
STREET TRADING POLICY

Local Government (Miscellaneous Provisions) Act 1982

1. On 13 February 2007 Gateshead Council's Cabinet approved the implementation of a Borough-wide control of street trading through the adoption of the street trading code under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, and designation of certain streets as 'Consent Streets', in which consent holders may trade in accordance with the provisions of their Consent.
2. In order to implement this scheme of control, the Council resolved on 18 September 2008 to designate certain streets as 'Prohibited Streets' and 'Consent Streets', to which the street trading code will apply.
3. This policy will be applied to street trading activities within the Borough. The purpose of the policy is to ensure that each application and consent is dealt with in a consistent, fair and proportionate way. Each application, and the conduct of each Consent once granted, shall be considered on its own merits. The Council shall have regard to the individual circumstances as necessary for the proper exercise of its functions.
4. The Sustainable Community Strategy - Vision 2030 sets out the vision for Gateshead that is shared by the Council and its partners: *'Local people realising their full potential, enjoying the best quality of life in a healthy, equal, safe, prosperous and sustainable Gateshead'*. The Council's Corporate Plan sets out how the Council will help to realise this vision and has identified six Corporate Priorities. In particular, the Street Trading Policy supports the Corporate Priorities for Building Stronger Communities and Improving Accessibility, Connectivity and Economic Prosperity.

Purpose of regulation of street trading

5. The Council recognises the valuable contribution that street trading can make to the local culture and economy, and the service that street traders provide to residents of the Borough, some of whom are unable to travel to centralised shopping centres and districts. Street trading can provide people with a flexible way of working, to meet the demands of the public where and when that demand arises. Street trading can also add to the richness of Gateshead's vibrant street environment.

6. However, issues arise where vendors do not pay due regard to their siting, and create an obstruction in the street, or make it dangerous for people to move around them. Street trading can also result in unnecessary littering and other nuisance to persons in the vicinity.
7. Also, whilst not seeking to restrict competition between traders in fixed premises and street traders, or between various street traders, the Council acknowledges that excessive numbers of street traders in any particular area can lead to unnecessary risks to public safety, in particular in relation to traffic and parking.
8. The regulation that the Council seeks to implement is intended to achieve these aims in a consistent, fair and proportionate way.

Prohibited streets

9. The streets in Gateshead Town Centre are prohibited areas which makes street trading in these parts illegal. A list of these streets is attached at Appendix A to this policy.

Consent streets

10. Those streets in the Borough that are not Prohibited Streets are Consent Streets. A Consent is needed in order to lawfully trade in a Consent Street.

Consent applications – procedure

11. Persons seeking to obtain or renew a Consent from Gateshead Council in order to trade in a Consent Street must make a written application, using the prescribed application form which can be obtained from the Council in person or on request from the Licensing Section (contact details are set out below), or from the Council's website.
12. The duly completed and signed application form must be accompanied by the following –
 - (a) The specified fee (details of which can be obtained from the Licensing Section or from the Council's website), which will be amended from time to time
 - (b) Location plan setting out any fixed location, or if mobile, a list of the streets where the proposed trading is to take place – the plan should meet the requirements set out in Appendix B(i)
 - (c) Three photographs of the van, cart, barrow, other vehicle or stall from which the trading is intended to take place – the photographs should meet the requirements set out in Appendix B(ii)
 - (d) Two passport sized photographs, one endorsed, of the applicant and any proposed assistants set out in the application form.

13. Applications must be received by the Council's Licensing and Enforcement Officer not less than twenty eight days prior to the proposed date of the Consent coming into effect.
14. The Licensing Officer may refuse to accept any application that is not made in accordance with the above procedure or does not take into account the site assessment factors in Appendix C.
15. The process by which the application will be determined is as follows –
 - (a) The application will be forwarded to the Consultees set out at Appendix D to this policy
 - (b) [For static sites] A site assessment may be undertaken if necessary and a recommendation will be made to the Licensing Officer, taking into account the factors set out at Appendix C to this policy
 - (c) The application will be determined by the Licensing Officer having due regard to the consultation responses, which should take into account the criteria set out at Appendix E to this policy
 - (d) If the application is not opposed by any of the Consultees, then the Licensing Officer will issue a Consent to the applicant. The Consent will include the Standard Conditions and the Consent Holder will be required not to breach those conditions.
 - (e) The Consent will be issued to the applicant within five working days of the application being duly determined.

Consultee responses

16. The Licensing Officer shall send a copy of the application form and accompanying documentation to each of the Consultees within three working days of receipt.
17. The Consultees should provide any representations in respect of the application by written response to the Licensing Officer within five working days of receipt of the application.
18. This is to ensure that there is sufficient time available to arrange any hearing necessary as a result of the responses.
19. If the Licensing Officer receives any responses from Consultees opposing the grant of the Consent, then the Licensing Officer shall forward copies of these documents to the applicant.

Representation to the Regulatory Committee

20. If the application is opposed by any of the Consultees, the applicant will be invited to respond in writing and/or at a hearing before the Regulatory Committee as appropriate.
21. The Regulatory Committee may grant a Consent and impose tailored conditions as necessary, or refuse to grant a Consent. This is set out in greater detail below.
22. The applicant will be notified of the Committee's decision within five working days of the application being duly determined.

Insurance

23. If your application for a Consent is granted you will be required to provide the Licensing Officer with evidence of appropriate public and product liability insurance to cover a minimum value of £5,000,000 before your consent will be issued.

Review of Consent

24. Consultees may seek a review of a Consent if they believe that the current operation under the Consent is not in accordance with the criteria set out in Appendix E of this policy.
25. Where an application to review a Consent is received by the Licensing Officer, it should be made in writing, and accompanied by any relevant supporting information, documentation, etc. If, in the view of the Licensing Officer, the application is relevant, and is not frivolous, vexatious or repetitive, a hearing before the Regulatory Committee will be held. Where appropriate the parties may be able to hold discussions with a view to reaching an agreement on steps that can be taken to improve the position.
26. When a hearing before the Regulatory Committee takes place, the Committee will consider all information presented to it, and decide what course of action is appropriate. There are a range of responses that are open to the Committee on a review application. The Committee may –
 - (a) Take no further action
 - (b) Give the Consent Holder a written warning
 - (c) Impose additional conditions on the Consent
 - (d) Revoke the Consent.

27. The review process is intended to enable the Council to take appropriate timely measures to ensure that Consents issued do not infringe, or continue to infringe, the criteria set out in Appendix E to this policy. A review can take place even if it would be disproportionate to revoke the Consent, as some lesser measure can be taken, as above.
28. Also, because the review process is intended to address the future conduct of the licence holder, a review can take place regardless of any other measures that may be open.

What happens if an application is refused or Consent revoked?

29. If a person applies for a Consent but the application is refused, or a person who has been granted a Consent subsequently has the Consent revoked, that person may not trade in Consent Streets. The Local Government (Miscellaneous Provisions) Act 1982 does not permit aggrieved persons to appeal the Council's decision in this respect, however it may be possible to bring an application for Judicial Review of the Council's decision. Persons wishing to do so should seek independent legal advice as soon as possible.

Surrender of Consent

30. Where a Consent Holder no longer wishes to hold the Consent, or does not intend to operate their Consent for the full duration of the period set out in the Consent, they should surrender the Consent. To do so, the Consent Holder should return the original Consent and any copies to the Licensing Officer, at the address stated below.
31. If a Consent Holder fails to exercise the Consent for a duration of more than 3 months where relevant, then the Licensing Officer shall notify the Consent Holder in writing that the Consent has been deemed to have been surrendered.
32. Upon receipt of the notice of deemed surrender, the Consent Holder should return the Consent and any copies to the Licensing Officer as above.
33. The Consent Holder may make a written request to the Licensing Officer to re-activate the surrendered Consent. The Consent Holder should ensure that any such request is received by the Licensing Officer within five working days of receipt of the notice of deemed surrender.

Duration of Consent

34. Gateshead Council will issue Consents for periods as follows –
 - (a) Two days (this is the minimum period for which a Consent will be granted)

- (b) One Week
 - (c) Summer Season (1 May to 31 October)
 - (d) 12 months (this is the maximum period for which a Consent will be granted)
 - (e) Special events – duration of the Consent is determined by the duration of a specified event, for instance the Evolution Festival, Summer Tyne Festival, Gateshead Flower Show, the NewcastleGateshead Winter Festival, and sporting events at Gateshead International Stadium.
35. The Licensing Officer may, as deemed necessary, suspend any Consent on provision of written notice to the Consent Holder. Any suspension will not extend the Consent duration.

Fees

36. The fee payable for a Consent will depend on the duration of the Consent sought. Details of the applicable fees can be obtained from the Licensing Section or from the Council's website.
37. The full fee for the period that the Consent is sought for is to be paid when the application for a Consent to be granted or renewed is made unless in the case of a 12 month Consent a Direct Debit arrangement is agreed.
38. No refund will be given where a Consent is surrendered or revoked.
39. If an application for a Consent is refused, the application fee will be refunded to the applicant, less an administrative charge of £60 (or the full amount of the application fee if that fee is less than £60).

Operation

40. The Consent Holder should familiarise him/herself with the conditions attached to their Consent and must not breach any of them.
41. No person under the age of eighteen years shall be granted a Consent. Persons under the age of sixteen may not be employed as an assistant.

Conditions

42. Under Paragraph 7 of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, the Council may impose conditions on a Consent if it considers it reasonably necessary to do so.
43. There are a number of Standard Conditions that the Council believes are appropriate in respect of any street trading in the Borough. These will be applied to all Consents issued by the Council unless an

applicant or Consent Holder specifically applies for one or more of the standard conditions not to apply.

44. Where an applicant or Consent Holder makes such a request, or where it is appropriate to consider the imposition of non-standard conditions on a Consent, such decisions will normally follow a hearing before the Regulatory Committee. At the hearing, representations can be made by the applicant / Consent Holder, and by other relevant parties, including the Consultees. All parties may agree that a hearing is not necessary.
45. Any conditions imposed by the Council will be proportionate to the circumstances they are intended to address. In particular, the Council will ensure that any conditions are:
 - (a) relevant to the applicant / Consent Holder and the (proposed) operation
 - (b) fairly and reasonably related to the scale and type of (proposed) operation
 - (c) reasonable in all other respects
46. For the avoidance of doubt, Consents are not transferable.
47. The Council will not consider imposing conditions:
 - (a) which make it impossible to comply with any statutory requirements
 - (b) do not relate to the activity of street trading
 - (a) unduly interfere with the applicant / Consent Holder's right to lawfully run their business as they see fit
48. Duplication with other statutory or regulatory regimes will be avoided as far as possible. Each case will be assessed on its own individual merits

Enforcement

49. In general, the Council's Regulatory Services Enforcement Team will take the lead role on the investigation and, where appropriate, the prosecution of unlawful street trading.
50. The Council will work with the police and other enforcing authorities to provide for the targeting of agreed problem or high-risk areas and issues. A lighter touch will be applied to those Consent Holders that are shown to have well managed and maintained operations.
51. In cases where more formal action is considered to be appropriate, the key principles of consistency, transparency and proportionality will be observed.

Further information

52. Should you have any comments as regards this policy statement please send them via email or letter to the following contact :

Licensing Section
Regulatory Services
Gateshead Council
Civic Centre
Regent Street
Gateshead
Tyne & Wear
NE8 1HH

Telephone : 0191 4334741

Email : licensing@gateshead.gov.uk

Changes to policy

The Council reserves the right to amend this policy and its appendices from time to time, following proper consultation where appropriate.

If you have a hard copy of this document, to ensure that it is current, please contact the Licensing Officer as above, or refer to the Council's website as follows :

<http://www.gateshead.gov.uk/Business%20and%20Industry/licenses/home.aspx>

Definitions

Consent	document authorising the Consent Holder to trade on street(s) within the Borough
Consent Holder	legal person who has been granted (and retains) a valid Consent
Consent Street	street in the Borough in which street trading is prohibited without being in possession of a valid Consent
Prohibited Street	street in the Borough in which street trading is prohibited
Street	and road, footway or other area (or part of), to which the public have access without payment; and any service area as defined under <u>Section 329 Highways Act 1980</u>
Street trading	exposing and/or offering for sale, and/or selling any thing or things in any street as defined above.

For the avoidance of doubt, the following activities are **not** classified as 'street trading' –

- (a) trading by a person acting as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871;
- (b) anything done in a market or fair the right to hold which was acquired by virtue of the grant (including a presumed grant) or acquired or established by virtue of an 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 newsvendor;
- (e) trading which is carried out at premises used as a petrol filling station; or is carried on at premises used as a shop or in a street adjoining premises so used and as part of the businesses of the shop;
- (f) selling things, or offering or exposing them for sale, as a roundsman;
- (g) the use of trading under Part VIIA of the Highways Act 1980 of an object or structure placed on, in or over a highway;
- (h) the operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980;
- (i) the doing of anything authorised by regulations made under section 5 of the Police, Factories, etc (Miscellaneous Provisions) Act 1916.

Prohibited streets

Central Gateshead

Ann Street
Arthur Street
Bensham Road (between High West Street and West Central Route)
Central Square
Charles Street
Ellison Street
Grahamsley Street
High Street
High West Street
Hopper Place
Hopper Street
Jackson Street
Nelson Street
Nuns Lane
Regent Street
Regent Terrace and Back Regent Terrace
St Bedes' Drive
Swan Street
Swinburne Place
Swinburne Street
Trinity Square (with the exclusion of an area 6m x 3m in the South West Corner which may be used if formal authorisation granted by the Shopping Centre Management)
Walker Terrace
Back Walker Terrace
Warwick Street
West Street

Application specifications

(i) The Plan

- The plan accompanying the application should be 1:1250 scale, and should show all residential and commercial premises in a 100m radius of the proposed site.
- The Licensing Authority may require applicants to provide further plan if necessary detailing the exact position of vans, carts, barrows etc on sites where necessary.

(ii) The Photographs

- The photographs accompanying the application should clearly show the nature of the van, cart, barrow, other vehicle or stall from which the trading is intended to take place.
- The photographs should show the front, side and rear views of the van, cart, etc.
- The photographs should be in colour.
- The photographs should be A4 in size.

Site Assessment factors

- Road safety –** is the siting of the street trading likely to have an adverse affect on road safety, either as a result of the siting itself or from customers arriving, attending and/or leaving the site?
- Parking –** is there adequate parking available to staff and customers?
- Obstruction –** will the siting cause an obstruction to pedestrians or road users?
- Sight lines –** will the siting interfere with the lights of sight of pedestrians or road users?
- Loss of amenity –** would there be a significant loss of amenity in the vicinity from the siting of the proposed street trading?
- Lighting –** if it is proposed that the activities will take place at night, is the siting adequately lit?
- Local Orders –** are there any relevant restrictions that would prevent the Consent being exercised at certain times or on certain dates, e.g. parking or waiting restrictions?
- Cart, barrow, etc -** The adequacy of the cart, barrow, etc to be used / being used to conduct the street trading activities, having regard to the siting, and the nature of the vehicle.
- Other -** there may be other issues relevant to the individual site

List of Consultees

- Northumbria Police
- Tyne & Wear Fire and Rescue Service
- Gateshead Planning Authority
- Gateshead Environmental Health Authority
- Licensing Officer, Regulatory Services
- Senior Enforcement Officer, Regulatory Services
- Traffic Planning and Engineering Manager
- Ward Members
- Interested Parties - to be decided by the Licensing Officer in each case

CRITERIA FOR ASSESSMENT

Consultees should have regard to the following criteria when considering whether to oppose the grant of a Consent, or to review an existing Consent. Consultees should specifically refer to the relevant criteria when setting out their grounds of opposition / review.

All of these criteria should normally be satisfied by the applicant / Consent Holder.

Each application / Consent will be considered on its own merits, and taking into account the individual circumstances.

Public safety

Applicants and Consent Holders should ensure that public safety is not threatened by their activities. The proposed street trading should not present a substantial risk to members of the public, including customers. Particular regard should be had to road safety, the potential for disorder, and to avoiding the possibility of creating an obstruction or fire risk.

Nuisance

Applicants and Consent Holders should ensure that their activities do not result in significant risk of nuisance, particularly to residents and businesses near their site. 'Nuisance' can include littering, noise, smells, etc.

Compliance with relevant legislation

Applicants and Consent Holders should be aware of relevant legislation, and should ensure that they comply with any requirements that affect their activities.

Trading hours

The permitted hours of trading are generally 06:00 – 18:00 hours. Persons wishing to carry on street trading outside these hours will need to seek the relevant standard condition to be amended.

Street trading outside these hours without having been granted Consent to do so is not permitted.

The nature of the activity

Applicants and Consent Holders should ensure that the things being offered or exposed for sale are not of a nature that may cause offence; and that the manner of offering or exposing the things for sale is not of a nature that may cause offence.

The Council will keep a record of complaints received regarding Consent Holders, and will investigate complaints as necessary. This may result in reviews being initiated by the Senior Enforcement Officer or any of the Consultees.

The character of the area

Applicants and Consent Holders should be sensitive to the character of the area in which they propose to operate.

This may include the number of existing outlets (whether fixed or mobile) selling similar things in the vicinity. It may also include consideration of whether the area is appropriate for the proposed activities, in particular with regard to conservation areas and 'feature areas', such as around the Angel of the North, Saltwell Park, Watergate Park etc

This list is not exhaustive, and other issues may be relevant in the individual circumstances of each application / Consent.

Standard Conditions

Consent Conditions

1. Street Trading shall be conducted in such a manner as not to cause:
 - (a) obstruction of the street or danger to persons using it. It should be noted by traders that the holding of Street Trading Consent does not preclude the Highway Authority or the Police from taking action to remove any obstructions on the highways.
 - (b) nuisance or annoyance (whether to persons using the street or otherwise).
2. Consent Holders are prohibited from setting out their goods or advertising material on the surface of the carriageway or pavement.
3. A Consent Holder shall not street trade within the vicinity of any premises selling articles/goods of a similar nature.
4. A Consent Holder shall not trade in any street designated by the Council as a "Prohibited Street".
5. Street Trading is restricted to the location indicated on the Consent. Mobile street trading within Consent Streets is restricted to a 15 minute duration, after which the Van/Cart/Barrow or vehicle must be moved a minimum distance of 200 metres before street trading again, return is prohibited within 2 hours. Longer time periods to street trade may be considered with prior written approval.
6. At the end of each street trading period the van/cart/barrow shall be removed from the street trading location within one hour of the end of street trading time showed on their Consent.
7. A "Consent Disc" issued to the consent holder should be displayed at all times. The Consent must be produced on demand to a Police officer or to duly Authorised Officer of the Council.
8. The Consent Holder shall clearly display his name, address and the consent number in the immediate vicinity of the goods, which he is offering for sale.
9. The Consent Holder shall immediately notify the Council of any changes affecting the original Consent.
10. The Consent holder shall street trade only in goods specified by the Consent.

11. This Consent shall be personal to the Consent holder and shall not be transferred to any other person.
12. No person under the age of eighteen years shall be granted a Consent or employed as an assistant.
13. The Consent Holder shall provide sufficient containers as may be necessary for the depositing of litter arising from his trade and ensure that the immediate vicinity of his van, car, barrow or other vehicle is kept free from litter at all times during which he is trading. All sites must be left free from litter and waste when trading has ceased.
14. All Street Trading units must be equipped with safe and adequate lighting for operation during the hours of darkness.
15. All Consent Holders must wear the Council consent badge, when Street Trading is taking place. The Council may also approve a maximum of 2 assistants. Consent badges for any assistants must be worn when Street Trading is taking place. Only approved Consent Holders and assistants may trade from the consent site. No one other than the Consent Holder and approved assistants may trade from the site at any one time.
16. No goods, other than those specified in the Consent, may be street traded without prior written consent of the Licensing Officer.
17. The use of loud speakers, horns, flashing lights or any other instruments used to attract customers' attention is forbidden in Consent Streets without the prior written consent of the Licensing Officer.
18. Consent Holders have a duty of care in relation to their street trading sites and adjacent areas and must not damage in any way, either wilfully or by negligence, any part of the consent street including paved areas, signs, fencing etc.
19. No Street Trading shall be permitted during 18:00 to 06:00 hours without prior written consent of the Licensing Officer.
20. The holder of a Consent must provide the Council with proof of Public and Product Liability Insurance for a minimum sum of £5, 000, 000
21. If the Consent Holder Street Trades from any Council land, he/she shall indemnify the Council from and against all loss, damage, costs, liabilities and claims whatsoever arising from its use and occupation of the land.