

Date: 24th February 2022

Wards: All

Subject: London Local Authorities Act 1990 (as amended), Draft Street Trading Policy for London Borough of Merton

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

Lead member: Councillor Nick Draper, Chair of the Licensing Committee

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. The Licensing Committee approves for consultation the draft recommended Street Trading Policy as laid out in **appendix A** and that Officers be instructed to report to the next Licensing Committee meeting on the outcome of the consultation.
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1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 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
- 1.2 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.
- 1.3 The regulations made by London Borough of Merton pursuant to Section 27(3) of the London Local Authorities Act 1990, were adopted in March 2009. These regulations prescribe standard conditions applicable to street trading licences. These are detailed in **appendix B**.

- 1.4 A review of the Council's approach to Street Trading is considered long overdue, with the current system inconsistent with modern street trading practices. The onset of the global COVID-19 pandemic and alterations to the licensing systems due to COVID, has seen many businesses and customers embrace the café culture in a rapidly evolving environment. It is important that the current system is reviewed and modernised to meet the local needs of residents, visitors to the borough and street traders.
- 1.5 In addition to the above, the Regulatory Services Partnership provides a street trading licensing service for Merton and Richmond upon Thames. A review of the street trading licensing processes has been undertaken with the intention that Street Trading Policies be implemented, which provides a single system of licensing across the two boroughs.
- 1.6 This report sets out the detailed draft policy on the Council's approach to the administration of Street Trading activities under the London Authorities Act 1990 (As amended), subject to consultation with existing licence holders.
- 1.7 The purpose of the proposed 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 under the London Local Authorities Act 1990 (as amended) is defined as:
- the selling or the exposure or offer for sale of any article (including a living thing); and
 - the purchasing of or offering to purchase any ticket; and
 - the supplying of or offering to supply any service, in a street for gain or reward (whether or not the gain or reward accrues to the person actually carrying out the trading);
- 2.2 For the purpose of this legislation 'street' is defined and includes:
- (i) any road or footway;
 - (ii) any other area, not being within permanently enclosed premises, within 7 metres of any road or footway, to which the public have access without payment;
 - (iii) any part of such road, footway or area;
 - (iv) any part of any housing development provided or maintained by a local authority under Part II of the Housing Act 1985.
- 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.

Current Street Trading licensing process

- 2.5 The London Borough of Merton designate parts of the public highway for the purpose of street trading rather than a whole street. These designations take the form of markets, individual stalls, tables and chairs outside of restaurants and shop-front displays.
- 2.6 The street trading licence applications are currently issued in accordance with regulations made by London Borough of Merton pursuant to Section 27(3) of the London Local Authorities Act 1990. These are detailed in **appendix B**.
- 2.7 There are currently approximately 898 temporary street trading licences, 32 permanent pitches and 32 Shop Front Displays in the borough. Many street trading which includes the provision of tables and chairs are currently being administered under the Business and Planning Act 2020 as Pavement Licences. Pavement licences are only available to hospitality premises. The fixed fee of £100 together with the existing licensing regime for pavement licences is presently under review by the Government. We will accommodate any changes within our procedures going forward. There are currently 34 active pavement licences in the borough.
- 2.8 The main street trading hubs in the borough are located in Mitcham, Wimbledon Village and Wimbledon Town Centre. This includes shopfront licences, designates street trading sites for street and markets. There are also designated sites which provide catering vehicles, with the majority of these located in industrial areas such as Weir Road, Willow Lane and Lombard Road.
- 2.9 Prospective traders are also able to apply for a location they find themselves. Applicants are asked to contact licensing officers to discuss their application so that pre-application advice can be given in terms of pre-assessment of the site before a full application is submitted.

3.0 Review of Street Trading Licensing Process

- 3.1 The current approach to Street Trading in Merton and has not been formally reviewed since March 2009 and the Council has no formal detailed policy in relation to street trading. The decisions are made in line with best practice and the regulations.
- 3.2 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.
- 3.3 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 Councils reputation.

- 3.4 In putting together this draft policy, officers have reviewed how the current street trading licensing service is provided and considered how the service could be improved, to be more consistent, raise standards and meet local needs. The proposed policy does not only enhance current practice, but also recommends certain changes to how the service is regulated and can be improved.
- 3.5 The draft proposed policy reflects on current operational requirements and service improvements. In summary, these relate to:-
- Types of licences to be considered
 - Revised application process
 - Designation of licence streets
 - Duration of licences
 - Terms for Market Trading Operators
 - Special Provisions for Community/Charity Trading Licences
 - Exemptions
 - Street Trading fees and waivers
 - Assessing consultation feedback and objections received
 - Improving Air Quality
 - Decision making
 - Licensing hearings
 - New terms and conditions for street trading licences
 - Special Provisions for certain geographical locations
 - Delineation of trading area
 - Council's enforcement approach
 - Succession
 - Commodities List (Approved and banned)

4. CONSULTATION

- 4.1 If approved by the Committee, the draft street trading policy will be submitted for consultation with all existing licensed traders and relevant key stakeholders during the next 12 weeks, in accordance with best practice.
- 4.2 It is proposed to consult with the following key stakeholders and organisations:
- Ward Councillors
 - Metropolitan Police
 - Highway Authority
 - Planning Authority
 - The Fire and Rescue Authority;
 - Existing Street Trading Licence Holders
 - 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

- 4.3 The draft policy will be posted on the Council's web site and consultees will be encouraged to respond in a variety of formats.
- 4.4 All replies will be taken into account and the policy, revised as necessary by the Licensing Manager and will be submitted to this Committee for final approval at its next meeting. The Committee will then be asked to recommend that the Street Trading Policy be adopted at a meeting of the full Council.
- 4.5 The policy may be changed at any time after adoption (after further consultation), and can be regularly reviewed.

5 Timetable.

- 5.1 Following the consultation a further report will be brought to the Licensing Committee on the 28th June 2022. The final draft Street Trading Policy will be presented to Full Council meeting for adoption towards the end of this year. The new Street Trading Policy will then take effect 1st January 2023.

6. Financial, resource and property implications.

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

7. Legal and statutory implications.

- 7.1 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.

8. Human rights, equalities and community cohesion implications.

- 8.1 It is important that the Council carefully considers all the representations made during the consultation process.
- 8.2 The proposed Street Trading Policy will provide a framework for traders and council officers to work together facilitating a more consistent and presentable appearance for street trading across the borough whilst improving service delivery for the community.

9. Crime and Disorder Implications.

9.1 None for the purposes of this report.

10. Risk management and health and safety implications.

10.1 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

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

11.1 Appendix “A” Draft Street Trading Policy under the London Authorities Act 1990 (as amended).

11.2 Appendix “B” - Existing regulations made by the London Borough of Merton Pursuant to Section 27 (3) of the London Local Authorities Act 1990, prescribing standard conditions applicable to Street Trading Licences.

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

12.1 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>