



Derby City Council

# **STREET TRADING POLICY 2024**

September 2024

## 1 DEFINITION OF STREET TRADING

- 1.1 Street Trading is defined in paragraph 1 of Schedule 4 of the Act as: “the selling or exposing or offering for sale of any article (including a living thing) in a street”. The Act defines the term “street” as including: “any road, footway, beach or other area to which the public have access without payment”; and a service area as defined in section 329 of the Highways Act 1980”.
- 1.2 Any part of a street is a “street” for the purposes of the Act. Streets located on private land are included within the scope of this policy
- 1.3 The Act at paragraph 1(2) of Schedule 4 states that the following types of trade are not street trading:
  - (a) a pedlar trading under the authority of a pedlar’s certificate granted under the Pedlar’s’ Act 1871;
  - (b) anything done in a market or fair, the right to hold which was acquired by virtue of a grant, enactment or order;
  - (c) trading in a trunk road picnic area provided by the Secretary of State under section 112 of the Highways Act 1980;
  - (d) trading as a news vendor;
  - (e) trading carried on at premises used as a petrol filling station;
  - (f) trading carried on at premises used as a shop or in a street adjoining a shop where the trading carried on is part of the business of the shop;
  - (g) selling things, or offering or exposing them for sale, as a roundsman.
  - (h) If you have a unit, van, trailer or similar for the purposes of selling pre-ordered items and the items have been paid for in advance prior to delivery or collection, then there is no requirement to apply for a street trading consent.
- 1.4 A commercial trader at a car boot sale is required to apply for street trading consent.

## 2. INTRODUCTION

2.1 Local Authorities have a legal discretion to regulate street trading in their area. If they exercise their discretion they can apply controls across the whole of their administrative boundary or just parts of it. On 18 September 1984 Derby City Council agreed to regulate street trading in certain parts of the city, predominantly in the central area. On 22 September 2021 Derby City Council readopted regulation to manage the areas as defined in this policy. The Policy will supersede, and take precedent over, any aforementioned policies.

2.2 A definition of the different classifications is set out below:-

### 2.3 **Prohibited Streets**

If a street is designated as a “**prohibited street**” then a criminal offence is committed by any person engaging in street trading in that street. There could be a number of reasons for wishing to designate a street as prohibited. For example the street may not be wide enough to facilitate a trader or the council may wish to restrict trading at a particular location. It may be considered that the prohibited status might be the most appropriate designation for the majority of residential streets in the city however this would create difficulties as such a restriction would prevent, for example, ice cream vans from carrying out their business. Please note there are currently no prohibited streets within the Council area.

### 2.4 **Licence Streets**

If a street is designated as a “**licence street**” then street trading is prohibited without a licence granted by the Council. Please note there are currently no licence streets within the Council area

### 2.5 **Consent Streets**

If a street is designated as a “**consent street**” then street trading without a consent is a criminal offence. The council is of course always bound to act reasonably and consistent with its general obligations (e.g. those under the Human Rights Act), but subject to that the council enjoys a very wide discretion with regard to the granting or refusal of street trading consents and does not have to rely upon specific

statutory grounds in order to refuse an application for grant or renewal of a consent. Please note that there are only consent streets within the Council area.

- 2.6 A street trading consent cannot be granted for a period of time exceeding twelve months and can be revoked at any time.
- 2.7 When granting or renewing a consent the council may attach any reasonable condition, furthermore the council can at any time vary the conditions attached to a consent. Any such variations will be notified in writing to the named person on the application form for the consent and will take effect immediately or on the date of the notification letter. Streets located on private land are included within the scope of this policy.
- 2.8 There is no statutory right of appeal against any council decision made in respect of a street trading consent. A person aggrieved by a decision of the council may make an application to the High Court for Judicial Review of the decision.

### **3 PURPOSE**

3.1 The purpose of this street trading policy is to provide a decision making framework for the consideration of applications for street trading consents and to create a street trading environment which is sensitive to the needs of the public, provides diversity and consumer choice, and enhances the character, ambience and safety of local environments. Street trading can be a valuable tool to aid the regeneration of Derby's retail centres. The council's ability to regulate street trading is set out in Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 referred to in this policy as "the Act". This policy facilitates the administration of applications for street trading consents. Central to the council's policy are a number of objectives which are set out below:-

#### **3.2 Public Safety**

The proposed location of the activity should not present a significant risk to the public in terms of highway safety and obstruction. This would include the consideration of factors

such as: - interference with sight lines for road users and access to pedestrian crossings.

### **3.3 Commercial Need**

Consideration will be given to the number of other traders in the vicinity of the application site.

### **3.4 Prevention of Crime and Disorder**

The proposed activity should not present a risk to public order. This is likely to be more of an issue in respect of applicants wishing to trade at later hours.

### **3.5 Prevention of Public Nuisance**

Consideration will be given to measures taken to reduce the risk of nuisance to the public from noise, refuse, vermin, fumes and odour.

Such considerations may include (but are not limited to) the following:

- a) the proximity of nearby sensitive uses;
- b) the nature and scale of the operations in terms of their potential to create high levels of noise, odour or other factors which could impact on the nearby sensitive uses;
- c) the proposed operating hours;
- d) seasonal/daily variations;
- e) the potential for a mains electricity connection in order to avoid the need for the use of a diesel generator;
- f) waste storage and collection provisions; and
- g) the local context including existing background conditions within the locality.

### **3.6 Sustainability and Product Type**

The applicant should set out measures to reduce the environmental impact of the proposed activity. Typically this could include the use of recyclable products and energy efficient processes. Consideration will also be given to the type of products sold and the suitability of the products at the location requested.

- 3.7 In addition to these policy objectives the council will also consider:

### 3.8 **Suitability of Trading Unit**

The vehicle, trailer or stall to be used will be of a high quality design/build and will add to the quality of the street scene. The unit will be inspected by an authorised officer of Derby City Council prior to any consent being issued. The unit shall comply in all respects with any legal requirement relating to the trading activity proposed and in particular with the following legislation (and any subsequent revisions):

- (a) Food Safety Act 1990
- (b) Food and Hygiene (England) Regulations 2013 as amended
- (c) Health and Safety at Work etc Act 1974 and any regulations made under this Act.
- (d) Environmental Protection Act 1990
- (e) Licensing Act 2003
- (f) Regulatory Reform (Fire Safety) Order 2005

### 3.9 **Suitability of Applicant**

When determining an application for the grant or renewal of a street trading consent the council will consider all relevant information relating to the suitability of the applicant to hold such a permission including:

- (a) whether the applicant has been convicted of any relevant offence;

*(We will ask for a DBS disclosure is required to be submitted with each application. Any convictions or proven criminal behaviour will be assessed against relevant policies.)*

- (b) persistent refusal or neglect in paying fees due to the council for a street trading consent or for any other charges due for services rendered by the council to the applicant in his capacity as the holder of a street trading consent. Examples of such services include collection of refuse and cleansing of streets.
- (c) previous failures of the applicant, without reasonable excuse, to make use, to a reasonable extent, of a previous street trading consent or licence.
- (d) previous history of non-compliance with conditions

## **4 SUBMITTING AN APPLICATION (New/Renewal)**

- 4.1 All applicants must be 17 years of age or above
- 4.2 Application forms are available on the Council's website [www.derby.gov.uk](http://www.derby.gov.uk). The following will be required to be submitted with the application:-
- (a) A completed and signed application form.
  - (b) The application fee.
  - (c) Where the proposed activity will take place at a fixed position a map should be submitted clearly identifying the proposed location by marking the site boundary with a red line.
  - (d) Three colour photographs of the trading unit illustrating different elevations of the unit.
  - (e) A copy of the Public Liability Insurance Certificate (£5m minimum - £10m Public & Property Liability for parks)
  - (f) Evidence of permission from the landowner
  - (g) Basic Disclosure & Barring Service Certificate (must be less than 3 month old)
  - (h) Food Hygiene Certificate (for food led traders)
  - (i) Catering vehicles will be required to show valid and current electrical installation and or a gas certificate
  - (j) One passport sized photograph for each employee
  - (k) Proof of right to work for applicant only

## **5. WHO WILL THE COUNCIL CONSULT?**

- 5.1 Before any consent is granted the Council will normally consult with the following agencies or persons, as well as advertising the application online. A period of twenty eight (28) days will be allowed for comments to be received.
- (a) Derbyshire Constabulary
  - (b) Area Planning (Derby City Council)
  - (c) Highways Department (Derby City Council)
  - (d) Environmental Protection (Derby City Council)
  - (e) Food Safety (Derby City Council)
  - (f) Business Improvement Districts
  - (g) Ward Councillors
  - (h) Outdoor Events Team (Derby City Council)
  - (i) Traffic Management (Derby City Council)

- (j) Derbyshire Fire Service
- (k) Climate & Environment (Derby City Council)

5.2 The applicant shall also be required to display a notice at the site(s) or on a mobile trailer/vehicle for a period of 28 days.

## **6 HOW THE COUNCIL MAKES ITS DECISION**

6.1 The Licensing Service Manager may determine all uncontested applications for street trading consents under delegated powers. Incomplete applications will be rejected.

6.2 Where the application is to go before the Sub Committee, the applicant, who will be expected to attend, will be advised in writing of the date, time and place when the application will be heard. The applicant can be represented by a solicitor or supported by a colleague and translation provision will be provided if requested.

6.3 A report will be prepared to be presented to the Licensing Sub Committee regarding the application. The report will be made available to the applicant at least five days before the date of the meeting. When considering the application, the Sub Committee will ensure that all persons receive a fair hearing.

6.4 Following consideration of an application the Licensing Sub Committee may take one or more of the following decisions:

- a) Grant the consent as applied for
- b) Grant the consent subject to modification, including but not limited to days, times, conditions, duration)
- c) Refuse to grant the consent
- d) Revoke an existing consent

## **7 DURATION OF CONSENTS AND FEES**

7.1 Street trading consents will normally be issued for one year period effective from the date of grant but may be issued for a shorter period where appropriate.

7.2 All fees must be paid in full in advance.

7.3 Fees are reviewed regularly and are calculated on a cost recovery basis.



## **8 CONDITIONS AND ENFORCEMENT**

- 8.1 Standard conditions (attached at Appendix A) will be attached to every consent detailing the holder's responsibility to maintain public safety, prevent nuisance and generally preserve the amenity of the locality.
- 8.2 Additional conditions may also be attached limiting the days and the hours when street trading is permitted, the goods which may be sold, the size of the trading pitch or any other relevant matter.
- 8.3 Failure to comply with conditions may lead to revocation or non-renewal of consent.
- 8.4 Persons engaging in street trading (as defined in the Act) without a consent or who fail to comply with the conditions will be liable to prosecution under paragraph 10 of Schedule 4 of the Act.

## **9 REVIEW OF POLICY**

- 9.1 This policy will be reviewed every three years or more frequently if appropriate

## **APPENDIX A**

### **STANDARD CONDITIONS THAT WILL BE ATTACHED TO STREET TRADING CONSENTS**

1. The consent holder shall only trade on the days and between the times stated on the consent.
2. The consent holder shall only trade in the description of articles stated on the consent.
3. The consent holder shall not carry on business on any street so as to cause obstruction or cause danger to people using the street.
4. The consent holder shall not carry on business from any vehicle or erect or place any stall or other structure in any street except in the area mentioned in the consent.
5. The consent holder shall not sell, offer or expose for sale any goods or articles other than those described within the principle terms of this consent.
6. The consent holder shall on all occasions, when carrying on business, be strictly sober, and conduct him/herself in a proper, civil and courteous manner, and he/she shall not carry on his/her business in such a way as to cause annoyance to the occupier or person in charge of any shop, business, resident, or any person using the street.
7. The consent holder shall at all times conduct his/her business and position any vehicle used by him/her in connection with his/her business in such a manner that no danger is likely to arise to persons trading or intending to trade.
8. The consent holder shall at all times conduct his/her business in a clean and tidy manner.
9. The consent holder shall ensure that a copy of the consent is clearly visible to the public.
10. The consent holder shall not permit any person to assist him/her in his/her trading unless the details of that person have been supplied to the Licensing Authority. Any such person shall be issued with an identification badge by the Licensing Authority.
11. If, during the currency of any consent any material change occurs in the facts of which particulars and information were contained in, or given along with, the application for the consent, the holder of the consent shall report such changes to the Licensing Authority within 72 hours of that change.
12. Any motor vehicle used for the purpose of street trading shall at all times be in a roadworthy condition and have the relevant documents i.e insurance, tax and MOT to make the use of that vehicle on a road legal. These

documents will be produced by the consent holder to any police officer or authorised officer of the Council.

13. Neither the consent holder nor any assistant shall display merchandise which is likely to cause offence or distress to any other person or which would be deemed an offence under any other legislation.

14. A consent holder selling food shall at all times comply with any food hygiene regulations in force at that time, and when required by the Licensing Authority, shall produce appropriate food handling certificates.

15. The Council reserves the right to alter or amend these conditions at any time.

16. The subletting of any consent is prohibited.

17. The consent holder shall be responsible for the temporary storage of refuse, liquid and other material accumulated or created whilst trading and its subsequent removal from the site. The removal and disposal must be to the satisfaction of the council.

- (a) The consent holder will make every effort to recycle waste wherever possible and have contracts in place with a waste disposal operator, if applicable.
- (b) The consent holder will be responsible for providing a litter receptacle for use by customers on or near the trading site, if applicable
- (c) The consent holder will be responsible for litter-picking of their trading site, including cigarette ends, if applicable

18. The consent holder shall not cause any nuisance or annoyance to persons using the street.

19. The consent holder, if intending to sell food from a stationery vehicle/stall shall operate from a purpose made vehicle/stall constructed and managed so as to comply with the relevant hygiene regulations currently in force within the provisions of the Food Safety Act 1990, and any subsequent changes to those regulations.

**N.B This consent is issued without prejudice to any other statute, by-law or regulation. This consent does NOT over-ride any regulations regarding parking, food hygiene, obstruction, etc**