

# Birmingham City Council

## City Council

3 November 2020



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**Subject:** Street Trading Policy 2020  
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**Does the report contain confidential or exempt information?** ☐ Yes ☒ No

### 1 Executive Summary

- 1.1 Birmingham City Council is the Licensing Authority responsible for considering applications for a range of activities that require a street trading consent under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
- 1.2 This legislation allows the Council to set a policy, conditions and fees for the grant, variation, renewal and revocation of street trading consents or licences.
- 1.3 Birmingham adopted street trading provisions in 1991, which state all public roads are classified as 'consent streets' for the purposes of street trading. No formal Street Trading Policy has ever been adopted.
- 1.4 In order to ensure that street trading in Birmingham reflects the current needs of the city as described in this report, a draft Street Trading Policy 2020 was produced. Consultation on this policy commenced on 16 December 2019 and concluded on 23 February 2020. A further opportunity for the public to comment was given in July 2020 (6-26 July 2020).
- 1.5 The purpose of this report is to inform City Council of the consultation undertaken, Birmingham City Council's response to the issues raised and to provide a final version of the Street Trading Policy 2020 and the required resolution relating to the designation of streets.

## **2 Motion**

- 2.1 That City Council approves the final version of the Street Trading Policy 2020 and makes the resolution:

*RESOLUTION: That all streets within the boundary of Birmingham City Council, excluding those to be designated as prohibited streets and the 51 parks and open spaces (which have no designation), be designated as consent streets for the purposes of street trading in accordance with the powers granted to the Council by Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, such designation to come into force on Sunday 6 December 2020. Street trading in those streets will be prohibited without the Council's consent from Sunday 6 December 2020. On the same date, the prohibited streets will also be designated as such.*

## **3 Background**

- 3.1 The legislation that applies to street trading is contained in the Local Government (Miscellaneous Provisions) Act 1982 and the Pedlars Act 1871. Some exceptions are contained in the Police, Factories etcetera (Miscellaneous Provisions) Act 1916 relating to charitable street collections.
- 3.2 The 1982 Act allows local authorities to adopt provisions to control street trading as follows: -
- Prohibited Streets- where no street trading is allowed;
  - Consent Streets- where trading is allowed when a consent is issued;
  - Licensed Streets- whereby trading is allowed from a designated pitch – this is often used for street markets.
- 3.3 There is no statutory appeal against the refusal to issue a consent, but there is a statutory appeal in the event there is a refusal to issue a licence. If the local authority does not apply a designation for street trading, then legislative controls are minimal and generally only cover pedlars and charity issues.
- 3.4 Birmingham adopted the 1982 Act street trading provisions in 1991, and currently all public roads are classified as 'consent streets' for the purposes of street trading. No formal street trading policy has ever been implemented.
- 3.5 The adoption of a proposed street trading policy is an Authority function, and the implementation of the policy is a non-executive function carried out by the Licensing and Public Protection Committee. The Leader has approved the policy direction (which was subject to consultation) that is reflected in the Street Trading Policy 2020.

### ***Key Drivers for Policy Direction***

3.6 The city of Birmingham has undergone and will continue to undergo significant changes in years ahead. These changes (listed below) are the key drivers in influencing the policy direction outlined in section 5 of this report.

- Changing infrastructure throughout Birmingham
- Introduction of red routes, metro routes, public squares and pedestrianised areas and hostile vehicle mitigation
- City Centre Public Realm Revitalisation
- Big City Plan
- 2022 Commonwealth Games
- Business Improvement Districts
- Supporting businesses and consumer needs
- Frankfurt Christmas Market

3.7 In addition we believe that to ensure that the administration of the application and renewal process is compliant with the EU Services Directive 2006 and the Provision of Services Regulations 2009 a review was necessary. One of the requirements of this legislation is that any authorisation scheme in respect of the provision of a service within the Directive (which street-trading is) must not be “dissuasive” i.e. of new entrants to the market who wish to provide the service in question.

### ***Why Change is Needed***

3.8 The current nature of street trading in Birmingham is based on the city’s infrastructure and layout in 1991 when all streets originally became consent streets.

3.9 This means that current locations and sizes of trading units are not always compatible with the current infrastructure leading to potential issues with nuisance and obstruction of the highway, obstruction of the visibility and entrance to shops, and public safety in terms of clear passage through highly pedestrianised areas.

3.10 This also hinders the capacity of current traders to safely move the trading units daily after trading. This is in turn exacerbating the issues described in section 3.7.2 and is also enabling the visual deterioration of the mobile units in terms maintaining them in good condition. Some units within prime shopping areas have graffiti or are in poor condition but the current consent conditions and renewal process do not enable appropriate action to be taken.

3.11 The nature of the current application and renewal process, including the essentially automatic renewal of existing consents, has resulted in very little change over decades in terms of the consent holders or product offer across the city. While this is not necessarily a problem, the limited number of suitable locations in the city centre means that the authority must be careful that its authorisation process does not prevent and is not dissuasive of new entrants to the market. In addition, innovation and quality of both the trading units and the goods sold on them has been limited. In particular: there is currently no capacity for new applications for consents in the city centre or for match day/football club trading. Continuation of the current

process is therefore likely to be dissuasive to new entrants wishing to enter the market and to incentivising improvements is quality of trading units and goods.

- 3.12 It has therefore been considered that the current process needs to be changed to ensure compliance with the legal requirements described above. The proposed Street Trading Policy 2020 is attached at Appendix A with appendices 1-9 being appendices to the Policy.

### ***Key Policy Issues***

- 3.13 The introduction of prohibited streets (red routes and metro routes). All other streets will be consent streets except for the 51 Birmingham City Council Parks and Open Spaces that are not given any designation. See Appendices 1-4.
- 3.14 The introduction of annual and occasional consents.
- 3.15 Introduction of design brief for trading units for annual consents over 12 weeks. The design brief was prepared by planning and includes a maximum unit size (subject to limited discretion where necessary) of 2.3m (width) 4.9m (length) 2.6m (height) and the stipulation of no trading outside the unit or from canopies. Appendix 6
- 3.16 All street trading units to be at least 30m apart except for match day traders.
- 3.17 Public safety, the prevention of crime, disorder and public nuisance, and appropriate consumer protection (including enhancing the retail offer provided by street traders) is at the heart of the considerations to approve, revoke, vary a consent.
- 3.18 The criteria that will be considered at application and renewal seek to prevent nuisance/obstruction of the highway, ensure retail business visibility and will enable Birmingham City Council to ensure the location, size and appearance of trading units are appropriate and quality goods are offered for sale.
- 3.19 The process will enable revocation if consent conditions are not adhered to or for any other reason. There is no statutory appeal against revocation, variation, non-renewal or refusing the application.
- 3.20 However, in relation to first applications under this new policy the Council has introduced an internal appeals process to senior officers against an adverse decision on a consent application. Furthermore, the Council has introduced an internal officer appeal process in relation to revocation. Both appeals mechanisms will trigger a review of the original decision-making process. Whether appeals will be continued for subsequent consent/renewal decisions will be considered by officers during the first 12 months of operation of the policy.
- 3.21 Following resolution of the policy it is proposed that a six-week window should be opened to enable all interested traders to apply for a consent and that those applications should be considered at the same time against the aim of the policy and the consent considerations.
- 3.22 Full implementation is likely to be 1 April 2021 when all new street trading consents have been issued and the traders are in position trading.

## **4 Options considered and Recommended Proposal**

- 4.1 When considering how to provide a framework for street trading in Birmingham the following options were considered:
- Maintain the current application, disciplinary and renewal process
  - Produce a Street Trading Policy
- 4.2 For the reasons outlined in sections 3.6 and 3.7 above the option to maintain the current framework was not considered appropriate. As such a new Street Trading Policy 2020 has been produced and consulted on.

## **5 Consultation**

- 5.1 The formal consultation was launched on 16 December 2019 on BeHeard until 23 February 2019. A link was been placed from Birmingham City Council's website to the BeHeard page. This enabled all stakeholders to comment on the consultation.
- 5.2 All Birmingham City Council Members, current street trading consent holders and BID Managers were written to informing them of the consultation and how to comment. Communication of the consultation has also been made to West Midlands Police, West Midlands Fire Service, Transport for West Midlands.
- 5.3 Reports were presented to both the Licensing and Public Protection Committee, and the Co-ordinating Overview and Scrutiny Committee as part of the consultation process.
- 5.4 Appendix 10 provides data relating to the BeHeard consultation responses received (170 respondents to 16 questions). Appendix 11 shows all the comments received via BeHeard. Appendix 12 shows the feedback from a consultation briefing with street traders, Birmingham Street Traders Association and a representative of the National Market Traders Federation. Appendix 13 shows the consultation submission from the Birmingham Street Traders Association Appendix 14 shows the feedback from both the Licencing and Public Protection Committee and Co-ordinating Overview and Scrutiny Committee. Appendix 15 provides Birmingham City Council's Consultation Analysis and Response to all the submissions/feedback themes received
- 5.5 Internally, extensive consultation work has been carried out by the service area with Legal Services, City Centre Management, Planning and Highways to ensure that the final policy is compliant with all relevant legislation and reflects the corporate views of these divisions in both policy direction and specific conditions in permitting street trading.

### ***Further opportunity to comment***

- 5.6 Further to the submissions/feedback received during the formal consultation process the Council published Appendix 15 on both the Street Trading webpage and the "You Said, We Did" BeHeard webpage in relation to the formal consultation. This consultation response gave any interested parties a further 21 days from 6 -26

July 2020 to respond to a specific question: **“Respondents are invited to respond by Sunday 26 July with any alternative proposals that they may wish BCC to consider, which would allow for new entrants to enter the market for city centre and match-day street trading while making fewer or less significant changes to circumstances of current traders.”**

- 5.7 Appendix 16 shows the four responses received. Two were from individual traders, one was from a PhD student in Urban Studies and Planning, and one was from the Birmingham Street Traders Association.
- 5.8 Appendix 17 provides the Council’s response to feedback provided at this stage.
- 5.9 On 17 September 2020 Birmingham City Council placed two previous street trading reviews (2011 and 2018) and the latest version of proposed Street Trading Policy 2020 on the Council’s web pages. On 24 September 2020 the Birmingham Street Traders Association became aware that this had occurred and responded with a statement that they asked to be included within this cabinet report. That statement has been added to the end of appendix 16.

### ***Notice to pass a resolution***

- 5.10 On 17 September 2020 the council published in the Birmingham Post its intention to pass the resolution (shown in section 2.1). This notice asked for any representations relating to this resolution to be made to the council by 17 October 2020 (more than 28 days). The council must consider any representations made. No representations were received. A copy of the notice can be found at appendix 20.
- 5.11 On 17 September 2020 the council served a copy of this notice on the Chief Constable of West Midlands Police and the Assistant Director (Highways and Infrastructure) of the Highways Authority by email and letter. The council must consider any representations made. No representations were received.
- 5.12 If the City Council passes the resolution relating to street trading then the council shall publish notice that they have passed such a resolution for two consecutive weeks in a local newspaper circulating in the Birmingham area. The first publication shall not be later than 28 days before the day specified in the resolution for the coming into force of the designation. Such notice will be placed in the Birmingham Post on 5 November 2020.

## **6 Redaction, addition or amendment following consultation**

- 6.1 The main amendments made to the final policy following consultation are set out below.
- 6.2 Amendments have been made to the design brief to make it more flexible. In particular a slightly larger permitted size of units (to meet the size of a standard food trailer), more colour and font variation. Flexibility has also been introduced to consider small modifications to the size of food units for technical operation.

- 6.3 Removal of the proposal for the introduction of a “mobile consent” (with a view to considering and consulting on this element in the future)
- 6.4 51 specific Birmingham City Council parks and open spaces have not been given any designation and will neither be consent streets or prohibited streets. This is because they have byelaws to control trading and are pursuing commercial opportunities related to trading within parks and open spaces.
- 6.5 A limited presumption of renewal will be introduced. Adopting an assessment framework which supports a limited presumption that consents will be renewed without undergoing a competitive process, subject to conditions, for a second 12-month period. This second period will run from March to April and will commence in the year following that in which the original consent was granted.
- 6.6 Clarification of how applications will be considered for streets where there are more applications for annual consents than availability of suitable locations will be introduced.
- 6.7 Clarification of the assessment framework for consent applications and renewals giving all traders the fullest opportunity to ensure they maximise their potential to make a successful application and to provide transparency in the process.
- 6.8 Quarterly payment of consents will be introduced with initial monthly payments during the first 6 months of the policy to support traders in relation to the impact of Covid 19.
- 6.9 Reduction of the proposed six-week window for initial applications to a four-week period has not been pursued as the implementation of this policy will now occur over Christmas 2020 and it is felt that appropriate time should be given to enable applications to be made.
- 6.10 Introduction of the following impact mitigations for traders during the implementation phase of the new policy:
- An internal appeal process (for a decision-making review) for traders not successful in gaining a consent during the implementation of the new policy;
  - Support to relocate to the Bullring Retail Markets if unsuccessful in gaining a consent during the implementation of the new policy;
  - Detailed feedback on any unsuccessful consent application to enable a better application to be developed in the future or for submission at another location;
  - Face to face discussion with unsuccessful traders to try and identify other suitable locations provided all other criteria are satisfied;
  - Allowing current traders successful under the new policy a three-month period to obtain the approved trading unit (providing their proposed temporary trading unit is of a suitable size and construction for the agreed location).

## **7 Implementation Timeline**

- Formal consultation was between 16 December – 23 February 2020

- Birmingham City Council Consultation Response for 21 days to enable further comment - 6July -26 July 2020
- Council to publish notice of their intention to pass a resolution (to designate streets as shown in app1-4) in a local newspaper (17 September 2020 in the Birmingham Post)
- Serve a copy of that notice on the chief officer for police for the area and on the highway authority (sent by letter and email on 17 September 2020)
- The notice gives until 17 October 2020 for representations concerning the resolution (exceeds 28 days)
- Cabinet report – 13 October 2020
- City Council report – 3 November 2020
- If the City Council passes the resolution relating to street trading then the council shall publish notice that they have passed such a resolution for two consecutive weeks in a local newspaper. Such notice will be placed in the Birmingham Post on 5 November 2020
- Designation of streets to take effect from 6 December 2020
- 7 December 2020– open six-week window for applications with a further two weeks after to consider the applications, and a further two weeks for potential appeals by unsuccessful traders to senior officers.
- Likely end date to application and appeal process – 14 February 2021
- Implementation 1 April 2021.

## **8 Risk Management**

- 8.1 The Street Trading Service has sought legal advice to ensure it is compliant with the consultation process and the contents of the final policy. Advice has been received confirming that compliance.

## **9 Compliance Issues**

- 9.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?
- 9.1.1 The proposals within the policy support the delivery of the Council Priority "Birmingham is an entrepreneurial city to learn, work and invest in" as set out in the Birmingham City Council Plan 2018 – 2022.
- 9.1.2 The proposals within the policy are consistent with the objectives of the Big City Plan and the City Centre Public Realm Revitalisation.
- 9.2 Legal Implications
- 9.2.1 The Council's primary statutory rights in relation to street trading are set out in Schedule 4 of the Local Government Miscellaneous Provision Act 1982.
- 9.2.2 In addition to activities authorised expressly under the above legislation, the Council may also do whatever is reasonably incidental to that power. This is given statutory effect in Section 111 (1) Local Government Act 1972 which states:



“Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.”

### 9.3 Financial Implications

9.3.1 Street Trading operates a net nil budget on a cost recovery basis with expenditure funded by income collected through consent fees. The cost of administration and compliance activity for street trading consent informs the setting of consent fees. The impact of the policy will inform the setting of consent fees for 2021/22 and include all relevant costs. It should be noted that fees will be charged in two stages, with the initial application fee covering only the costs of the authorisation itself, to comply with the requirements of the EU Services Directive 2006 and Provision of Services Regulations 2009.

### 9.4 Public Sector Equality Duty

9.4.1 The public sector equality duty (Appendix 18) drives the need for equality assessments (Initial and Full). An initial assessment has been prepared and is attached at Appendix 19.

## 8 Appendices

- Appendix A Street Trading Policy 2020
- Appendix 1, 2, 3, 4, 5, 6, 7, 8, 9 (appendices to Street Trading Policy 2020)
- Appendix 10 – BeHeard Data
- Appendix 11 – BeHeard Comments
- Appendix 12- Street Trader Meeting Feedback
- Appendix 13 – Birmingham Street Traders Assn. consultation submission
- Appendix 14 – Consultation Feedback for Committees
- Appendix 15 – Birmingham City Council Consultation Analysis and Response
- Appendix 16 – Further comments from external parties
- Appendix 17 – Final BCC response to further comments from external parties
- Appendix 18 – Public Sector Equality Duty
- Appendix 19 – Equality Assessment
- Appendix 20 – Copy of notice of resolution

## 9 Background Documents

- 9.1 Local Government Miscellaneous Provisions Act 1982
- 9.2 European Convention on Human Rights and Fundamental Freedoms
- 9.3 EU Services Directive 2006 (the Directive)
- 9.4 Provision of Services Regulations 2009 (PSRs).