

Birmingham City Council Street Trading Policy

2020

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1. Introduction

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 referred to in this policy as “the Act”.

The aim of this Street Trading Policy is to **create a street trading environment which is sensitive to the needs of the public and businesses, provides quality consumer choice and contributes to the character and ambience of the local environment whilst ensuring public safety, and preventing crime, disorder and nuisance.**

Street trading can aid the local economy and contribute to the facilities offered to people who visit, live and work in Birmingham and it supports the Birmingham City Council's priorities:

- Birmingham is an entrepreneurial city to learn, work and invest in
- Birmingham is a great city to live in

This policy will be reviewed in 2021/22 and then formally every five years; however, it will be kept under continuous review and where any significant amendments are considered necessary these will be made by the Authority function of Birmingham City Council after appropriate and relevant consultations have taken place. Minor amendments that do not impact on the aim and objectives of the policy, for example due to changes in legislation, review of design brief etc. will be made in line with the delegation scheme.

An Equality Assessment on this policy has been undertaken.

2. Purpose of Policy

This policy sets out the criteria and guidance that Birmingham City Council (hereafter referred to as the Council) will use as the regulatory framework for street trading. This policy also clarifies the requirements around special events and occasional markets. It gives prospective traders an early indication as to whether their application is likely to be granted or not. It also provides prospective applicants with details of what is expected of them.

The policy recognises the importance of street trading to the local economy and the character of the area whilst trying to ensure that location and activities do not cause obstruction, nuisance or annoyance.

3. Definition of street trading

Street trading is defined in paragraph 1 of Schedule 4 of the Act as:

‘the selling or exposing or offering for sale of any article (including living thing) in a street’.

The Act defines the term ‘street’ as including:

'any road, footway, beach or other area to which the public have access without payment; and a service area as defined in section 329 of the Highways Act 1980'.

Streets located on private land are included within the scope of this policy.

The Act in paragraph 1(2) of schedule 4 states that the following types of trade are not street trading:

- *A pedlar trading under the authority of a pedlar's certificate granted under the Pedlar's Act 1871;*
- *Anything done in a market or fair, the right to hold which was acquired by virtue of a grant, enactment or order;*
- *Trading in a trunk road picnic area provided by the secretary of state under section 112 of the Highways Act 1980.*
- *Trading as a news vendor.*
- *Trading carried on at a premises used as a petrol station.*
- *Trading carried on at premises used as a shop or in a street adjoining a shop where the trading carried on is part of the business of the shop.*
- *Selling things, or offering or exposing them for sale as a roundsman.*

4. Types of street

Streets may be designated as either 'prohibited', 'licensed' or 'consent streets' for the purpose of street trading.

Definitions:

Prohibited streets

If a street is designated as a prohibited street then a criminal offence is committed by any person engaging in street trading in that street. There could be a number of reasons for wishing to designate a street as prohibited. For example the street may not be wide enough to facilitate a trader or the council may wish to restrict trading in a particular location. All current red routes and metro routes (and approved extensions) within Birmingham are prohibited streets (Appendix 1 details prohibited red routes and Appendix 2 details prohibited metro routes).

Licensed streets

A licensed street designation is considered appropriate for the more formalised market type of trading in a street where the strict control of a limited amount of space is required. There are no licensed streets within Birmingham.

Consent Streets

Designating a street a consent street enables trading to take place upon it, subject to the trader receiving a consent to trade from the Council. All streets within Birmingham are designated as consent streets with the exception of the prohibited streets.

5. Street trading within Birmingham

Birmingham City Council has designated all streets within Birmingham as consent streets, except all red routes and metro routes which are prohibited and certain Birmingham parks. This policy applies to all street trading which is undertaken within Birmingham.

The Council has decided not to give a street designation to 51 parks and open spaces within Birmingham as these have been selected as appropriate for mobile catering concessions. The Parks Service has byelaws in place that prevent the display, sale etc. of goods without the agreement of the Council and the means of enforcement of the same. It is considered appropriate to exclude specific parks and open spaces from designation as consent or prohibited streets within the 1982 Act. The list of parks and open spaces excluded can be found at Appendix 3. Maps of the excluded parks and open spaces can be found at Appendix 4.

This policy refers at times to the city centre. This is defined as the area of the city within and including the A4540 (Inner Ring Road).

Where an applicant wishes to trade on private land or land that is not Highway Maintained at Public Expense (HMPE), a consent will not be granted by the Council unless the applicant provides written permission from the landowner showing they have permission to trade.

Street trading consents are issued by Birmingham City Council. The consents come under the following classifications:

Annual Street Trading

This is a consent that lasts up to 12 months and enables the trader to trade up to seven days a week at a particular pitch within Birmingham per financial year. An Annual Consent will not be granted for periods of less than four weeks.

Occasional Street Trading

This type of consent will be for one to thirty trading days for a particular pitch in Birmingham per financial year.

Special Event Street Trading

The Birmingham Corporation (Consolidation) Act 1883 gives Birmingham City Council the market rights for any market (five stalls or more) within six and two thirds miles of a market run by Birmingham City Council. At present this is the Bullring Markets and the distance is measured from St. Martins Church, Birmingham City Centre. Therefore, any special events held within this ring-fence will be subject to an application for and the granting of a licence issued by the Markets Service. Street trading consent is not required for licensed markets.

If the special event is for street trading of less than five stalls or outside this ring-fence the organiser of an event will apply to the Council requesting their event to be considered a 'special event' where street trading is taking part at the event. The event organiser will provide full details of each trader attending the event. Consents will be issued by the Council to individual traders on successful application to the council.

6. Why do we have street trading?

Street trading supports the Birmingham City Council's priorities of:

- Birmingham is an entrepreneurial city to learn, work and invest in
- Birmingham is a great city to live

Street trading encourages a vibrant and prosperous economy. It provides valuable employment opportunities for local people as well as a seedbed of entrepreneurship, allowing new entrants to test their business skills and ideas in an environment which has a low start-up costs, minimal overheads and existing customer footfall.

Goods on sale in the street provide convenient access to hot and cold drinks, fresh fruit and vegetables, household goods and other services for local communities, those travelling to work, and the visitors to Birmingham. The designation of both consent and prohibited streets within Birmingham has taken place to support:

- Public safety
- Prevention of crime and disorder
- Prevention of public nuisance
- An enhanced retail offer

7 Implementing this Policy

Upon the approval of this of this Policy and the resolution designating the streets, the Council will open a six-week window in which any applicant can apply for a consent for street trading in Birmingham. At the end of this six-week period the Council will consider all applications at the same time against the criteria in this Policy. Consents will be granted to those applicants who best meet the criteria in this policy and hence best reflect the aim of this Policy to:

“create a street trading environment which is sensitive to the needs of the public and businesses, provides quality consumer choice and contributes to the character and ambience of the local environment whilst ensuring public safety, preventing crime, disorder and nuisance”

Applications received outside this six-week window will be considered in date order and against the criteria set out in this Policy and its aim.

On any one street where we receive more applications for an annual consent than availability of suitable locations (that comply with the street trading consent criteria) then all applications will be considered on the basis of the highest score awarded through the assessment framework. The application/s with the highest score/s will then be chosen and discussion with the trader/s about a suitable location on that street will follow. If agreement on location cannot be made then the next best applicant will be chosen and the same discussion will be held. The assessment of the applications will be made by jointly Birmingham City Council's planning, highways and street trading teams (and any other consultee deemed appropriate by the Council) through a points system. This process will be used in considering applications and renewals in future years.

The assessment framework can be found at Appendix 5.

The commencement date of street trading consents approved during the initial six-week period will be 1 April 2021.

Current traders successful under the new policy will be allowed 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).

8 Key considerations when assessing an application

The following criteria apply to all types of street trading:

Public safety

- The proposed location of the activity should not present a risk to the public in terms of highway safety and obstruction.
- All locations will require an officer visit before a consent can be issued.
- Applications in respect of sites that have previously been the subject of refusal due to the unsuitability of the location are unlikely to be accepted.

Prevention of crime and disorder

- The proposed activity should not present a risk of crime and disorder.

Prevention of nuisance

- Activities at the pitch must not cause a nuisance, annoyance or disturbance to neighbouring properties, this includes businesses. Controls must be in place to ensure that nuisance from noise, light, refuse, vermin, fumes, obstruction, littering, and smells does not occur.
- If at any time the City Council receives complaints a nuisance, annoyance or disturbance is occurring, the Council is duty bound to investigate and, if complaints are found to be justified, may decide to take enforcement action, including withdrawal of the consent.

Suitability of the applicant

- Birmingham City Council will consider any unspent convictions the applicant may have and this information will be requested in the application form.
- When determining whether an applicant is suitable, the Council will consider the reliability of the applicant in paying fees and charges based on previous history.
- An applicant's history of street trading will also be taken into consideration e.g. whether previous street trading consents have been used appropriately and whether the Council's requirements have been met, including deadlines.

Suitability of the trading unit

- The vehicle, trailer or unit (now referred to as a 'unit' within this policy) to be used should be of a high quality design (that complies with the Council's design brief, including size and colour if appropriate –Appendix 6), build, be harmonious with the character of the locality, add to the quality of the street scene and comply with the legal requirements for the activity proposed.
- The design brief will apply to all annual consents that are requested for longer than 12 weeks.

- The design brief does not strictly apply to annual consents of less than 12 weeks or for occasional consents or special events. However, the design brief should be used for guidance.
- The unit shall be of a high-quality design, with robust construction and materials that the daily removal will not result in the rapid deterioration in appearance of the unit.
- A high quality design means: material used are of high quality; a design that is reflective of the quality and planning requirements of the facades of the surrounding retail offer; a design that is attractive and may be unique.
- The quality and appearance of the unit must be maintained at the standard approved in the original consent.
- The design brief will be kept under review and where appropriate will be subject change.
- The unit must meet with all of the consent conditions including removal after trading unless specifically permitted to remain
- The unit will be inspected by an officer from Birmingham City Council prior to consent being issued.
- Goods, ancillary equipment and stock must be contained within the unit.

Power

- City centre units will be powered by electricity through a plug and use process that will be chargeable.
- Diesel generators will be permissible outside the city centre only when no other power source is available. They shall be positioned so as to reduce the length of cabling required to an absolute minimum and to minimise disturbance to local residents or businesses from noise or fumes. Where required, silenced generators or acoustically insulated generators shall be sourced.

Advertising

- Advertising must only relate to goods offered for sale on that pitch.
- Third party advertisements are prohibited.
- It is not permitted to illuminate any advertisement on the outside of the stall kiosk without express consent of the Council.
- The use of 'A' boards or any other display board/structures are prohibited.

Barriers

- Barriers for safety purposes will only be allowed on a consent pitch where they have been specifically included within the unit's consent approval.
- Any barriers proposed shall not constitute a nuisance or danger under the Highways Act 1980, must not impede the free flow of pedestrians or traffic and must not restrict the pavement so as to inhibit social distancing (if it is required).

Hours of trading

Trading hours will be set on the basis of promoting the following purposes:

1. Preventing crime, disorder and antisocial behaviour.
2. Avoiding disturbance due to noise, smell or any other matter the Council considers appropriate.
3. Protecting public safety.
4. Preventing obstruction of the highway.
5. Having regard to location and operating hours of business activity.

Cumulative Impact

The Council will not normally grant consent for a street trading unit within 30 metres of another street trading unit.

Street Trading in relation to football match days and other sporting events may allow trading to be more densely located than 30 metres apart.

Selling the right goods

The types of goods allowed to be sold will be considered on a pitch-by-pitch basis and specified on the consent. The quality of goods and innovative approach will be considered.

Quality of goods refers to traders making the proper (and legal) checks to ensure their goods are safe for use or consumption. In addition, the use of recyclable materials in the product or packaging or the reduced use of packaging to minimise plastic or other waste will be improving quality.

Innovative products refers to goods that are not readily available within the High Street marketplace.

Anyone applying for a stall must clearly state the nature of the proposed goods. The goods must not:

- Cause a nuisance, disturbance or annoyance to nearby properties/ people, including cooking smells, smoke, noise, litter and additional cleansing requirements for the Council.
- Cause or contribute to crime and disorder – including the selling of fake or counterfeit goods.
- Have a negative public health impact e.g. vaping products, locality of fast food units near schools, gyms etc.

Site assessment

In determining whether street trading in a particular area is appropriate the council will have regard to:

- Any effect on road safety, either arising from the siting of the pitch or from customers visiting or leaving.
- Any loss of amenity caused by noise, traffic, smell etc.
- Existing traffic orders e.g. waiting restrictions.
- Any potential obstruction of pedestrian, vehicular or disabled access.
- Any obstruction to the safe passage of pedestrians and wheelchair users.
- Any nuisance/interruption to pedestrian flow or maintenance of appropriate social distancing.
- The safe access and egress of customers and staff from the pitch and immediate vicinity.
- Obstruction of entry to or sight lines to the entrance of retail premises or obstruction of display windows of retail premises.
- Public squares will not be appropriate for annual street trading consents longer than 12 weeks.
- In terms of any land that is not Highway Maintained at Public Expense (HMPE) permission needs to be obtained from the landowner and submitted with the application e.g. private land or Birmingham City Council park or open spaces (that are not part of the excluded 51 parks and open spaces)

Other criteria

- The consent holder will at no time have the exclusive right to trade from the street or any part of it.
- Street trading can take place in the area outlined in the consent and on days and hours detailed in the consent.
- The consent holder may only trade in goods that are outlined on the consent.
- A copy of the consent shall be made immediately available upon request to an authorised officer of the Council or the police.
- Auction sales shall not be permitted as part of the consent.
- All street trading units will be equipped with safe and adequate lighting for the operation during the hours of darkness.
- Evidence of a commercial waste contract must be provided before the consent is issued and on request by a Council officer.

Failure to comply with any of these requirements may result in refusal to issue or renew consents or revocation of an existing consent.

9 Types of Street Trading Consent

Annual Street Trading

This consent enables the consent holder to trade up to seven days a week at a particular pitch within the City Council area. Annual street trading consents may run from the 1 April until 31 March the following year. Consents can be applied for part way through the year, but they will only run until 31 March. An Annual Consent will not be granted for periods of less than four weeks.

Occasional Street Trading

This type of Occasional consent will last for one trading day for a particular pitch in Birmingham. No more than 30 consents will be issued per pitch per trader per financial year.

10 Consent Application, Renewal and Surrender

Application or Renewal

Applicants must submit a new application or a renewal application for an annual or occasional consent at least eight weeks before the date they wish to start trading. This is to enable the Council to consult with partner agencies. **Failure to do so may result in a delay in being able to trade.**

Consent holders will be reminded that their consent is due to expire at least eight weeks before the expiry date. This is done to assist the trader, the Council accepts no liability if the trader does not receive the reminder. It is the trader's responsibility to ensure that they have the correct consent, to submit their application prior to the expiry of their consent and to update the Council should their contact details change.

Surrendering a consent

Where the trader wishes to surrender a consent they must give the council 21 days written notice. Notice must be sent to licensing@birmingham.gov.uk

11 Special event and occasional market/fair street trading**Special Event Street Trading (two or more street trading units)**

A 'special event' is where there are two or more street trading consents to be issued to the traders at that event, and where the event is organised by a single person/ organisation

The organiser of the special event that will apply to the Council requesting their event to be considered a 'special event' where street trading is taking part at the event. The event organiser will provide full details of each trader attending the event and inform each trader that they must apply to the Council for an occasional consent. Occasional consents will be issued by the Council to individual traders on their successful application to the Council. All applications must be made 8 weeks prior to the event taking place.

Occasional market/fair (five or more street trading units)

The Birmingham Corporation (Consolidation) Act 1883 gives Birmingham City Council the market rights for any market within six and two thirds of a mile from St. Martins Church, Birmingham City Centre (Appendix 7) and or any other market run by Birmingham City Council. Therefore, any market or fair including antique fairs, coin, stamp and postcard fairs, book fairs etc. where street trading from five or more units occurs held within this ring-fence will be considered as a market and will be subject to an application for and the granting of a licence issued by the Markets Service. Street trading consent is not required for licensed markets.

The organiser of the market or fair must apply to the Markets Service for a licence at least 8 weeks prior to the market or fair taking place.

12. Letting of pitches**Sub-letting pitches**

Consent holders are not permitted to sub-let the pitch they are allocated under any circumstances.

Re-letting pitches

Street traders must make full use of their consent. The local authority will assess whether a consent holder has made a full use of their consent. Street traders shall notify the Council in circumstances where, and for whatever reason, they do not intend to make use of their consent, and notification should be made in advance. Consent holders must inform the Council of the date upon which they intend to resume trading. In circumstances where the date is not known, consent holders must give appropriate notice of their intention to resume trading. Where no prior notification has been received and in circumstances where the council is satisfied that the consent holder is not making full use of their consent it may re-let the street trading pitch to another trader. Multiple street trading consents may be granted to different applicants for the same site provided specific trading days/ periods are applied for.

13. Temporary relocation

When a pitch becomes temporarily unsuitable for any reason, the Council will seek to relocate consent holders to an alternative street trading pitch. The Council will not be liable for any claims for loss of earnings etc. If agreement cannot be reached on relocation, then consideration needs to be given by the trader in terms of giving notice for the consent and by the Council in terms of revoking the consent.

14. Fees and charges

Birmingham City Council set fees and charges for street trading. Fees and charges are reviewed annually. There will be an application fee and a consent fee.

Please visit <https://www.birmingham.gov.uk/street-trading> to find out what the current fees and charges are for street trading. When making an application the application fee must be paid in advance and is non-refundable. If a consent is granted or renewed, payment will be on receipt of the quarterly invoice for the consent in advance. Methods of payment are described on the invoice. The requirement to pay fees for the consent on or before the due date specified by the Council forms one of the conditions of the consent.

Where a consent is surrendered, the Council will remit or refund, as they consider appropriate, the whole or part of any consent fee paid for a grant or renewal of the consent subtracting any administration costs or any costs incurred in delivering the street trading service.

Payment of fees for Annual Consents

Annual consent fees are published on Birmingham City Council's website. For annual consents the fee will be paid quarterly in advance of the relevant quarter. The consent will run from the 1 April until 31 March the following year. If an applicant makes an application during this period, the consent will cease on 31 March in the financial year that it was applied for or the length of time the annual consent is requested provided it expires before 31 March in the same financial year.

Payment of fees for Occasional Consents

Occasional consent fees are published on Birmingham City Council's website. For Occasional consents the applicant will need to pay prior to the consent being granted. The consent fee will cover up to thirty days trading in any part of one financial year with the year ending on 31 March. All trading must take place at the same pitch.

15. Applications for grant or renewal

All applications will be considered on their individual merits taking into account all relevant matters.

Consents will not normally be granted or renewed where:

- Enforcement action is pending or has previously been undertaken and proved against the applicant.
- The holder is currently in arrears with any charges.
- The location is unsuitable
- There is a potential risk to public safety
- The activities are likely to cause a nuisance, disturbance or annoyance to neighbouring properties.
- The applicant is unsuitable.
- An applicant has failed to appropriately use previous consents.
- The unit is unsuitable.
- It may cause or contribute to crime and disorder.

This list is not exhaustive.

Who can apply?

To apply for consent a person must be: -

- An individual or business
- 17 years of age or over
- Legally entitled to live and work in the UK

Making an application

All applications must be made on the Council's prescribed application form. The application must be completed in full, with all the required information, before it will be considered. Applicants can apply online by visiting <https://www.birmingham.gov.uk/licensing> If there are any queries relating to this then contact licensing@birmingham.gov.uk

The application form must be submitted along with the following:

- A non-refundable application fee (based on the cost of administering the application)
- Photographic identification (e.g. passport, photo card driving licence)
- A site plan of the proposed trading area or list of proposed streets
- Photographs of the trailer, stall, or vehicle proposed for use
- The make and model of any generator to be used (if applicable)
- Gas certificate (if applicable)
- Public Liability Insurance certificate cover for £5,000,000
- Current MOT certificate (if using a vehicle)
- Appropriate current business use motor insurance (if using a vehicle)
- Proof that the applicant and any assistants are entitled to work in the UK

Upon receipt of the complete application the Street Trading Team will consider the application in line with the key considerations outlined in section 8 of the policy and conduct a consultation as detailed in this section of the policy.

Once the application is complete and has been accepted, the council will either:

- Determine to grant the consent as applied for and attach standard conditions.
- Determine to grant the consent with specific conditions or a variation to the application.
- Determine to refuse the consent.

Where it has been determined to grant the consent, before the consent is issued the following must be provided:

- the appropriate fee
- evidence of a commercial waste contract

Where a consent is refused the council will notify the trader in writing detailing the reason for refusal.

Receipt of application and fees

An application will be treated as being received only when the relevant application and all the necessary supporting evidence has been received and the relevant non-refundable application fee has been paid. The application must be completed in full. Incomplete applications will be rejected. Failure to follow the application process may result in the consent being refused or delayed. Applicants are encouraged to submit their applications in plenty of time before the trading date to ensure that if there are any problems they can be rectified or discussed before they intend to trade.

Consultation

In determining a street trading consent the Council may decide it is appropriate to consult with various people or groups. The Council will consider relevant representations.

The Council may consult the following people before determining a consent:

- West Midlands Police
- West Midlands Fire Service
- Highways Division, Birmingham City Council
- Transportation Division Birmingham City Council
- Transport for West Midlands
- Planning Division Birmingham City Council
- Parks Division Birmingham City Council
- City Centre Management, Birmingham City Council
- Business Improvement Districts
- Relevant services at Birmingham City Council e.g. trading standards, environmental health, waste management etc.
- Any other person or body deemed necessary.

Information obtained from these people/ bodies will be considered during the application process and will help determine whether a consent should be granted.

Renewal

The Council has adopted an assessment framework with a limited presumption of renewal for a maximum of one 12 month period running from March to April the following the year the consent was granted, if there has been full compliance (and in the absence of contra

indicators) with the consent conditions in the first year or part of. On any renewal application after this maximum 24-month period, a full competitive reappraisal will take place.

This is only a presumption of renewal and not a guarantee. There may be circumstances in which a renewal is not granted. Aside from failures to comply with consent conditions, examples include where changes to the locality since the original consent was granted mean that a first consent would not, at the time of renewal, have been granted for trading in that location, or otherwise where BCC's criteria for granting a consent are no longer met.

16. Insurance

The council will accept no liability for the street trading activities undertaken by the consent holder(s). Evidence of suitable public liability insurance (minimum value of £5 million) will be required from the applicant covering the period they wish to trade.

The insurance must be maintained throughout the period of the consent and the consent will be revoked should the insurance be cancelled or breached or its sum altered as to provide less than the minimum value.

If the insurance is due for renewal during the period covered by the consent, it is the responsibility of the consent holder to provide the council evidence that public liability insurance is continuous for the period of the consent.

17. Food units

All food businesses must be appropriately registered with their local authority. Certain low risk businesses are exempt from the hygiene rating scheme, so will not require a hygiene rating, however the Council may contact Environmental Health to ensure adequate compliance with food law. Other low risk food businesses (the decision of what is classed as a low risk business will be determined by the Environmental Health Team), may be considered safe to trade whilst awaiting inspection by their local authority or in other circumstances. All other traders that sell or provide food must have a national food hygiene rating of a 4 or 5. Where a rating drops below a 4 or where there is significant food hygiene or food safety breach whilst a consent is in place, consent may be suspended or revoked. Applicants and consent holders should notify Birmingham City Council of any changes to their national food hygiene rating.

18. Removal of waste

Traders shall ensure that they comply with the law in relation to the disposal of waste. All businesses must put in formal commercial arrangements for the collection of waste created by their activities. It is an offence to dispose of trade waste in domestic refuse bins.

19. Enforcement Actions

Where the conditions of the consent are breached and it is deemed appropriate, necessary and proportionate for enforcement action to be taken then the disciplinary process attached at Appendix 8 will apply. The process is:

FIRST OFFENCE

The Consent Holder will be verbally warned on site by an “Authorised Officer” and a formal verbal warning will be issued in writing and placed on the traders file.

SECOND OFFENCE

Should the Consent Holder commit a further breach of the conditions within **six months** of the first offence, a formal written warning will be issued and placed on the traders file.

THIRD OFFENCE

Should a Consent Holder commit a further breach within **twelve months** of the second offence, the Consent Holder will be asked for a written submission relating to the breaches. A senior authorised officer will review the consent with a potential outcome being revocation.

In addition, should a consent holder commit a significant breach of the conditions so as to be considered as serious misconduct or such as to impact significantly on the following:

- **Public Safety**
- **Prevention of crime and disorder**
- **Prevention of public nuisance**

Then immediate suspension of the consent will occur which will trigger a review of the consent by a senior officer with a potential outcome being revocation. Written submissions for both the Street Trading Team and the consent holder will be sought prior to a decision being made.

Where circumstances change or there are serious concerns regarding a consent, officers will compile a report for consideration by a senior officer. A copy of this report will be provided to the consent holder in advance of its consideration in order that they are able to provide any explanation or justification to support their position within a reasonable time.(14 days) The matter will be determined after the 14 days whether a response has been received or not. The senior officer will consider all evidence and make the decision whether to revoke the consent.

Where a consent is revoked the Council will advise the applicant verbally and confirm the reasons for this in writing within 10 working days.

20. Appeal against revocation

There is no statutory right of appeal against a decision to revoke a consent however an appeal may be made to the Head of Licensing within 5 working days of the written revocation. A panel of two independent senior officers will review the decision to revoke the consent. After considering the original evidence (new evidence or material will not be permitted) the panel will make a decision in writing on whether to uphold the appeal (with or without conditions) or not to uphold the appeal.

21. Refusing applications

The Council may refuse to grant or renew a consent. Where a consent is refused the Council will advise the applicant in writing and notify them of the reason for the refusal. There is no right of appeal against an officer's decision to refuse a consent.

Interim Arrangements – Implementing the new policy.

In relation to first applications under this new policy the Council has introduced an internal appeals process to senior officers against a potential adverse decision on a consent application. The Council will consider, as part of its review of the policy during its first twelve months of operation, whether to this right of appeal will continue in relation to subsequent applications for grant or renewal of consents.

The right to appeal will be triggered when an applicant is informed that the Council is minded to refuse an application. The applicant may appeal to the Head of Licensing within 5 days of the potential refusal. The matter will then be considered through the appeal process below.

If the potential refusal of a consent application relates to a street where there are more applicants than suitable locations then all applicants will be informed that the Council is minded to grant or refuse their application but that a final decision will not be made until the appeal period has lapsed. Applicants may then appeal to the Head of Licensing within 5 days of the potential refusal. If an appeal by any applicant is made in this time, then all applicants will be informed that an appeal has been made and that a Panel of senior officers will review all applications for that street and that the outcome of their decision will be final. The matter will then be considered through the appeal process below.

The appeal will take the form of a review of the decision-making process. The submission of new material by traders or officers will not be permitted unless at the request of the panel.

The appeal process is as follows:

- Panel of two senior officers of Birmingham City Council (not connected with making any decision related to street trading)
- Panel to consider the application (and scored assessment framework) that has been refused and if relevant all other applications (and assessment frameworks) that were made for the same street
- Panel to defer decision making if further evidence required from officers or trader
- Panel to determine whether the “minded to” decision to refuse was appropriate in the light of information provided and decide which applicants on a given street shall be refused and which will be given a consent.

During the implementation phase of the new policy applicants will be able to access:

- 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
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22. Conditions, complaints and offence

General conditions will be attached to every consent. These are found at Appendix 9. Additional conditions may also be attached relating to the type of the consent given. Failure to comply with conditions may result in enforcement action, revocation of your consent, and refusal to grant further consents on application.

Complaints

Complaints will be fully investigated in accordance with the Council's Complaints Policy and consent holders will be expected to liaise with the Council to resolve them. Substantiated complaints may result in a consent being revoked and refusal to grant further consents on application.

Offences

Decisions regarding enforcement action will be made in accordance with the Council's enforcement policy.

A person commits an offence if they:

- Engage in street trading in a prohibited street.
- Engage in street trading in a consent street without first obtaining authorisation from the council.

Any person guilty of such an offence will be liable, on conviction at a magistrates' court to a fine of up to £1,000.

23. Definitions

Roundsman

A roundsman is a person who followed the round of his/her customers to take orders and deliver the pre-ordered goods of these customers.

News vendor

News vendor is a reference to trading where:

- The only articles sold or exposed or offered for sale are newspapers or periodicals; and
- They are sold or exposed or offered for sale without a stall or receptacle for them or with a stall or receptacle for them which does not:
 - exceed one metre in length or width or two metres in height;
 - occupy a ground area exceeding 0.25 square metres; or
 - stand on the carriageway of a street.