

**Committee: Licensing Committee**

**Date: 28<sup>th</sup> June 2022**

Wards: All

**Subject: Report on the proposed draft Street Trading Policy under the London Local Authorities Act 1990 (as amended), following public consultation**

**Lead officer:** Chris Lee, Director of Environment and Regeneration.

**Lead member:** Councillor Edith Macauley, Chair of the Licensing Committee

**Forward Plan reference number:** N/A

**Contact Officer:** Caroline Sharkey, Licensing Manager, London Boroughs of Merton, Richmond upon Thames and Wandsworth Joint Regulatory Services Partnership and Guy Bishop, Principal Lawyer - Litigation and Licensing

**Recommendations:**

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- A. Consider the comments received during the public consultation process on the draft Street Trading Policy, which took place between 11<sup>th</sup> March and 31<sup>st</sup> May 2022;
  - B. Approve the Street Trading Policy attached at Appendix A of the report (subject to any amendments required by this Committee);
  - C. To recommend if for adoption by full Council on 14<sup>h</sup> September 2022.
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## **1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1 The draft Street Trading Policy was presented to the Licensing Committee on 24<sup>th</sup> February 2022, where it was approved for public consultation. At that meeting, officers were instructed to report to the next Licensing Committee meeting on the outcome of the consultation.
- 1.2 Before determining its Street Trading Policy, the Authority is required to consult with the existing licence holders, the public, responsible authorities, persons who represent the interests of street traders and those who represent the interests of persons who are likely to be affected by street trading activities. The consultation took place between 11<sup>th</sup> March and 31<sup>st</sup> May 2022.

- 1.3 The comments received from the consultation have been collated and responded to as detailed in appendix B and C of this report. Online responses are produced in appendix B and direct responses in appendix C. Once approved the final Street Trading Policy will be put to full Council on the 14<sup>th</sup> September 2022 for adoption. If adopted the Street Trading Policy will be reviewed in future at regular intervals or when the Government changes the law. The maximum period recommended to review the Street Trading policy is every 5 years in line with other licensing policies.
- 1.4 The purpose of the proposed Street Trading policy is to provide a framework for the Council to administer and regulate street trading ensuring a consistent approach is taken. It also serves as a reference for licence holders, enforcement officers, relevant stakeholders and the Licensing Committee as to the Councils intended vision and approach to street trading activities in the London Borough of Merton. It will raise standards and bring consistency; all applications will still be considered individually on their own merits; but this will be done in accordance with the policy. It will also strengthen the decision making and support the Council's position should issues arise.

## **2. DETAILS**

- 2.1 Street trading activities are regulated by Part 3 of the London Local Authorities Act 1990 (as amended) which provides Local Authorities in London with an authorisation process to control the following activities:
- Street Trading Pitches
  - Tables and Chairs on the Highway
  - Market stall licences
  - Shop Front Displays
- 2.2 Street Trading is a function of the Council. Under the Act the Council is responsible for granting, renewing, varying or revoking all street trading licences listed above. The Act allows the Council to make regulations prescribing the terms, conditions and restrictions on/or subject to which licences can be granted, varied, renewed or transferred.
- 2.3 Street Trading is often carried out on the public highway and the Council therefore has a duty to ensure public safety is protected from street trading activities. Street Trading is normally a commercial enterprise and those carrying it out ought to comply with the same rules that regulate other trading, including fair trading, minimising impact of their activities on the environment and the wider community.
- 2.4 Street Trading can also play a part in the cultural identity of the borough and contribute to the local economy. It attracts visitors and can make for vibrant towns and communities, while at the same time providing employment and opportunities for small enterprise. In regulating street trading activities, the Council acknowledges that a balance must be struck between the legitimate objectives of applicants and members of the public living, working or engaged in normal activity in the area concerned. Ensuring the public highway is not cluttered and minimum standards are maintained

- 2.5 At the Licensing Committee meeting on 24<sup>th</sup> February 2022, members were advised that a review of the Council's approach to Street Trading is considered long overdue. The current regulations which prescribe the standard conditions applicable to street trading licences in Merton were last adopted in March 2009. The Council has no formal detailed policy in relation to street trading. The decisions are made in line with best practice and the regulations.
- 2.6 The current system is considered to be out of date, restrictive for entrepreneurial business and not compatible with the modern trend in café culture. The current system does not take into consideration new ways of trading and the evolution of the hospitality sector with the implications of COVID. There is a need to meet local needs for service users such as alterations to working practices, utilisation of public realm and community-led markets.
- 2.7 The lack of a sound street trading policy or the adoption of an unsound policy may result in poor decisions being taken and could cause difficulty to businesses and residents. This may leave the authority open to challenge by way of Judicial Review in relation to officer decisions and/or appeal of a Licensing Committee decision to the Magistrates' Court. This could adversely affect the Council's reputation.

### **3. CONSULTATION**

- 3.1 The Licensing Committee approved the draft Street Trading Policy on 24<sup>th</sup> February 2022 for the purposes of public consultation.
- 3.1 Public consultation took place between 11<sup>th</sup> March and 31<sup>st</sup> May 2022.
- 3.2 The Licensing Authority consulted with the following key stakeholders and organisations:
- Existing Street Trading Licence Holders
  - Ward Councillors
  - Metropolitan Police
  - Highway Authority
  - Planning Authority
  - The Fire and Rescue Authority.
  - Persons/bodies representative of Street Trading Licence Holders
  - Environmental Health Section (Food and Safety Team)
  - Environmental Health Section (Noise and Nuisance Team)
  - Transport for London
  - Environmental Health (Air Pollution Team)
  - The Area Forums
  - Local business organisations
  - Town Centre Management/BID team
- 3.3 The draft policy was also posted on the Council's web site. All consultees were encouraged to respond by completing the on-line survey, e-mail at: [licensing@merton.gov.uk](mailto:licensing@merton.gov.uk), and by post.

- 3.4 During the consultation period, the Licensing Authority received eight responses to the consultation through the on-line survey. In addition, three responses were received directly.
- 3.5 A summary of the on-line responses, including free text comments, can be seen at Appendix B of the report. A précis of the comments received directly is attached as Appendix C to this report. In both cases a comment has been made, where appropriate, indicating whether amendments have been proposed to the policy and, if not, reasons given.
- 3.6 The majority of the people responding to the consultation were supportive of the new Street Trading Policy.
- 3.7 Of those who responded, a number raised concerns about street trading locations in relation to potential obstruction of the highway and the space left for pedestrians/disabled persons to safely pass. The proposed minimum space recommended in the policy is 2 metres clearance. These sizes reflect the requirements of the legislation to not cause undue interference or inconvenience to persons or vehicular traffic using the street. It should be noted that central government has recommended a minimum acceptable distance of 1500mm clear space between the obstacle and the edge of the footway.
- 3.8 The placing of Advertisement boards is regulated by the Council's Planning and Highways Sections. However, if complaints are received regarding obstruction of the highway due to street trading activities, licensing enforcement officers work in collaboration with colleagues from the Planning and Highways Sections to carry out the appropriate enforcement action.
- 3.9 Some of the respondents commented on the Council's approach to climate change and requested measures to be included in the Street Trading policy. Paragraph 7.6 of the policy proposes new measures for improving Air Quality as part of the Council's climate change strategy and action plan. The majority of designated sites for street traders in Merton use electricity bollards supplied by the Council when carrying out street trading activities.
- 3.10 It is not proposed to alter the draft Street Policy to any great extent.
- 3.11 A copy of the proposed final Street Trading Policy is attached at Appendix A.

#### **4 Timetable.**

- 6.1 Following this meeting, the final Street Trading Policy will be presented to Full Council meeting for adoption on the 14<sup>th</sup> September 2022. The Policy will come into effect on the 1<sup>st</sup> January 2023.

#### **7. Financial, resource and property implications.**

- 7.1 The costs will be met from within existing resources. The proposed Street Trading policy will facilitate more effective financial and administrative procedure

## **8. Legal and statutory implications.**

- 8.1 Sections 21 - 41 of The London Local Authorities Act 1990 (as amended) regulates trading on the street. Under section 27(3) a Borough Council can make regulations prescribing standard conditions which are attached to a street trading Licence or can be added to a temporary street trading Licence. The legislation states in section 27(4) that before the regulations are made the Borough Council has to consult on them. Section 27(4), (5) and (6) prescribes how the consultation process is to be carried out, whilst requiring the conditions to be reasonable. Section 23 provides that standard conditions apply to any person authorised by a street trading licence or a temporary licence

## **9. Human rights, equalities and community cohesion implications.**

- 9.1 These are statutory functions and are applied globally.
- 9.2 It is important that the Council carefully considers all the representations made during the consultation process.

## **10. Crime and Disorder Implications.**

- 10.1 None for the purposes of this report

## **11. Risk management and health and safety implications.**

- 11.1 Failure to discharge its duties under the Act and implement a Street Trading Policy/regulations to control street trading could damage the Council's reputation and expose it to the risk of judicial review.

## **12. Appendices – the following documents are to be published with this report and form part of the report.**

- 12.1 Appendix "A" Final Street Trading Policy following consultation.
- 12.2 Appendix "B" Responses to the on-line consultation
- 12.3 Appendix "C" Precis of the comments received to the consultation sent in directly to the Council.

## **13. Background Papers – the following documents have been relied on in drawing up this report but do not form part of the report.**

- 13.1 London Authorities Act 1990 (As amended)  
<https://www.legislation.gov.uk/ukla/1990/7/contents/enacted>  
<https://publications.parliament.uk/pa/ld200405/ldprbill/003/05003--r.htm>
- 13.2 Consultation responses – directly received
- 13.3 On-line consultation responses

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