

In the matter of Schedule 4 (Street Trading)
of the Local Government (Miscellaneous Provisions) Act 1982

And in the further matter of the Birmingham Street Traders Association

And in the further matter of the Birmingham City Council, Draft Street Trading Policy, 2020

Birmingham City Council: Draft Street Trading Policy 2020 Consultation
Birmingham Street Traders Association Response

The Birmingham City Council established street trading consent regime

1. Street trading in Birmingham has been regulated since the adoption of the regime in 1984, pursuant to Sch 4 of the Local Government (Miscellaneous Provisions) Act 1982. Fundamentally, street trading has however been a recognisable feature of the City for far longer than 1984. Many of the BSTA members have been trading since before the adoption of the 1982 Act and are the third or fourth generation of their family to do so at their pitches.
2. Currently all streets in Birmingham are consent streets. The street trading consent scheme in Birmingham is based upon and grown out of the skeletal provision contained at para 7 of Sch 4. Professional commentary has long voiced concerns in respect of para 7 and has described the street trading consent provisions as ‘nebulous’. Concerns as to the lawfulness and proper application of the street trading consent provisions are equally well established.
3. Currently, Birmingham City Council does not have a broad policy framework within which the street trading consent regime is operated it seems to operate on accepted customary practice going back many years. Such guidance as exists is limited. Firstly, providing a definition of street trading. Secondly, to providing details of streets where street trading is permitted. The current guidance confirms the long-standing practice that it is for the prospective street trader to determine a location and persuade the City Council that the location is suitable. The guidance advises against main roads, locations likely to cause congestion or obstruction (the only example given is near schools) and areas of parking restrictions.
4. The guidance also recognises and offers protection to established traders: *‘We’re [Birmingham City Council] are currently not accepting applications for street trading on any site in the city centre or football clubs. These sites are full. If a site becomes available, it will be advertised.’*

5. Thirdly, the guidance provides for a monthly fee payable in advance. Traders have been encouraged to set up direct debits many of whom have done so and have been paying ongoing fees for a considerable period of time. The promotion of the direct debit payment scheme further recognises and offers protection to established traders.
6. Fourthly, consent is '*normally granted for 6 or 12 months. Consents will normally be automatically renewed if there have been no issues.*' The customary practice is that consents have been '*automatically*' renewed year on year and decade after decade for many established traders. Indeed, as far as traders are concerned they operate with the legitimate expectation that their long-standing pitches and trade are a valued, protected and settled feature of the City and its street scene.
7. Consents for new pitches and traders seem to be variously based upon the application document, the views of various council officials and the police, the views of members of the public, the views of the Ward sub-committee or District Committee meeting and ultimately the Head of Service (Markets). Other than the application itself there is no opportunity for the applicant to make representations, participate in the consultation and determination, or appeal any decision.
8. The balance seems to be that following lengthy consultation a successful applicant can expect to enjoy the uninterrupted and continued use of a street trading consent at the chosen site without undue interference from the City Council. The nature of the street trading operations requires significant start-up investment and on-going investment and commitment by the holders of street trading consent. We are committed to the City and are willing to continue our investment in the City despite the apparent attempts by City Council to dismiss us and exclude us from further public life.
9. The operation of the street trading consent regime by Birmingham City Council encourages and promotes a policy for street traders to settle and establish themselves as on-going concerns on a continuing long-term basis. It encourages those who wish to commit to a viable, sustainable, long-term street trading businesses: to invest in, contribute to and trust the City. The current guidance on the City Council's web pages do not accurately reflect the long-standing practice and procedures that have been and continue to be operated. The proposed policy certainly fails to do so.

Legal Concerns – fundamental rights and obligations

10. BSTA association are of the view that para 7 of Sch 4 provides the basic structure upon which a local authority is able to build its own local regime. Within the City this has built up over time with an overlap of guidelines and long-established customary practice that has contributed to certain key legitimate expectations and established and continuing economic interests in the street trading consents issued and automatically renewed by the City Council.

11. The draft Street Trading Policy 2020 as currently formulated does not take into account these established practices and economic interests. Furthermore, the draft fails to address key legislative developments that impose overarching duties and obligations upon local authorities in respect of the ways in which their function are exercised and their duties fulfilled.
12. Neither the current guidelines, the established customary practice nor the draft policy addresses the question of whether the street trading consent scheme either in its skeletal outline or in the 1982 Act or the way in which it is specifically operated by the City Council is compliant with the European Convention on Human Rights and Fundamental Freedoms as incorporated into the Human Rights Act 1998. In particular the Council both in its guidelines, customary practice and draft policy needs must address itself to Article 6 (the right to a fair trial) and also Article 1 of Protocol 1 (the protection of property).
13. The City Council has not addressed itself to these fundamental Convention rights vis-à-vis the street trading consent regime. This failure is in itself grounds for challenge. In these circumstances the BSTA invite the council to withdraw the draft policy so as to publish its proposals to ensure compatibility with the Convention rights of street traders.
14. Further, the 1982 Act must be compliant with the provisions of the European Services Directive 2006/123/EC and the Provision of Services Regulations 2009. In October 2014, in its response to a joint consultation on street trading, the Government (Department of Business Innovation and Skills) confirmed that a number of aspects of the existing legislation were incompatible with the Directive/Regulations and promised amending legislation. Pending the (now long-awaited) amending/reforming legislation the Government reminded local authorities of its duty to screen their local street trading legislation against the requirements of the Directive. This duty to screen the street trading legislation, policies and practices against the requirements of the Directive is on-going.
15. The City Council has not addressed itself to the provisions and requirements of the EU Services Directive and the Provisions of Service Regulations 2009. In these circumstances the BSTA invite the council to withdraw the draft policy so as to publish its proposals to ensure compatibility with the Directive.
16. Furthermore, the City Council have failed to consider the combined impact of Convention rights and the Directive vis-à-vis the street trading consent regime as it specifically operates in Birmingham and as it proposes to operate pursuant to the draft Policy.
17. The draft policy and the consultation thereon being based upon a partial and incomplete legal basis is self-evidently and fundamentally flawed. Clearly, the correct approach

and most efficient (both in terms of partnership building, time and cost) is for the City Council to withdraw the draft policy and set out, as a preliminary, its understanding of these basic legal requirements in the light of the established and actual operation of the street trading consent regime in the City.

18. A review of the proper legal basis for the operation of the street trading consent regime in the City is a matter of urgency. There is a strong feeling among traders that Council officers are acting as if the draft Street Trading Policy 2020 has indeed been approved and adopted. It has come to the attention of the BSTA that the provisions of the draft Street Trading Policy 2020 are being currently applied *as drafted* against individual traders making a mockery of the various stakeholder meetings and the consultation itself. The BSTA is working with these individual traders to assert their legal rights and support them in making individual responses to the City Council.
19. Given the strong indication and perception that the outcome of the consultation on the draft Street Trading Policy 2020 has been pre-determined the BSTA strongly urge the City Council to withdraw the consultation and undertake a careful, detailed and engaged review of the existing practices, legitimate expectations and interests of established traders.

In our own words

20. **Samantha Poole and Allan Poole** we own and run a stall on the junction of New Street and the High Street have been at this location since 1976. The location and pitch was given to Allan's father for his services to the Bullring Market for many years previous. In all of the years we have held our licence we have never had to renew it's always been a rolling contract and for the last six years have been issued with an invoice monthly that we pay into the bank.
Our primary line of goods is in flowers, but in recent years we have diversified into tourist/souvenirs. We are the only outlet in the City Centre that sells tourist souvenirs, Birmingham does not even have a tourist information, we have doubled as that for years, we also have our souvenirs made specifically for us and import them ourselves, this takes forward planning and forward outlay of revenue, we could not do this either under the terms of the proposed policy.
We are members of the Birmingham street trading association, Allan is the chairman, I am the vice chair/secretary. We have filled in the online consultation and are not happy with the form as it seems heavily weighted towards what the council wants. You can't make comments if you agree only if you disagree – it just doesn't feel fair. This whole process has impacted immensely on our personal life as we are worried that we will lose our sole source of income, also the new proposed policy gives no security, how are we supposed to invest in a business that we may not have in 12 months time? We want to go forward with the council and enjoy many more years of trading but this proposed policy gives us no sense of trust with the council.

We have given an interview with the local press, that has had a positive public response, and have also set up a Facebook page (with the help of our daughter Roxanne Poole) this has also had a positive public response. With the upcoming Commonwealth Games should we not be considered too? Also, there is a further consultation running that involves the City Centre Public realms improvement, this makes no mention of street trading, this is very alarming as we feel that we are being overlooked. We have a strong suspicion that our city streets are being cleansed of our long established, family run street trading units.

21. **Karen & James Smith** trade on New St in Birmingham. We sell hats, scarves and gloves in the winter and gentleman's hats and ladies scarves and headscarves in the summer months. We have served the people of Birmingham for 27 years and have many regular customers. The license has never had to be renewed in 27 years. I have traded in this site for 27 years with no complaints I offer a great service to my customers and the city. I provide good quality and reasonable prices.
We are part of the community and are on hand to help and guide many of the visitors to the city. we constantly give directions, travel info, help with change. with the cuts in running the city I believe the street traders have been taking up the slack. I have often stopped beggars accosting people in an aggressive manner by my stall. I have also let people use my phone in an emergency and personally walked a young girl to the train station because she was being followed by someone. We are part of this community and care about it.
I am a member of BSTA and NMTA i do not hold a role but have attended meetings. it has been rolling. I have completed the consultation form. But feel it is wholly biased. there is no opportunity to comment unless you strongly disagree.
If the council don't reconsider these proposals and allow me to continue with my business. We will be put in serious financial hardship which will have a negative effect on myself and of course my family. We believe many traders will be in the same boat. We want to invest in improvements and growth but the if the council will not let the license automatically renew how could the traders invest £20K plus on new units with the high probability they would not recoup the money within the year.
22. **Max Davis** on Tays Corner, Bristol Road South, Northfield (Household Goods) I have been here for 7 years, but my family have been running Tays Corner for over 30 years. I pay monthly in advance and by direct debit for about four years.
23. **Robin & Leigh Paton**, Directors of Roseshine Ltd, t/a Mr Bumbles, selling jacket potatoes in Cherry Street, Birmingham city centre. We've been here for 30 years, since November 1990. BCC gave us this site in 1990, saying they would like it to be owner-run in order to maintain high standards As a result, we both gave up secure office jobs to throw our heart and soul into our own business, which we are still doing. During this time, we have always had a rolling license, which we pay by monthly direct debit, and have never missed a payment. The Council have always assured us that our business would continue provided we did nothing wrong, and we feel sure we never have. We're

unaware of anyone losing their licence to trade in that time. We are members of the BSTA, and the NMTF, and Robin is the treasurer of our group. We've completed two online surveys, both of which are heavily weighted in favour of the council's viewpoint, particularly the Public Realm consultation, which makes no mention of street traders at all. It's as if we're being completely airbrushed from Birmingham's history-a form of social cleansing. We're very concerned that our job security, which we've enjoyed for 30 years, is threatened, with no statutory right of appeal, and no independent arbitration between us and the council. Furthermore, we live next door to Robin's frail 96 year old mother, for whom we are carers, and loss of our only form of income would result in us having to sell our home, and see our beloved relative forced into full time care. This is our main worry, and is causing us considerable mental anguish.

24. **Graham Littlewood** on Kent Street B5 6SE (operating at night sell burgers hotdogs and chips, I have traded at this location 20 years this month March. The renewal process has been ongoing on an annual basis since signing for the pitch in March 2000. The rent is paid monthly in advance on a direct debit. The online survey seems simple enough however I don't understand why as existing traders I've been asked to apply for our own pitches. Having done nothing wrong by the councils own disciplinary guys which are attached to our trading consents. The renewal system doesn't allow any traders to look any further forward than 12 months so I wonder how the council thinks we can invest in the pitches with that being the case. The council statement in their own policy states that they wish to create new vibes new opportunities and move with the times however at this stage it looks just to wipeout businesses that have built up over the years without consulting them and I could move with the times bring some fresh ideas. All traders at the meeting recently held was in agreement that they would be happy to look at new things straight some pitches out where things have gone Off plan Currently we have no idea what the council thoughts are other than a survey that has now concluded and a letter to say at the moment we're all out of a job come the end of March! Most people I spoke to was of the same opinion that the existing traders need to be given a chance to run with the new rules and regulations bearing in mind that they haven't fallen foul of them in the 2030 or 40 years that they've been in existence.
25. **Graham Parsons** I own and run a street trading business in Birmingham city centre. The name of the business is The Potato Man and I am located on Lower Temple Street. I am a sole trader and my hours of business are as follows : Mon - Fri 10am - 3pm and the same hours on the occasional Saturday. The goods sold are hot baked potatoes with fillings, hot and cold drinks, crisps and confectionery. The business has been running since 1990. I am a member of the Birmingham Street Traders Association and also the National Market Traders Federation. The amount paid to BCC every month is £643. I

operate from a £36,000 catering unit that represents an old style Tram car. The unit was purchased 7 years ago after the last consultation with BCC on Street Trading.

26. **Cary Sutton** I have been working on the family run stalls since I left school in 1982, there were two pitches in town, one on the Bull Ring Markets and one on New St Station.
My family have been flower sellers in Birmingham for over 150 years. I am a lifetime member of the NMTF (one of only four left in the country!) My stall on New St (opp the ramp) is worked six days a week, 9am-6pm, I have one full time and one part time employees. I also work with the Youth Probation Service, giving young offender work experience.
27. **Carl O'Connor & Ben Fisher**: Habanero's on Temple Row, corner with Cherry Street (Mexican street food). We have been trading here since March 2013, having taken over families previous pitch (Mary Rowan), who traded there for 27 years, selling burgers, hotdogs, and roast pork sandwiches. We are members of the BSTA and NMTA
28. **Lakhbir ("Tony") Auja** I am a street trader working on Broad Street (B16 1DA) near to Five Ways Island. I work there 4 nights a week, my license currently permits me to work 7 nights a week. My consent/license says I can trade there from 6pm to 5am. I also work at Villa Park football ground on Manor Road (B6 6RH). I operate my catering unit on Aston Villa home match days, whenever they may occur. I have been issued a consent/license by Birmingham City Council to trade there at all home matches.
I am a hot food retailer, my products range from burgers, including beef, chicken, halal burgers, vegetarian and vegan. I also sell hot dogs, chips, gravy and curry sauce. I also sell hot drinks which include tea, coffee and hot chocolate. I also sell soft drinks and water.
I have been trading since March 1981 at both of these pitches, almost 40 years. I am the first of my family to operate here and set this business up single handed when leaving education at the age of 18. I am hoping to pass my business and valued customers down to my son following my retirement. He has worked with me on the pitches part time since the age of 16.
I am a member of BSTA and also NMTF, who provide me with upto £10m worth of third party (public) and product liability insurance and upto £10m employers liability insurance.
I have had a consent issued to me on Broad Street, Birmingham since consents were introduced in 1984, 3 years after I first started trading there. I cannot recall in which year the Villa Park consents were introduced however I have also had a consent there since the first day this was introduced as I was also already trading there.
I pay £228.00 per month for the Broad Street pitch and £788.00 for Villa Park per football season. Initially, I had to physically go to Manor House on a monthly basis to pay for the Broad Street pitch and once a year for Villa Park. When this was changed and the council introduced the collection of payment via Direct Debit, I immediately complied and paid via the council's preferred method.

I have also previously been issued with consent to trade on Gas Street, Birmingham where I operated for 20 years and Lower Trinity Street where I operated for approximately 8 years. However, I voluntarily handed these licenses back to the council as these pitches were not very busy so the licenses were no longer required.

I am aware through other traders that the only pitch which has previously been revoked from the council was in Alcester Road, King's Heath. This was quite some time ago and is in no way connected to my pitches or business.

I have never been in debt/arrears to the council and have always paid my rent well before the due date. I have always operated within the terms of my consent/license and have never received anything from the council to advise me anything to the contrary.

I have a duty of care to my customers and the general public, whether they are paying customers or not. I employ 3 members of staff and we care about our community and local area very much. We help the public numerous times throughout our hours working on the pitches, helping people with directions and making suggestions to tourists of other establishments worth visiting whilst in the area. We also help people find the best method of transport home after a long night out. This often this includes young university students who are new to Birmingham.

I did complete the online consultation form however I found this difficult to navigate. I found it weighed towards comment suggestions if I disagreed on a question but no feedback if I agreed with a question.

This is the only business I have operated since leaving school at the age of 18. I employ 3 members of staff who are in a similar position. We would not know what else to do given our age if we had our pitches taken away from us. I have a mortgage to pay on my house as well as a family to support. I would most likely have to sell the house I have lived in for 31 years and find somewhere smaller.

My catering unit meets all of the requirements set out by Birmingham City Council in the proposed draft however, I am willing to upgrade or make further changes if required, although this would be a considerable cost to my business.

The products I serve are appropriate for the clientele that frequent the area where I operate. I have built this business up over 4 decades and have built rapport with customers from all walks of life. I do not think it is fair to consider allowing someone else to take over my pitch after such a long period of time.

I am very concerned that this review carried out by the council has not taken into consideration the years of service of my fellow traders and I have given to the public from not only Birmingham but many surrounding areas. Furthermore, the consultation did not consult us, the people whose livelihoods are risk, before opening up to the general public.

Conclusion

29. While some of the stated aims of the draft Street Trading Policy are supported by the BSTA and its members the draft fails to address itself to some fundamental concerns. The draft policy fails to address how the City Council proposes to protect the established and legitimate interests of existing traders. The draft fails to address

fundamental rights and obligations that have been established since the implementation and adoption of the 1982 Act. At a number of meetings with council officials established street traders have been told that they would have “*first dibbs*” on their established sites. It is a cause for alarm and grave concern that traders who have served the City and contributed to its vibrancy for decades and in some cases over a number of generations are having their livelihood and years of civic service reduced to some form of school playground lottery. This is not only a cause for personal and professional anxiety but deeply insulting.

30. While development, regeneration and innovation are welcomed such future growth should not come at the expense of settled and established communities that have contributed to this City and its growth for decades and for generations. Any future street trading policy should both recognise and protect established traders while also providing the opportunity for improvement growth and the next generation of street traders.

Moving Forward

31. The BSTA wants to work in partnership with the City Council to develop a street trading policy and regime that reflects the lawful interest of current and future street traders and contributes to the growth of the city and the street trading community. In order to achieve this the BSTA is of the firm view that the current flawed draft street trading policy needs to be set aside and the City Council needs to start afresh on a proper legal and factual basis. We are willing to meet with the City Council (along with our own legal representative, if required) to develop a sound policy for the future. In particular we require the City Council to:
 - Provide an assessment of the actual street trading consent scheme, its operation and the established traders within Birmingham.
 - Proposals on how the City Council intends to meet its obligations under the Human Rights Act 1998 and the Provision of Services Regulations 2009 in respect of the street trading consent regime.
 - Proposals on how the City Council intends to recognise and protect the interests of established traders.
 - Proposals on how the City Council intends to provide for full participation in the determination process including rights and mechanisms for appeal.
 - Proposals on how the City Council intends to recognise and protect the interests of established traders while also providing opportunities for new street traders.
 - Proposals in respect of the economic and market restrictions.

- Proposals in respect of purported duration of consents.
- Proposals in respect of clear and lawful grounds for enforcement and revocation (including full participation in the determination process including rights and mechanisms for appeal).

For and on behalf of the Birmingham Street Traders Association

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