

## Appendix 16

Four responses were received to the 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.”

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 this appendix.

### **Response 1 – Birmingham Street Trading Association**

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

And in further matter of the Birmingham Street Traders Association (“BSTA”)

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

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#### Alternative Proposals

#### BSTA response to the Councils’ Consultation Analysis & Response

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1. The Birmingham Street Traders Association (“BSTA”) are not opposed to development, regeneration and innovation. Such future growth should not, however, 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 of the existing street traders, the next generation of street traders along with new entrants to the Birmingham street trading community.

### **The Deterioration of the Street Trading Offer: Evidence Base**

2. The Consultation Response takes a very dim view of the existing street trading offering and of existing street traders within Birmingham being described as a ‘deterioration of the street trading offer’ [3.1.2]. Paragraph [3.1.5] asserts that the current street trading arrangements are incompatible with current City infrastructure; that innovation is limited with very little change; and the quality of goods and trading units are questioned.
3. The BSTA has not seen the evidential basis upon which these conclusions have been reached. We would welcome sight of this/these assessments and the opportunity to

comment on this harsh condemnation. The BSTA represents established and successful street traders that have operated a viable, sustainable and successful street trading offering within the City many have done so for a significant period of time.

4. The BSTA does not accept that the City has a deteriorating street offering. We nonetheless welcome the opportunity to work with the City Council to agree areas of improvement and innovation and to work together to achieve these. The Consultation Response proposes no more than proportionate changes to the arrangements under which existing traders have operated [18.1.10]. It is being further proposed in the Consultation Response, amongst other measures, at [18.1.9] to provide ‘Detailed feedback on any unsuccessful consent application to enable a better application to be developed in the future or for submission at another location.’
5. The BSTA make the following suggestion:

[1] We suggest that in place of the broad and general judgment in respect of the existing street trading offer in the City that the Council as a matter of urgent priority provides such *detailed feedback* to existing traders. Such detailed feedback must be related to the lawful purposes of the 1982 Act. There must be an opportunity for existing traders to make representations on the detailed feedback. Finally, the Council must agree with each existing trader an action plan to meet any relevant and lawful concerns within an agreed time frame.

#### **Aims and object of the 1982 Act**

6. The Council continues to demonstrate its failure to understand the aims and objects of the 1982 Act. The Council is invited to properly consider the aims and objects of the 1982 legislation in light of the EUSD/Provision of Services Regulations 2009 and the Human Rights Act 1998. In particular the Council is invited to consider whether its emphasis on public protection and public realm considerations [3.1.5 d] are within the aims and objects of the 1982 Act. While many of the aims of the policy are laudable they are none-the-less outside the scope of the regime. We welcome the Council’s commitment to be ‘rigorously compliant’ with all legal requirements [3.1.2], our offer to assist remains open.
7. The key considerations in part 8 of the draft policy are broad and wide ranging and in our view outside the scope of the 1982 Act and Provision of Services Regulations 2009. The Consultation Response promises clarification of the assessment framework for consent applications [18.1.6]. We look forward to the clarification in the subsequent draft policy document; once these fresh proposals are published we will comment upon that draft accordingly.

8. The most egregious example of this failure is the imposition of an economic tests which is a prohibited requirement contrary to the Provision of Services Regulations, Reg 21(1)(e):

‘A competent authority must not make access to, or the exercise of, a service activity subject to any of the following - ... ..

(e) the case-by-case application of an economic test making the grant of authorisation subject to –

- (i) proof of the existence of market need or market demand,
- (ii) an assessment of the potential of current economic effects of the activity,
- or (iii) an assessment of the appropriateness of the activity in relation to the economic planning objectives set by the competent authority.’

9. Under para 3(6) of Schedule 4, local authorities have a discretion to refuse an application for a street trading *licence* on one of seven grounds and that one, namely para 3(6)(b) – that there are already enough shops / traders in the street who are trading in the applicant’s goods – is incompatible with the Directive because it involves a case-by-case assessment of the existence of an economic need or market demand. Accordingly, the Government proposed to repeal this ground (see Government response to the consultation to repeal the Pedlars Act and make changes to street trading legislation in England and Wales (BIS, October, 2014), para 31) (see also BEIS, Guidance on the provision of services regulations, March, 2019, page 15).
10. Although the 1982 Act has not been amended the BIS Guidance for local authorities also requires local authorities to screen local legislation and administrative practices to ensure that unnecessary barriers to service provision are removed. This includes adjusting regulations and policy rules that do not satisfy the criteria of the Directive (page 13) (see also the Screening Flowchart for requirements that are imposed on service providers operating in the UK which require competent authorities to take steps to ensure that they comply with the Directive).
11. The draft Policy states that ‘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 ...**’ (draft Policy section 1, page 3). The assessment of the existence of an economic need or market demand is explicitly set out in the draft Policy at section 8 which lists the broad and wide-ranging considerations. At page 8 under the heading of ‘**Selling the right goods**’ the draft Policy provides: ‘The sale of goods from street trading should complement those provided by nearby businesses/retail shops. 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, local need for the goods and innovative approach will be considered.’

12. The Consultation Response confirms that unlawful economic considerations are a key – if not the key – factor that informs draft Policy:
- [2.1.4] and [7.1.4] The ‘new policy aims to support and facilitate a high quality street trading offer ...’.
  - There is to be an annual ‘full competitive reappraisal’ to counter, amongst other matters ‘the undesirable stagnation of the market’ [2.1.9].
  - Concern with what is considered to be ‘a deterioration of the street trading offer’ [3.1.2] and the consideration of the ‘retail offer made’ [3.1.5 a].
  - Concern with the products offered, innovation and the quality of the goods sold in the city [3.1.5 b].
  - One of four overriding needs at the heart of the proposed authorisation scheme is for ‘An enhanced retail offer’ [3.1.5 d], [3.1.7] and [5.1.3].
  - Providing a ‘seedbed of entrepreneurship’ and business start-up [7.1.2].
  - The expansion of trade opportunities [3.1.8].
13. The Consultation Response clearly confirms that contrary to Reg 21(1)(e) economic test are at the heart of the draft policy requiring proof of the existence of economic needs and market demand; the assessment of potential or current economic effects of street trading and an assessment of the appropriateness of street trading in relation to the economic planning objectives of the competent authority. The Council is also reminded of Reg 17 which make provision for selection from among several candidates.
14. The BSTA make the following suggestion:
- [2] We suggest that the draft Policy is reviewed so as to exclude from its scope the consideration of prohibited economic tests. The aims of any subsequent draft policy should be confined to the lawful aims and objects of the 1982 Act and not wider albeit laudable aims.

### **Duration and Renewal of Street Trading Consents**

15. The Council response now recognises that traders need to be allowed a longer period during which they may establish their businesses [BCC Response [2.15] and proposes what is described as a limited presumption of renewal [BCC Response [2.1.6]-[2.1.10]

and [18.1.4]). This is not, however, a presumption of renewal as the Council proposes to retain its full discretion to refuse applications and renewals.

16. This limited presumption of renewal fails to address the established and legal interests of existing traders as previously outlined in the BSTA consultation response.
17. Paragraph 7(10) of Schedule 4 provides that ‘A street trading consent may be granted for any period not exceeding 12 months but may be revoked at any time.’ Regulation 16 of the PSR provides:

‘An authorisation granted to the provider of a service by a competent authority under an authorisation scheme must be for an indefinite period, except where –

  - (a) the authorisation is
  - (i) automatically renewed, or
  - (ii) is subject only to the continued fulfilment of requirements,
  - (b) the number of available authorisations is limited by an overriding reason relating to the public interest, or
  - (c) a limited authorisation period can be justified by an overriding reason relating to the public interest.’
18. The BIS Guidance for local authorities (2<sup>nd</sup> Edn, June, 2009) provides that ‘Local Authorities must ensure that authorisations granted to service providers are not for a limited period. Exceptions to this are cases in which: the authorisation is automatically renewed or is subject only to the continued fulfilment of requirements; the number of available authorisations is limited due to an ORRPI; a limited authorisation period can be justified by an ORRPI’ (page 15)
19. The BIS Guidance for local authorities also requires local authorities to screen local legislation and administrative practices to ensure that unnecessary barriers to service provision are removed. This includes adjusting regulations and policy rules that do not satisfy the criteria of the Directive (page 13) (see also the Screening Flowchart for requirements that are imposed on service providers operating in the UK which require competent authorities to take steps to ensure that they comply with the Directive; also BEIS, Guidance on the provision of services regulations, March, 2019, page 13).
20. In the Government response to the consultation to repeal the Pedlars Act and make changes to street trading legislation in England and Wales (BIS, October, 2014) it was determined that ‘the Government will remove the specification of the time period of validity of street trading licences and expect local authorities when setting a time period to take into account the need to avoid unduly restricting entry to the market (paragraph 45). Further, at paragraph 61, ‘The Government will also remove the specification of the time period of validity of street trading consents while making it clear that the period set should take into account the need to avoid unduly restricting entry to the market.’

21. Neither the draft Policy nor the limited presumption of renewal in the BBC Response adequately addresses the legal requirements as to the duration of authorisation.
22. The BSTA has previously set out its concerns in respect of protecting the established and legal interests of existing traders. The BSTA is further concerned that the Council has failed to have proper regard to new entrants to the Birmingham Street Trading community. The current position seems to be that each year the Council will effectively dismantle its entire street trading offering and start over. This is an unduly restrictive measure that undermines both existing and prospective traders.
23. The BSTA make the following suggestions:

[3] The Council must consider measures to encourage prospective traders to the street trading community that do not undermine existing traders. Such measures to include the development of markets (including the Bullring Market as suggested in the BCC Response [18.1.9]) and special events and occasional markets and street fairs.

[4] The Council ought to adopt a policy which includes a presumption in favour of renewal of existing street traders (*i.e.* those with valid street trading consents prior to 23<sup>rd</sup> March 2020<sup>1</sup>) at their existing locations. Where as a result of the proposed reselection and designation of street trading consent locations the existing locations are untenable we propose mitigation measures for a commensurate replacement location. Any such commensurate measures to be subject to an internal review (similar to appeal measures outlined below).

[5] The Council ought to adopt a policy which includes a presumption in favour of renewal for all street traders granted a street trading consent under the terms of any newly adopted policy.

[6] The Council ought to adopt a policy that the presumption for renewal either for existing street traders or new entrants is to be set aside only upon grounds within the aims and objects of the 1982 Act and the Provision of Services Regulations 2009.

[7] The Council ought to adopt a policy for an internal appeal mechanism on any refusal of a street trading consent application, any refusal to apply the presumption in favour of the renewal of a street trading consent and any decision to revoke a street trading consent.

### **Designation of Consent Streets and Prohibited Streets**

24. The Consultation Response seems to suggest the selection and designation of suitable street trading locations. The BSTA has not seen any proposals in respect of the

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<sup>1</sup> Start of Covid-19 Emergency Period.

designation of suitable street trading locations; once these fresh proposals are published we will comment upon that draft accordingly.

25. The BSTA make the following suggestion:

[8] That the Council set out the details and evidential basis upon which it proposes to rescind and / or vary the current designations to include in draft the proposed resolution in accordance with paragraph 2(13), Schedule 4 of the 1982 Act.

### **Specific City Center and Match Day arrangements**

26. The City Council is now seeking proposals for specific arrangements in respect of city center and match-day street trading [18.1.11]. This is a novel development that has not previously canvassed. The draft policy does not contain any details for site specific or event specific arrangements; once these fresh proposals are published we will comment upon that draft accordingly.

### **Appeals**

27. In the draft Policy, whilst a right to an internal appeal was afforded if a trader's consent was revoked, no appeal was afforded if, at the end of fixed 12-month period of a consent, the Council refused to renew it (Consultation Draft, sections 20-21, pages 1516).
28. The effect of a refusal to renew a consent is, in terms of its effect on the trader, materially identical to the revocation of such a consent: it removes the trader's livelihood. This effect is the same whether a trader is long-established, or is at the end of their first consent period. Nevertheless, the scale of the impact of this deprivation of livelihood may be much harder felt by long-established traders, not least due to the interruption of well-developed supply chains and loss of significant business goodwill.
29. BSTA notes that the Council now accepts the principle that "it is appropriate to provide some opportunity to request a reconsideration of an adverse decision" in respect of a renewal application (BCC Response, paragraphs [3.1.11]; *cf* [15.1.2]). However, it intends only to apply this principle to 'first consent applications under the new policy once it is introduced'. This restrictive approach is wrong for the following reasons:

[a] The effect of non-renewal of a consent is the same, regardless of when it takes place within the lifetime of the proposed future policy. If the principle is accepted that an appeal against non-renewal is appropriate, it must apply to all decision not to renew, and not only to some;

[b] The restriction of a right of appeal to only the first round of renewal applications under the new policy means that only traders holding consents prior to the policy

implementation will benefit from a right of appeal. BTSA supports new entrants to the market and believes they should be treated fairly – indeed, the Council maintains this is one of the purposes of devising a new consent scheme. This equality of treatment includes being afforded the right to appeal BCC’s non-renewal of their consent, even if that consent is first issued after the implementation of the new policy.

30. BSTA in its previous written submission emphasised, and re-emphasises now, that both decisions to revoke a consent and decisions to refuse to renew a consent are processes for the determination of civil rights and obligations within the meaning of Article 6 of the European Convention on Human Rights. Any appeal procedure set out in this policy must be effective and fair.

31. The Council has not provided any information in the Consultation Draft Policy or in the Council’s Response about how it intends to ensure the effectiveness and fairness of the appeal procedure. The Council’s updated policy needs to clearly set out how it will ensure that:

[a] Those determining the appeal are impartial, chiefly by a requirement that they have not been involved in or consulted in relation to the original decision to revoke/refuse; [b] Appellants are provided with and given adequate opportunity to comment on all the information that the Council has relied upon in revoking/refusing a consent;

[c] Appellants have a reasonable period of time in which to make their appeal, including through seeking proper advice and gathering evidence – a deadline of 5 working days to lodge an appeal is manifestly insufficient for this purpose.

32. The BSTA make the following suggestions:

[9] BSTA therefore recommends that the Council make amendments to the proposed policy to introduce a right of appeal against all decisions not merely to renew a consent.

[10] BSTA therefore recommends that the Council sets out in proper detail how any appeal process will work, and how it will ensure that the process is fair and effective. In particular, the policy should:

[a] Stipulate that no person who has been involved with or consulted upon in respect of the appealed decision will be involved in determining the appeal;

[b] Require the Council to disclose to a person whose consent is revoked or refused all the materials upon which the Council has reached its decision;



[c] Allow at least 21 days from the decision revoking/refusing a consent for the lodging of an appeal.

### **The Covid-19 Crisis**

33. The present emergency has had a devastating effect on the livelihood of street traders. BSTA is clear that the council should consider the effect of the Covid-19 epidemic on street traders and postpone the implementation of any changes to the street trading consent scheme in the City. The inability to work during the emergency period, the downturn in economic activity is having adverse consequences. These adverse consequences are compounded by the uncertainty caused by the Council's granting of consents for only six months' duration, with further uncertainty about whether or not their consents will be ultimately renewed.
34. Street traders contribute to the City's urban economy, through their distinct, entrepreneurial and characterful retail offer. In the present circumstances, the Council should provide them with greater security and support where they can, including by delaying the proposed steps to change the terms upon which their long-standing businesses operate.
35. The BSTA has fundamental concerns about the Council's draft Policy and about the way in which it is pre-emptively implementing it. Even setting these concerns to one side however, the Covid-19 emergency situation in which street traders now find themselves clearly demands a meaningful response from the Council. A key way in which the Council could support this important group of small businesses would be to put on hold the proposals to reform their regulation and operation, giving them breathing space to focus on getting their businesses back up and running and continuing with the long-standing contribution to the urban economy.

For an on behalf of the Birmingham Street Traders Association

Names of legal representatives deleted

Francis Taylor Building

25<sup>th</sup> July, 2019

## **Response 2 – PhD student Urban Studies and Planning**

Answer to the Consultation Analysis and Response in regard to the Draft Street Trading Policy 2020

**To the Head of Licensing and Markets Service (inc. Street Trading),**

Birmingham City Council (BCC) has made its reasons for adopting some contestable changes to the street trading policy clearer in this *Consultation Analysis and Response* to the feedback collected between December 2019 and February 2020. It has also committed to make amendments to the Draft Street Trading Policy which will accommodate part of the current traders' requests. Such changes shall be recognised as positive, in trying to balance current and aspiring traders' needs. Nevertheless, I would like to bring attention to: 1) some matters that could be, in my understanding, still contested or improved; and 2) about important aspects that are still ill-defined.

On the first group, I would like to discuss the broader picture of Birmingham's development and whose interests are being defended in this. While the answers provided in this document indicate a more inclusive tone, accommodating some requests from current traders, there is still a narrative indicating that the existing trading activity in Birmingham is outdated and uninteresting. The envisioned updating in the city wants to take it in the direction of fulfilling the narrative of an entrepreneurial global city. This sort of planning aim tends to exclude from the 'main picture' the more vulnerable or popular/working class groups of the cities, in the expectation to be more 'business attractive' and appealing to visitors. These values are expressed when the Commonwealth Games and the Frankfurt Christmas Market are mentioned (5.1.2), where street trading, it is implied, is considered a nuisance. There is also the indication that street trading goes in an opposite direction to "Public Safety"; "Prevention of Crime and Disorder"; "Prevention of Public Nuisance"; "An Enhanced Retail Offer" (subitem e, 3.1.5).

In light of the mentioned above, and defending the traders' legitimate feelings of entitlement, right to the city (Lefebvre) and pride for their profession, it would be interesting if the BCC could establish some sort of work group that could approach the current traders/ trading activity which the BCC deems outdated or unappealing. Like that it could work to propose and facilitate the modifications in e.g. branch of activity/ type of product and/or visual language used by the specific traders, in the direction of bridging conditions and achieving the expected trading standards. A more inclusive approach, taking into account the relevance of trading as the income generation activity for the currently involved merchants. Obviously, this is not to defend the exclusion of new traders, but rather to accommodate different stakeholders' interests and not to generate a divide – new X current/old traders.

In terms of the second group of remarks, the aspects that remain ill-defined (not only in this reply, but in the Draft Policy) are: the assessment criteria for the issuing of trading consents; the appeal procedures, and the design brief for the trading units. I am aware paragraphs 18.1.1 and 18.1.5 and 18.1.6 mention that these ill-defined aspects will be amended/ clarified in the new version of the Trading Policy. However, the question is: will the design brief and the assessment criteria be presented to the public, including the current traders, before the publication of the final version of this policy? Specially the assessment criteria seem to be a central element in a new policy for street trading, and consequentially the knowledge about the conditions – allowing for a formal feedback – by the potentially more interested and affected stakeholder group (i.e. current traders) is extremely important.

Last but not least, below there are some comments on specific sections and paragraphs. Thank you for the attention.

Yours faithfully,

## Name of respondent deleted

(PhD student in Urban Studies and Planning – University of Sheffield)

### 1.0 – Prohibited Streets (No Comments) 2.0 – No financial security if maximum consent is 12 months

2.1.6 (i.e. renewal of licenses for up to 24 months) seems an advancement in relation to the restrict terms previously presented in the Draft Street Trading Policy 2020. And apparently reasonable in light of the mentioned in point 2.1.4 (i.e. not to discourage the application by new traders). Nevertheless, considering that current and aspirant traders are the ones proposing trading locations (according to Item 8 of the Draft Policy: ‘Key Considerations when Assessing an Application’) it would be interesting to explore the possibility of BCC’s accommodating more (new) trading spots in desirable areas, in light of the competition/ shortage identified by BCC.

### 3.0 – The position of current traders under the new process

3.1.4. *“We do not think that existing traders have a legitimate expectation of the continuation of the previous policy arrangements...”*

Taking into account also the content of para 3.1.2, which explains the need to update the trading policy in the BCC’s understanding, I consider that the quote above reveals that there is a conflict about what can be considered ‘legitimate’. While the policy has to be impartial and weight fairly the interest of different stakeholders in the city arena, it seems sort of unethical to simply disregard or disrespect what I consider to be legitimate expectations from the traders. It is considerably a responsibility of the local government if breaches of license conditions and ad hoc trading practices developed and functioned for approximately 40 years in Birmingham. As such, it is important to respect that within these ‘informal’ practices, traders developed and established trading spots, formed a clientele and a career expanding commonly over more than one generation. In sum my comment here aims to encourage a bit more empathy by BCC managers towards current traders’ situation and requests.

3.1.5 subitem b: *“The nature of the current application and renewal process has resulted in very little change over decades in terms of consent holders or the product offer across the city thereby limiting innovation and quality or both the trading units and the goods sold on them”*

I wonder to what extend a diagnosis could not be enforced, identifying ‘unappealing’ trading units/ activities where the specific traders could be then approached by the council for the development of a ‘collaborative updating’ e.g. changes on the branches of activity. This would be a more socially inclusive alternative rather than the simple substitution by a newer creative generation – although new traders should definitely be given opportunities. This could be organised in partnership with BSTA.

subitem e: it is implied that street trading in its current shape and form is ‘inadequate’ and a burden to Birmingham. This is a tendentious depiction in which seems that street trading goes in an opposite direction to “Public Safety”; “Prevention of Crime and Disorder”; “Prevention of Public Nuisance”; “An Enhanced Retail Offer”.

3.1.6. *“It is proportionate to introduce **a new policy that properly reflects the expectations of current traders**, those who seek the opportunity to trade and the people who live and work, have businesses in, and visit, Birmingham and who require street trading to take place in safe and convenient locations (...) and the new policy, together with the amendments suggested in this document seeks to strike a fair balance between the interests of all the different stakeholders”*

I am not yet confident that the policy – even with the proposed amendments expressed in item 18 does manage to take current traders’ interests in an equal foot with the BCC’s interests and other city

development stakeholders. Nevertheless, the tone of the council seems more understanding and conciliatory than the expressed in the Draft Policy document.

3.1.7: “... will ensure that **fairness to existing and prospective traders**, public safety; prevention of crime and disorder; prevention of public nuisance; an enhanced retail offer are at the heart to approve, revoke and vary a consent”

I would advise the reflection about the idea of ‘fairness’ in relation to the understanding of ‘legitimate expectations’. I commented about when discussing para 3.1.4.

3.1.11: i.e. right of appealing to consent denial (at least on first instance): it seems an advancement and improvement from the proposed in the Draft Policy.

#### **4.0 – Less Commitment by Occasional Traders (No Comments) 5.0 – No change required**

5.1.2: There is a clear stated hierarchy, where events as the Commonwealth Games and the Frankfurt Market are deemed more relevant to the city than the historical trading practices. While the city should evolve with time, it is interesting to think about the contradictory aspect of incentivising so much a trading imported event like the Frankfurt Market – which while brings tourists do cause mobility nuisance on High Street – and making terms more rigid for the local street traders.

#### **6.0 – All food businesses should be treated the same (No Comments) 7.0 – Prefer no Street Trading**

7.1.2: I shall state my full support to the argument developed in this paragraph.

#### **8.0. – More appropriate enforcement required (No Comments) 9.0. – Units Should be allowed to remain in situ after trading**

This is a very contested aspect. In this section the BCC for the first time provided arguments explaining why it defends the units’ removal. Considering the traders’ perspective and the generation of more nuisance with the enforcement of this removal rather than the allowance of its permanence, the suggestion would be to discuss this element of the new policy with the BSTA, to find a way of accommodating interests.

#### **10.0 – Request for the exemption of BCC Parks from Street Trading Policy (No Comments) 11.0 – The need for current street traders to be made fully aware of the proposals (No Comments) 12.0 – Design brief too restrictive (No Comments) 13.0 – All elected members should be made aware of the consultation (No Comments) 14.0 – Traders Associations should be informed of the consultation (No Comments)**

#### **15.0 – Participation in Decisions by existing traders:**

15.1.1: “BCC will ensure that the **application process is fair by identifying both the consent criteria with which all street traders would expect to comply and by including a framework for decision making (when considering application and renewals) within the policy**”

“all potential traders will be able to put their case why they should be granted a consent under the new policy, **in the full knowledge of the criteria the authority intend to apply**” The consent criteria have to be clarified as the decision making framework.

“...BCC will introduce an internal appeals process to senior officers against an adverse decision on a consent application. (...) The appeal mechanism will be outlined in the final policy document”

The appeal mechanism, as the assessment criteria for consents should be presented prior the publishing of the final version of the policy.

## **16.0 – The directive, PSR 2009 and the BIS Consultation Response 2014**

16.1.3: *“the revised version of the policy will set out BCC’s proposals in relation to the issues raised in that document more specifically, though it must be said as originally drafted and consulted on, we think our proposals are clear”*

There are ill-defined terms of the policy though (i.e. assessment criteria for consents, appeals and the design brief)

16.1.4: the contained argument of this paragraph is unclear – which consultation is being referred to? The current one, to the Draft Policy 2020, or the BIS consultation response 2014?

## **17.0 - Policy Development with existing traders**

17.1.1: *“BCC does not consider it appropriate to develop policy in conjunction with one group of stakeholders, especially where the interests of that group are likely to be in opposition to the interests of the other groups equally entitled to the fair representation of those interests and to a proper and independent decision-making process”*

While there are definitely other relevant stakeholders in the city to whom street trading activities have an impact, the traders themselves are undoubtedly the most impacted group. As such there is a legitimate claim for participation representation of interests. A better balance should be sought in this respect.

## **18.0 – Redaction, addition or amendment to the policy following the consultation**

18.1.1 *“Amendments have been made to the design brief to make it more flexible”*

18.1.5 *“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.*

18.1.6 *“Clarification of the assessment framework for consent applications”*

18.1.9: reasonable impact mitigation actions by BCC

*“an internal appeal process for traders not successful in gaining a consent”*

Finally, there is the mentioned commitment of introducing the criteria for applications’ assessment in the amendments to be done to the draft policy. My comment, as previously stated is about the need to make public and clear the assessment criteria, appeal mechanism and design brief before the final version of the policy. Otherwise, the consultation process is partial, excluding meaningful elements of the policy.

## **Response 3 – Trader**

Dear Name deleted

With regards to the updated consultation proposals, please find our comments below.

### **Extending lease and licenses to 24 months**

Although we welcome any provisional extension of the lease and license periods, we still feel that 24 months is not sufficient to support new businesses – in this or any economic climate. In our experience on Temple Row, it took a number of years to make the business profitable without the additional challenges posed by COVID-19.

Obviously, these are not normal times. The city centre was already struggling with unoccupied shops and premises and these are now increasing weekly. It's difficult for even experienced traders to survive.

You've stated that this process is about improving the quality of the offering to the public, but these constraints, and accompanying costs due to new restrictions on trailers, will surely lead to a decline in standards. Without the rolling consents, there is reduced incentive to invest and offer a top class product, instead will likely lead to a quick buck philosophy.

Further, our business has a contract with an energy provider for electricity at our pitch. Is there a plan for how we either might be compensated on days when another trader is using our pitch, or for how we can be guaranteed an electricity supply at any other pitch we are assigned? Having an electricity supply is vital to our being able to trade.

### **Trailer specifications**

With regards to trailer specification, the new size restrictions appear to disregard the fact that most (and best - Ifor Williams, A&R Willis, Roka etc) catering trailers have 7ft 6" as standard width, and any quality food trailer typically has a length of 16ft and a height of 8ft 6". The new trailer specification makes it difficult for food traders to get the best built and safest trailer. Perhaps this could be increased to take industry standards into account, or you could provide examples of the type of units you are seeking traders to use?

### **Design Brief**

Can you confirm what the new design brief is.

### **Daily removal of trailers**

It has been difficult to understand the requirement to remove trailers from their pitch on a daily basis as a means of improving pedestrian safety and reducing graffiti and vandalism. We have never personally been victim of any graffiti or vandalism, and we believe moving the trailer daily actually creates more risk to pedestrians on a regular basis.

Further, the changes in road access to some pitches between 7am and 7pm proposed in February will require some traders to work in excess of 12 hours a day to meet this requirement. Would it be possible to amend the requirements on moving the trailer daily so that it is possible to leave on site at least three nights a week?

### **Policy Development**

We understand that traders should not be directing policy, however it seems sensible that as one of the key stakeholders the council may benefit from some of their insight/feedback to help the management of street trading. Other than the current consultation process which, from a trader's perspective, has felt quite heavy handed, stressful and formal, there has been little contact between traders and the Birmingham Licensing and Markets office since Steve Alders left a number of years ago.

I look forward to your response.

Yours sincerely  
Names deleted

#### **Response 4 – trader**

Subject: Proposed street trading policy

In response to the consultation email you sent to all concerned, I would like to raise a few points in relation to the new proposals.

1.3.2 This trader should not have to forfeit a site, even if he/she have multiple sites.

2.0 Local government should look into this and ammend as mortgages are a lot longer than 12/24 months. Mortgage companies look for at least 3 years of self employed accounts and at the moment it is very hard for us to gain a mortgage due to coronavirus.

3.0 It is fair that BCC has altered its policy on appeal procedures. Also that existing traders can re-locate to another location, although it would not be beneficial for me to re-locate there as I trade at night and at Villa Park.

4.0 Even though match day trading is occasional trading, this is a regular occurrence for 9/10 months of the year and most traders have regular clientele.

5.0 I do believe that if change is required on certain sites. Please remember that the Frankfurt Market is only here 6/7 weeks and Commonwealth Games will be her for just over 1 week. We have to look after our traders who operate 12 months of the year in all sorts of conditions.

6.0 Hygeine is of the upmost importance of any food business and a low rating should not be tolerated.

12.0 I do believe that the design and size of the trading unit should be considered on an individual site case. Some sites have the ability to accommodate small units, whilst others can accommodate larger ones. It is also quite difficult to work in a catering unit, which is small in size, especially with staff.

18.1.9 BCC should allow existing traders more than the allocated three months period to upgrade trading units, as catering units take a lot longer to design and build than 3 months.

Just to finish off, i personally think that each individual site has different issues to be addressed, if at all any. I would be willing to help and definitely comply with any issues or objections that may arise on my pitches.

Many thanks

## **Statement made by Birmingham Street Traders Association on 24 September 2020**

Dear Sajeela

Thank you for your response.

I still have points that I wish to raise with you .

Firstly I find the excuses of the newer version of the policy being made public, on what ever site be it the Beheard or the site it is on it was still made public without us being notified, especially as I had asked the question of the status of it, insulting. Next I want to address your statements with regards to the 2011 and 2018 reviews .

1) The 2011 review was made available to us at every stage of the process , in fact the findings of this review bought about the formation of BSTA. We worked closely with the council with the common goal of updating/ improving the offer from street trading. We met with officers of the council, which became known as the steering group . In these meetings ways to improve street trading were discussed , these meetings were held in a regular basis and all were minuted and a record kept . The officer who had the task of being able to make decisions at this time was NAME DELETED , but he would not let the group make any decisions going forward . A university competition was undertaken ( initiated by the council) to design a new trading unit , no decision was made by this officer. So BSTA at there own cost submitted architect drawings ( at a substantial cost to ourselves)with new units , these were not even acknowledged by NAME DELETED. Although I see hXX name is attached to the list of stakeholders that had an input into The 2018 review , as is yours . No mention is made of the traders willingness to work with the council which makes this a very biased report.

2)Now I will address the 2018 review that up till now has not been made available to us, despite it being asked for many times. We once again were consulted on the process of this review, but I see that once again no mention of the traders wanting to make improvements is included. And for the record I will disagree with your statement that this review was made public as a direct response to BSTA queries vis our barrister, regarding the councils views on the need to improve the street trading offer in Birmingham. If this was the case you should have directed this review in the first instance to the the traders , not the general public , as you have done . Our letter that was sent headed "Alternative proposals in response to the councils consultation analysis" Please read the paragraph headed "The deterioration of the street trading offer - evidence base " This in fact states we " must be given the opportunity to make representations on the detailed feedback " BCC and yourself have failed to do this by publishing this review without prior notice to the current street traders this review condemns. I would ask that this letter and contents are attached to the cabinet report, as going forward with our a full history of current street traders willingness to work with the council is biased towards the council and not a fair and just representation of BSTA , fair being one of BCCs buzz words I believe . Maybe BCC should be seen to be acting on this word in these very challenging times to Birmingham's street traders , instead ,as I have seen evident in very recent emails you have responded to with traders concerns , of being dismissive, on one occasion advising a trader his only way forward if he felt the footfall was very low and was struggling, was to relinquish his consent. I will make no apologies to any of my comments in this email, my only thoughts are to help protect a group of small businesses that find themselves , by your actions and BCC in danger of losing their livelihoods . Regards Samantha Poole