trading on unregistered land without authorisation may expose street traders to legal risks and liabilities. In these circumstances, for a Street Trading Consent to be considered, the Council may request further documentation from the applicant confirming that Consent may be granted at risk of legal proceedings from the owner of the land. Advice from Legal Services will be sought in these circumstances (Section 10).
- 2.9 Additional conditions for street traders operating on streets managed by National Highways. The A616, A628, and A61 are operational assets managed by National Highways. National Highways do not have a national policy with regards to regulating street trading on their network, which restricts involvement within the application process. National Highways have adopted a position of tolerance for street trading, but with several conditions. These include the recognition that street traders can be asked to move or cease trading by National Highways officers if they have safety or environmental concerns, semi-permanent structures are not allowed, flags or signage advertising the business are not allowed, and only 'oxbow' type laybys can be used for street trading. In these circumstances, for a Street Trading Consent to be considered, the Council may request further documentation from the applicant confirming that consent may be granted at risk of legal proceedings from the owner of the land (Section 11).
- 2.10 Amendments to regulations on use of A-boards. Businesses are permitted one 'A' board and should not exceed 800mm in height and 500mm in width. 'A' boards and other free standing pavement signs should be placed, either in an area 600mm immediately in front of their stall or in line with an adjacent line of bollards. It should be remembered that at least 1.8m of clear footway must be retained between the board and the stall or bollards/obstruction, and boards should allow at least 450mm clearance between the board and the kerb edge (Section 12.8).
- 2.11 Clarification on the application process and the introduction of an advance enquiry mechanism. It is recognised that street traders are being asked to undertake a complex administrative exercise when making an application for Street Trading Consent, which includes the payment of a fee. For some, this may result in a refusal based on the location they wish to trade. An online advance enquiry form will be introduced to support street traders before a full application is made, covering key elements such as pitch location and business type. The aim of this mechanism is to support traders make a stronger

application and increase their chances of being granted Street Trading Consent (Section 13).

- 2.12 Clarification on refunds if Street Trading Consent is surrendered or revoked. If surrendered, no refund will be by the Council unless there are exceptional circumstances. If revoked by the Council, a full refund will be issued to the Consent Holder for any payments already made following an inspection of the vacated pitch. Reasonable deductions will be taken from the remaining balance before refunding to the Consent Holder to cover the cost of administration, repair to any damage cause, removal of discarded materials, and cleansing costs.
- 2.13 Clarification on DBS disclosures required as part of the application process. A basic DBS disclosure will have to submitted with each application. Any convictions or proven criminal behaviour will be assessed by the Council whether an applicant is a suitable person to hold or to continue to hold a Street Trading Consent. A basic disclosure will be required every three years once an application is granted.

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 A public consultation has been undertaken and as required by the legislation, the Highway Authority and South Yorkshire Police have been formally consulted with. Other council departments who may be affected by the proposed changes have been consulted with through the Council's place governance structure.
- 3.3 A notice on the Council's intention to designate streets in the Barnsley borough as Consent Streets for legal street trading was published in the Barnsley Chronicle on Friday, 9 February for two weeks. The statutory consultation period for representations to be made is at least 28 days from publication of the notice. The public consultation opened on Friday, 9 February and closed on Monday, 11 March 2024. Details of the consultation were published on the Council's website and were promoted on the Council's social media.
- 3.4 Following Cabinet approval, the Street Trading Policy and the resolution to designate streets in the Barnsley borough as Consent Streets for legal street trading will then go to Full Council for final decision.
- 3.5 Following the passing of a resolution at Full Council there is a standing period of at least one month before the designation comes into force. The Council must publish a notice in the Barnsley Chronicle for two consecutive weeks that a resolution has been passed. 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 Outcome of consultation and resolution:

- 12 June 2024: Cabinet consideration of representations and decision on the outcome of the consultation.
- 25 July 2024: Full Council decision to adopt the Street Trading Policy, including the fees and charges, and 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.
- 2 August 2024: Publish in the Barnsley Chronicle for two consecutive weeks that a resolution has been passed.
- 15 September 2024: Date of designation for streets in the town centre coming into force.
- 15 March 2025: Date of designation for streets in the whole borough coming into force.

5 IMPLEMENTATION PHASES

5.1 It is proposed to implement the designation of the streets on a phased basis starting with Barnsley town centre on 15 September 2024 and then to the rest of the borough six months later on 15 March 2025.

5.2 This will give street traders outside of the town centre six months' notice to consider, apply, and to make any amendments necessary to their business to enable them to meet the criteria as outlined in the Street Trading Policy.

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 This report requests that Cabinet adopt a street trading policy and approve the proposed fees and charges for street trading permissions included in Appendix B.

6.1.3 The administration of Street Trading includes the determination of Consent Streets, the setting of fees, the administration of consents, and enforcement in the event of non-compliance. Administration costs will be contained within the existing budgets and any further resource considered in line with the revenue income generated.

6.1.4 There will be cost implications for advertising the decision to resolve the designation, although this can be contained within the existing Urban Centres budget.

6.1.5 As a result of street traders being able to trade in Barnsley town centre and the rest of the borough, this is hoped to result in a new income stream of

£20K pa as per the service's recent Transformation Phase 1a review. Any surplus to this amount will need to be considered as to whether this is invested in the service to enable delivery, year 2 onwards, or put forward as a future efficiency via relevant governance processes.

6.1.6 The fees, as per Appendix B, will then be reviewed annually as part of the Corporate Fees & Charges report.

6.2 **Legal**

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

6.2.2 Following approval, continued liaison with legal colleagues to uphold the integrity of the Street Trading Policy throughout its implementation and subsequent operational phases is recommended.

6.3 **Equality**

6.3.1 A Full Equality Impact Assessment has been completed.

6.3.2 As per the legislation, applicants for street trading consent must be over 17 years of age.

6.3.3 There are no foreseen impacts on people with different protected characteristics.

6.3.4 No representations were made during the consultation process that relate to concerns about the impact on people with different protected characteristics.

6.4 **Sustainability**

6.4.1 The completed decision-making wheel is presented below:



6.5 Employee

6.5.1 It is expected additional resource will be required from year 2 when street trading is implemented boroughwide. A resourcing paper will be submitted to SMT for a decision on this in due course.

6.6 Communications

6.6.1 As required by legislation, a notice of intention to pass the resolution was published a local newspaper. In addition, a notice must be published in a local newspaper for two consecutive weeks within 28 days prior to the date of designation coming into force.

6.6.2 Public consultation was promoted on the Council website, inviting representations from affected parties to contact officers by email. A copy of the Street Trading Policy and the proposed resolution was 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 The public consultation opened on Friday, 9 February and closed on Monday, 11 March 2024. A notice was placed in the Barnsley Chronicle for two weeks from Friday, 9 March 2024. Details of the consultation were published on the Council's website and were promoted on the Council's social media.
- 7.2 As required by the legislation, officers undertook formal consultation with the Highways Authority (the Highways service in Barnsley Council), National Highways, and South Yorkshire Police. Around 30 comments and questions were received from business owners and members of the public.
- 7.3 In addition, officers undertook consultation through the Council's place governance structure, namely the Urban Centres Operational Management Group and the Town Centre and Principal Towns Strategy Group. Services across the Council are represented in these groups.

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 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 has access to without payment, which includes private land.

11 LIST OF APPENDICES

- | | |
|-------------|---|
| Appendix A: | Financial Implications |
| Appendix B: | Street Trading Policy, including fees & charges |
| Appendix C: | Resolution to Designate Consent Streets |

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>This box must be signed to confirm that there are no financial implications. Alternatively, a signed Appendix A outlining the financial implications is required.</i>
Legal consultation & sign off	Legal Services officer consulted and date Bob Power, 03/04/2024

Report Author: Chris Savage
Post: Urban Centres Programme Manager
Date: 15 May 2024