

# Birmingham City Council

## Report to the Leader of the City Council

17 December 2021



**Subject:** Street Trading Policy

**Report of:** Rob James , Managing Director of City Operations

**Relevant Cabinet Member:** Leader of the Council - Councillor Ian Ward

**Relevant O &S Chair(s):** Councillor Carl Rice – Co-Ordinating Overview and Scrutiny Committee

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference: 007273/2020		
Is the decision eligible for call-in?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, state which appendix is exempt, and provide exempt information paragraph number or reason if confidential:		

## 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 originally adopted street trading provisions in 1991 and formally approved a Street Trading Policy in 2020.
- 1.4 It was agreed that the Policy should be reviewed after 12 months
- 1.5 The purpose of this report is to consider that review and provide a final version of the Street Trading Policy (as amended October 2021).

## **2 Recommendations**

- 2.1 That Cabinet Member approves the final version of the Street Trading Policy (as amended October 2021).
- 2.2 The Cabinet Member approves that the Street Trading Policy (as amended) takes affect from 24 December 2021.

## **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 originally adopted the 1982 Act street trading provisions in 1991.
- 3.5 Since the introduction of the Policy streets have been classified as either Consent Streets or Prohibited Streets. 51 parks and open spaces have not been given a designation, as this enables the parks service to manage and enforce any trading in these areas under specific byelaws.

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

3.6.1 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 below.

- 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

3.6.2 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.

### **3.8. Key Policy Issues**

3.8.1 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.

3.8.2 The introduction of annual and occasional consents.

3.8.3 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.

3.8.4 All street trading units to be at least 30m apart except for match day traders.

3.8.5 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.

3.8.6 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.

- 3.8.7 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.

The Council has introduced an internal officer appeal process in relation to revocation. This appeal mechanism will trigger a review of the original decision-making process.

- 3.8.8 The introduction of a Scheme of Delegations to enable applications to be determined at an appropriate level
- 3.8.9 Full implementation was on 1 April 2021 when new street trading consents were issued, the traders are in position trading and new applications are being dealt with on a case by case basis.

## **4 Options considered**

- 4.1 When considering the review of street trading in Birmingham the following options were considered:
- Retain the Street Trading policy 2020 in full
  - Amend the policy to further clarify matters, simplify processes and reflect the current position in practice

## **5 Consultation**

### **5.1 External**

- 5.1.1 There is no requirement for external consultation any amendments have removed temporary allowances which applied to the first year of the policy only or are related to matters of clarity, simplicity or minor changes.

### **5.3 Internal**

- 5.3.1 Consultation for the initial policy was been carried out by the service area with Legal Services, to ensure that the final policy is compliant with all relevant legislation and reflects the corporate views in both policy direction and specific conditions in permitting street trading.

## **6. Redaction, Addition or amendment following this review**

The main amendments made to this final policy are set out below.

- 6.1 The introduction of one application for special events
- 6.2 Removal of references to this review
- 6.3 Minor amendments to what matters are considered as part of the site assessment as they were duplications of issues considered in other criteria

- 6.4 An update to the contact email address
- 6.5 Removal of the temporary internal appeals process
- 6.6 Introduction of a scheme of delegations

## **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.
- 8.2.3 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 continued impact of the policy will inform the setting of consent fees for 2022/23 and include all relevant costs.
- 9.3.2 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 drives the need for equality assessments (Initial and Full). An initial assessment was prepared for the original Street Trading Policy and as the changes to the policy are purely administrative, no further assessment is required.

## **10 Appendices**

- Appendix A Street Trading (as amended October 2021)
- Appendix 1, 2, 3, 4, 5, 6, 7, 8, 9 (appendices to Street Trading Policy (as amended October 2021))

## **11 Background Documents**

- 11.1 Local Government Miscellaneous Provisions Act 1982
- 11.2 European Convention on Human Rights and Fundamental Freedoms
- 11.3 EU Services Directive 2006 (the Directive)
- 11.4 Provision of Services Regulations 2009 (PSRs).