

BIRMINGHAM CITY COUNCIL

REPORT OF THE INTERIM ASSITANT DIRECTOR OF REGULATION AND ENFORCEMENT TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE

8 SEPTEMBER 2021
ALL WARDS

IMPACT OF STREET TRADING POLICY 2020

1. Summary

- 1.1 On 3rd November 2020 Birmingham City Council approved the Street Trading Policy 2020 (the Policy). Prior to this no specific policy was in place above the designation of all street as consent streets (where street trading is permissible) which was made in 1991.
- 1.2 The new Policy introduced clarification of the issues that are considered when administering the authorisation scheme and provided specific designations for prohibited streets and consent streets. It also excluded 51 Birmingham City Council Parks and Open Spaces from any designation.
- 1.3 On 18 November 2020 this Committee approved a new fees and charges structure for all applications for consents made under the new Policy.
- 1.4 The Policy was fully implemented from 1 April 2021.
- 1.5 This report shows that since the implementation of the Policy that while the overall number of street traders has decreased, there has been a significant increase in new traders.

2. Recommendations

- 2.1 That the report be noted.

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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 Birmingham City Council (the Council) adopted the 1982 Act street trading provisions in 1991 and classified all streets as 'consent streets' for the purposes of street trading. No formal street trading policy had ever been implemented until the Policy.
- 3.4 On 3 November 2020 the Council approved the Street Trading Policy 2020. Birmingham. This introduced prohibited streets, consent streets and excluded 51 Birmingham City Council Parks and Open Spaces from any designation.
- 3.5 In January 2021 two long standing street traders applied to bring an expedited judicial review against the Council. The judicial review was heard by the High Court on 7 and 8 April 2021.
- 3.6 On 7 May 2021 the judgement was handed down. That being that the judicial review was dismissed in its entirety.
- 3.7 On 19 December 2020 the application process for consents for 2021/22 opened and the Policy was fully implemented from 1 April 2021.

4.0 **The Need for Change**

- 4.1 The Policy was introduced to ensure that the street trading offer in Birmingham reflected the current infrastructure. Public safety, the prevention of crime, disorder and public nuisance, and appropriate consumer protection are at the heart of the considerations to approve, revoke, or vary a consent.
- 4.2 In addition the Policy also ensures that the Council is compliant with the EU Services Directive 2006 and the Provision of Services Regulations 2009 in 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.

- 4.3 Prior to the Policy being implemented there were significant issues relating to the previous locations and sizes of trading units not always compatible with 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.
- 4.4 This also hindered the capacity of traders to safely move the trading units daily after trading. This in turn exacerbated the issues described in paragraph 4.3 above and enabled the visual deterioration of the mobile units in terms maintaining them in good condition. Some units within prime shopping areas had graffiti or were in poor condition but the previous consent conditions and renewal process did not support appropriate action to be taken.
- 4.5 The nature of the previous application and renewal process, including the essentially automatic renewal of existing consents, had resulted in very little change over decades in terms of the consent holders or product offer across the city. There was no capacity for new applications for consents in the city centre or for match day/football club trading.
- 4.6 The Policy can be accessed via https://www.birmingham.gov.uk/downloads/file/17375/birmingham_city_council_street_trading_policy_2020

5 Key Policy Issues

- 5.1 The introduction of annual and occasional consents.
- 5.2 Introduction of design brief for trading units for annual consents over 12 weeks.
- 5.3 All street trading units to be at least 30m apart except for match day traders.
- 5.4 Public safety, the prevention of crime, disorder and public nuisance, and appropriate consumer protection (including enhancing the retail offer provided by street traders).
- 5.6 The criteria that will be considered at application and renewal seek to prevent nuisance/obstruction of the highway, ensure retail business visibility and enable Birmingham City Council to ensure the location, size and appearance of trading units are appropriate and quality goods are offered for sale.
- 5.7 The process enables 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.

However, in relation to first applications under this new policy the Council introduced an internal appeals process to senior officers against an adverse decision on a consent application.

6. Impact of Policy

6.1 All applications under the Policy are considered by a cross departmental team from Street Trading, Transport and Highways, Planning, and City Centre Management. West Midlands Police provide feedback for each application and Business Improvement Districts are consulted where appropriate.

6.2 The data so far is:

- 54 applications have been received
- 24 applications were approved
- 17 applications were approved after a solution was found to an initial refusal
- 8 applications were refused with no alternative solution being found
- 1 application was withdrawn
- 4 applications are ongoing
- 5 appeals were lodged against an adverse decision, but none were upheld
- Of the 54 applications received 14 were from new traders

6.3 The reasons for refusal were:

- Location not compliant with Highways legislation
- Size of unit not suitable for the location
- Location not suitable
- Location on a prohibited street

6.4 There are currently 41 street trading consents within Birmingham with 4 applications ongoing. Of these 6 are in the city centre, 7 are sports stadia consents and 28 are consents in the suburbs.

6.5 This compares to an analysis of consents in November 2020 (prior to the Policy being implemented) that identified that of the 71 consents normally held, 44 of those were non-football (non-sports stadia) consents and 27 were football consents.

Of the non-football consents, 15 of these were in the city centre and 29 in the suburbs.

6.6 The Policy has clearly encouraged new entrants to the market.

6.7 The greatest reduction in consents has been in city centre trading (a reduction from 15 to 6). Potentially this was to be expected as many of the previous locations and sizes were not appropriate. However, new locations with different sized stalls have been supported and will continue to be supported. Only four previous city centre traders have applied for a consent and three of these have been approved. A further three new traders applications were

approved. All traders are removing their trading units after trading. This overcomes the previous issues relating to units being kept on site overnight (e.g. attracting graffiti, units being in poor condition, closed units negatively impacting on the active retail environment)

7. Consultation

- 7.1 There is no requirement to consult in relation to this update report.

8. Implications for Resources

- 8.1 The delivery of the Policy is consistent with the budget for 2021/22 for the Licensing and Public Protection Committee. This ensures that the services continue to be managed within the approved cash limits and in line with the financial regulations relating to these services.

9. Implications for Policy Priorities

- 9.1 The issues addressed in this report underpin the City Council Vision, Birmingham is an entrepreneurial city to learn, work and invest in, Birmingham is an aspirational city to grow up in, Birmingham is a great city to live, Birmingham is a fulfilling city to age well in.
- 9.2 Regulation and Enforcement will be a key service in ensuring Birmingham residents gain the maximum benefit from hosting the Commonwealth Games by supporting legitimate business.
- 9.3 The Policy will be reviewed in 2021/22 and will be submitted to the Leader for consideration and approval.
- 9.4 The Policy supports Regulation and Enforcement Mission Statement: Locally accountable and responsive fair regulation for all – achieving a safe, clean, green and fair trading city for residents, business and visitors.

10. Public Sector Equality Duty

- 10.1 The Policy relates to all applicants and consent holders regardless of their protected characteristics. An initial Equalities Assessment was undertaken with regards to this Policy.

INTERIM ASSISTANT DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: Street Trading Policy 2020