

LICENSING COMMITTEE

(Non Licensing Act 2003 Functions)

Agenda Item 35

Brighton & Hove City Council

Subject: Street trading policy
Date of Meeting: 24 April 2009
Report of: Assistant Director Public Safety
Contact Officer: Name: Jean Cranford Tel: 292550
E-mail: jean.cranford@brighton-hove.gov.uk
Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 Brighton & Hove City Council introduced a street trading policy on 2 April 1998 which was an amalgamation of policies from Brighton Borough Council and Hove Borough Council adopted under the provisions of the Local Government (Miscellaneous Provisions) Act 1982.
- 1.2 Brighton & Hove has streets in which street trading is prohibited, it has areas where consent is granted for street trading (e.g. East Street) and there are 5 pitches for street trading in the city centre. The Seafront area including Grand Junction Road and Kings Road is designated a consent street but is outside the trading policy established by the Council and control of that area is the responsibility of the Seafront Office.
- 1.3 Officers obtained permission to undertake consultation to review the entire city's street trading designations and policy from committee on 27 November 2008 and this report outlines the next stage.
- 1.4 Existing standard conditions have been modified to remove imprecise, unenforceable conditions and to assist small businesses which links to corporate priorities.

2. RECOMMENDATIONS:

- 2.1 That committee agrees the street trading policy as set out in appendix 1.
- 2.2 Members consider whether a standard street trading condition should be imposed to exclude traders 25metres from school curtilages.
- 2.3 That the committee authorises officers to consult further with existing street traders and officers engage with street traders concerning the council's Healthy Choice Award Scheme.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

Current Process

- 3.1 Officers in Environmental Health and Licensing issue permits for street trading (see 3.2 – 3.4). Any appeals against officer's decisions are heard by the Licensing Committee (Non-Licensing Act 2003).
- 3.2 There are currently 5 designated pitches for street trading in the city centre (Castle Street, Clarence Square, Dean Street, Crown Street and Marlborough Street). All pitches are let and there is a waiting list for traders who would like to take over a pitch if one becomes vacant.
- 3.3 A street market is held each Saturday in Upper Gardener Street between the hours of 07.00 and 17.00. Occasional markets are held in Bartholomew Square and George Street Hove. New Road and Black Lion Street in Brighton need to be authorised for street markets.
- 3.4 Street artists and hot chestnut sellers are permitted to operate in East Street, Duke Street, Bartholomew Square and Market Street.
- 3.5 There are designated areas (zone B) where traders can request a permit for street trading. These are the residential areas outside the city centre.
- 3.6 There are areas throughout the city in which street trading is prohibited. These areas are generally main thoroughfares or areas in the city centre and run from the western boundary of Brighton & Hove in Vale Road, Portslade, along Portland Road, Sackville Road, Church Road, Western Road, Montpelier Road, Chatham Place, Viaduct Street, Upper Lewes Road, then southwards down Lewes Road, Albion Street and Grand Parade before heading East along Edward Street, Eastern Road and finishing in Arundel Road.
- 3.7 A meeting was held with Brighton & Hove Albion Football Club regarding street trading in the streets surrounding the new Community Stadium at Falmer. It was agreed that street trading will be prohibited within 1 mile of the Community Stadium, but excluding council owned public spaces, which would remain undesignated.
- 3.8 There have been requests for occasional markets from the business community in areas such as New Road, Jubilee Street and Black Lion Street.

Commentary on street trading policy

- 3.9 Historically, parks have remained undesignated to allow Leisure officers flexibility permitting outdoor events. The Seafront has been a consent street managed on a day to day basis by Seafront officers. Economic development members and officers are considering corporate market

policies and officers are working to ensure corporate market policies and street trading policy work in harmony.

- 3.10 For members assistance and as reported last time:-
Street trading is selling articles on the street, including exposing or offering articles for sale. It does not include provision of services, like henna tattooing, hair braiding, tarot reading etc.

The following activities are not subject to street trading controls:

- Pedlars, with a pedlar's certificate issued by the Police under the Pedlars Act 1871. These are itinerant traders.
- Markets covered by enactment or order (ancient – none in Brighton & Hove)
- Trunk road picnic areas (none in Brighton & Hove)
- News vending
- Trading at petrol filling station
- Trading on the street adjoining a shop as part of the business of the shop
- Selling things on a round like milk doorstep delivery
- Objects on a highway licensed under highways legislation, like tables and chairs or A boards
- Recreation or refreshment facilities licensed under highways legislation
- Charitable street collections which are subject to separate permissions

Controls only apply to the street or other public places.

It is proposed to continue to permit Upper Gardner Street, city centre stalls, various specialist or occasional markets and seasonal activities like portrait painting and hot chestnut selling but to allow markets in some newly pedestrianised street.

4. CONSULTATION:

- 4.1 A full and measured consultation will involve residents (including the citizens panel and via the council's website), residents associations and Community Associations including the North Laine Community Association, businesses (including individual street traders) in Brighton & Hove, Police and Highway Authority, Economic Development and Regeneration regarding the corporate markets policy, Tourism, Events Office, Seafront Office (including Seafront Trader Association), Trading Standards, City Clean, Legal, Finance, Ward Councillors, City Centre and Hove Business Fora, Trader Associations including North Laine Traders Association, Upper Gardener Street Traders Association Brighton & Hove Albion Football Club, Education Authority (Children's Trust) and the governing body and head teacher of Dorothy Stringer High School (copy attached at appendix 4).

4.2 The Education Authority commented as follows:

“You may be aware of a particular issue we have regarding street traders who operate outside schools, in particular some of our secondary schools. There is an increasing drive towards healthy eating and we have made considerable efforts to improve the school meal offer to encourage pupils to eat more healthily. In some instances this effort is being hampered because of the proximity of street traders running burger and ice cream vans very close to schools. This inevitably encourages pupils to leave the school campus and purchase less healthy food options than for lunch rather than the healthier options that are available in the school dining facilities. This has been raised in the past with officers in the licensing department to see if there is anything that can be done to restrict the ability of these traders from operating in such proximity to schools. Would it be possible as part of this review to consider introducing an ‘exclusion zone’ around the secondary schools in the city to help promote the benefits of healthy eating?”.

4.3 The regulation of street trading by consents covers infrequent, itinerant trading. There is no right of appeal against refusal and so it is vital that licensing authorities behave in a fair and reasonable manner. An established street trader would have a reasonable expectation that his/her consent would continue. Street trading consent regulations’ primary purpose is to prevent obstruction of the street or danger to persons using it, or nuisance or annoyance to people using the street or otherwise. The department promotes diet, health and local food issues including engagement with school children by its healthy awards scheme recently launched. Using street trading regulations to promote healthy food, although appealing, may not be proper use of the Regulatory controls.

4.4 Brighton and Hove Business Forum raised the matter of Jubilee Street but this is private land and therefore not subject to street trading controls.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

Revenue: Street Trading fees are set at a level that officers reasonably believe will cover the costs of administering the service. Licensing functions should neither be subsidised by the general fund nor raise revenue. Any costs associated with the Street Trading Policy will be met within existing Licensing budgets. Fees are set as part of the annual Council budget setting process.

Capital: There are no capital implications.

Finance Officer Consulted: Karen Brookshaw

Date: 23/02/2009

5.2 Legal Implications:

Section 3 of the Local Government (Miscellaneous Provisions) Act 1982 enables a district council in England and Wales to adopt a code for the regulation and control of street trading within its area.

Certain types of trading are excluded from the definition of street trading and these traders are not required to obtain a licence or consent to trade on a licence or a consent street. Similarly, a trader falling within the exclusions may trade in a street designated as a prohibited street.

Lawyer Consulted: Rebecca Sidell

Date: 06/04/09

5.3 Equalities Implications:

Diversity is valued and strong, safe communities are vital to future prosperity.

5.4 Sustainability Implications:

Some street trading supports recycling of goods. Farmers markets may reduce "food miles"

5.5 Crime & Disorder Implications:

Transparent, proportional street trading controls minimise danger of obstruction and nuisance. Street trading can be a source of stolen or counterfeit goods.

5.6 Risk and Opportunity Management Implications:

Street trading is a crucial business and employment opportunity and unnecessary regulation might lead to legal challenge.

5.7 Corporate / Citywide Implications:

Street trading represents some traditional, historic heritage of the city. Many characters and activities are interwoven into the city's history.

SUPPORTING DOCUMENTATION

Appendices

1. Street trading policy.
2. Local Government (Miscellaneous Provisions) Act 1982: Standard Conditions for Street Trading.
3. Clarification/Times of trading.
4. Letter from the Chair of Governors, Dorothy Stringer School.

Documents In Members' Rooms

None.

Background Documents

None.

APPENDIX 1

STREET TRADING POLICY

Consent Street	Purpose
Zone A	
City Centre Static consent sites (Dean Street, Marlborough Street, Castle Street, Crown Street, Western Road, Clarence Square)	General trading
Upper Gardner Street	Saturday market
Bartholomew Square, Dukes Street, Market Street	Hot chestnut and other traditional Christmas trading activity
Bartholomew Square, East Street, Dukes Street, Market Street	Street artists who produce portraits on the street
George Street Hove, Bartholomew Square, Black Lion Street, New Road and Jubilee Street	Occasional markets including ethnic, farmers and crafts etc.
Zone B	
Area outside city centre	Mobile and static traders, both as regular occupation and community events and markets

APPENDIX 2

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 : **STANDARD CONDITIONS FOR STREET TRADING**

- A. The consent may not be transferred and the Trader shall not permit any person to exercise the consent in his/her absence unless that person is employed by the consent holder and is at least seventeen years of age. The consent holder shall not employ more than two persons at any one time to exercise the consent in the absence of the holder and any contravention of the standard conditions forming part of the consent by these persons shall be deemed to have been committed by the consent holder.
- B. The Trader shall not stand or use any stall, barrow or basket or other receptacle or any mobile stall or vehicle in any street except such as are specified in the consent. Such stall, barrow etc. shall be removed from the specified site at the end of each trading day for storage at a location that is not on the public highway.
- C. The Trader shall not sell, expose or offer for sale any articles on days or at times other than those specified in the consent.
- D. The Trader shall not place, store or sell, expose or offer for sale any article outside the trading area marked out at the specified site (with the exception of Upper Gardner Street).
- E. The Trader shall at all times whilst trading provide a suitable receptacle for rubbish and litter and remove the rubbish and litter from the site at the end of each days trading. Such rubbish and litter is not to be placed in municipal litter bins. In Upper Gardner Street in lieu of this condition being complied with the Council will offer a refuse collection service upon payment of an appropriate fee.
- F. The Trader shall operate in a manner which causes no nuisance to the Council or to the general public.
- G. The Trader shall at all times whilst trading wear in a prominent position an identity badge provided by the Council. In addition, for town centre street trading consents, the consent, or copy thereof, shall be displayed on the stall/mobile vehicle.
- H. The Trader shall be insured against any claim in respect of third party liability whilst trading under a consent. No consent will be issued until a current policy has been produced to the Director of Environmental Services and the Trader shall produce evidence of such insurance to an authorised officer of the Council within seven days of the officer's request.
- I. Where there is a potential ignition source present including cooking facilities, a 2kg dry powder extinguisher which complies with the standards set out in BS 5423: 1987 must be provided.

- J. Where hot fat cooking facilities are provided a fire blanket should be provided and so positioned as to allow the blanket to be withdrawn easily and quickly.

APPENDIX 3

Clarification

Times of trading:

Upper Gardner Street	7am – 5pm
City Centre	8 am – 6pm
Zone B	No times set

- A waiting list will be administered where sites or types of street trading are oversubscribed.
- There will be no transfer of consents, no joint consents, preference will be given to local residents and consents will be issued not exceeding 12 months.
- Consent holders shall be fit and proper, the activity will cause no danger, obstruction, nuisance or annoyance to people in the vicinity and will leave 2m unobstructed footway.
- Preference will be given to existing traders at existing sites at renewal.
- Traders will ensure suitable refuse storage and remove refuse at the end of trading (with the exception of Upper Gardner Street).
- Traders will wear identity badges issued by the Council.
- Traders will take reasonable fire safety measures.
- Consent will only be issued following receipt of appropriate fee. Fees shall be payable quarterly.
- If the site is temporarily unavailable, it will be relocated to a nearby site or suspended and a proportion of the fee remitted.

APPENDIX 4

Reg Hook

33 Overhill Drive - Patcham,
Brighton BN1 8WF
01273 553745: Fax. 01273 883840
Mob: 07950 925758 Email: reghook@ntlworld.com

Ref: RH

25 March 2009

Mr. T. Nichols
Head of Environmental Health and Licensing
Brighton and Hove City Council
Bartholomew House
Bartholomew Square
Brighton
BN1 1JP

Dear Mr. Nichols

Re: Street Trader Licensing Policy Review

I write on behalf of the Governing Body and Head Teacher of Dorothy Stringer High School to contribute to the policy review of street trading licence conditions.

Our concern in this area stems from the fact that a street trader selling food such as burgers and chips from a van regularly targets our school. His name is Mr Coomber and he trades from a van labelled "Soft Ice Cream" registration number F409 DKL.

This trader used to sell food just inside the entrance to the school in Loder Road. When asked to leave school premises he simply re-located, and now parks at morning break, lunchtime and after school in Stringer Way at the rear of the school. This is a road owned by the Council separating the Stringer and Varndean campuses. It leads to various buildings including a nursery school and swimming pool and is constantly used by vehicles and pedestrians.

The **nuisance** caused to our school by this street trader is considerable:

1. Road safety

Naturally the safety of all the children at our school is our absolute priority. The van is parked on the road and restricts visibility. There is

no pavement. There is therefore an obvious and unacceptable risk of injury if a child going to buy food or drink from the van were to be hit by a car.

2. Unhealthy food

We are very proud of the fact that our school has Gold Status as a Healthy School. We have worked hard to improve the range and quality of healthy food in the canteen. Unfortunately, youngsters continue to be attracted by unhealthy food such as burgers and chips sold by this trader, who is plainly targeting a captive market. It would be far preferable for this type of food not to be available to children near school.

3. Litter

Inevitably this food is sold in wrappers which are unfortunately discarded causing a litter problem. Whilst the school tries to address this through educating children not to drop litter, the problem would not arise if the cause were removed.

4. Staffing implications

Because of the risk to children's safety, senior staff have no alternative but to supervise Stringer Way when the van is there. This is outside school premises and does not form part of their normal responsibilities. The governing body regards it as unreasonable for staff time and resources, already stretched to the maximum, to have to be deployed in this way.

Zones under Local Government (Miscellaneous Provisions) Act 1982: Street Trading

5. The information given on the Council website states that there are 2 zones in relation to street trading. Zone A excludes the city centre and Zone B defines other excluded areas in the rest of the city. We note that although "parks, gardens, recreation grounds, pleasure grounds and open spaces under the management and control of the Council" are excluded, there is no mention of schools or the areas around schools. Also the designated excluded streets are main thoroughfares with no mention of streets around schools (apart from some by coincidence, such as Elm Grove).
6. We understand from the Environment Department that it is not possible to attach individual terms and conditions to street trader licences, so that if a license is granted, the trader can effectively operate anywhere in Zone B apart from the designated excluded areas and roads.
7. We would therefore submit that as part of its policy review, the Council should extend the excluded Areas in Zone B specifically to exclude named streets around our school, and indeed, the other secondary

schools in the city, for the health, safety and protection of the children in our care.

8. In the case of Dorothy Stringer, we would wish to avoid the problem simply being displaced from Stringer Way to a nearby street (such as Draxmont Way). This would only increase the danger to our children and potentially cause a nuisance to our residential neighbours. Therefore, any extended exclusion zone would have to be meaningful in size. We would suggest an area of at least $\frac{1}{2}$ to 1 mile radius around our school.
9. Finally we wish to make clear that we do not object to Mr. Coomber or any street trader earning a living in this way, but we do object to the children in our school being targeted as his prime market, for all the reasons set out above. We do not argue for an unreasonable restriction in trade, but consider our submissions to be reasonable and proportionate.

Yours sincerely

Reg Hook
Chair of Governors
Dorothy Stringer School

c.c. Sarah Ranger

