

REPORT TO LICENSING COMMITTEE

DATE	22nd February 2018
PORTFOLIO	Resources
REPORT AUTHOR	John Yardley
TEL NO	01143999067
EMAIL	jyardley@burnley.gov.uk

Local Government (Miscellaneous Provisions) Act 1982 - Amendments to Street Trading Consent Conditions**PURPOSE**

1. To consider the adoption of new conditions relating to hours of trading, duration of consent and DBS checks in relation to the grant of Street Trading Consents within the Borough under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982

RECOMMENDATION

2. That Licensing Committee approves the following conditions for Street Trading Consents:
 - Amend permitted trading hours to between 0630hrs and 23.00hrs, with only street traders who hold a late night refreshment premises licence under the Licensing Act 2003 being permitted to trade beyond this time in accordance with that licence
 - Introduce consents in the circumstances, and for the durations outlined at Appendix A
 - Require a basic DBS disclosure, not less than one calendar month old, to accompany any new application for a consent. The applicant must also sign up to the DBS update service for the duration of the consent, and any subsequently renewed consent, so that the Council is able to monitor any change in circumstances. Where an applicant intends to employ any other person in the course of the business, then similar arrangements must be in place for each such employee.
 - Require all existing consent holders to meet the DBS requirements within 2 months of the conditions coming into effect
 - No person shall be permitted to hold a street trading consent, or be employed in a business to which the consent relates where they have unspent convictions for sexual, violence, dishonesty or drugs offences. See Appendix B.

That Licensing Committee delegates to the Head of Streetscene the power to revoke street trading consents where the conditions relating to DBS requirements are not met or where a licence holder has an unspent conviction for an offence involving dishonesty, indecency or violence or for an offence that is drugs-related

REASONS FOR RECOMMENDATION

- 3 Licensing Committee is delegated to determine policy in relation to the Street Trading Consent Scheme in accordance with the Scheme of Delegation Pt 3 para 1(b)3 . The proposals to amend conditions ensure that the regulation of street trading better reflects customer needs, is better aligned to current hours of trading particularly within the night time economy and supports strong safeguarding principles.

SUMMARY OF KEY POINTS

- 4 On the 19th March 1986 the Council resolved, to apply the provisions of Schedule 4 of The Local Government (Miscellaneous Provisions) Act 1982, throughout the Borough of Burnley with effect from 20th March 1986. This schedule of the Act deals with the regulation of Street Trading. Since that time the council has periodically reviewed street trading provisions, most recently in 2003. The conditions apply to all consents issued by the Council including those issued via tender within the town centre and parks.
- 5 The Licensing Act 2003 (LA03) came into force in 2005. LA03 resulted in the opening hours of alcohol licensed premises generally being extended particularly within the town centre. Street traders supporting the night time economy, in particular the food sector, extended their hours to reflect this.

Street traders who supply hot food or hot drinks to members of the public between 2300 hours and 0500hrs are required to hold a premises licence under the Licensing Act 2003 for the provision of late night refreshment. There are currently two long established traders who operate under the authority of a LA03 premises licence within the town centre in addition to holding a Street Trading Consent.

Current conditions permit street traders to operate between the hours of 0800hrs and midnight; it is proposed to change these hours to align them with the late night refreshment requirements of LA03. Trading hours under a Consent will be restricted to 0630hrs until 23.00hrs, with only street traders who hold a late night refreshment premises licence permitted to trade beyond this time. This change in hours better reflects customer needs within the food sector not only in respect of late night traders but established food traders who operate within the town at various locations, primarily on industrial estates. A portion of these traders commence trading before 0800hrs to service people on their way to work. Non-food traders generally trade during the daytime, the only exception being traders who cater for special events such for example Burnley FC home fixtures. 2300hrs is considered to be sufficiently late to cover events of this nature

- 6 Concerns have also been expressed within the trade that the current annual consent and annual fee has little flexibility and is unsuitable for some traders who do not wish to operate for a full year, for example ice cream vendors or traders who only wish to trade for a short period of time. It also involves officers in the administration of refunds when traders wish to surrender their annual consent. It is therefore proposed to amend the duration of consents to provide 12 month, six month and one month consents. Additionally it is proposed to introduce special event consents to accommodate traders who do not trade daily, for example at Burnley FC home fixtures. These traders consider themselves to be disadvantaged by having to pay for an annual consent despite y operating infrequently. The proposals for variable duration consents and pro-rata fees are appended at Appendix 'A' of this report. Should Licensing Committee agree to implement

variable duration consents then fees will be set under officer delegations by the Head of Finance in consultation with the Exec Member – Resources. The fees will recognise the additional administration requirements of short term consents.

- 7 The overriding aim of the Council is to protect the safety of the public. The Council is committed to ensure the safeguarding of children, young persons and vulnerable adults. With this in mind it is proposed that a basic DBS disclosure not less than one calendar month old must accompany any new application, and that the applicant must be signed up to the DBS update service for the duration of that or any subsequently renewed consent so that the Council is able to monitor any change in circumstances. Where an applicant intends to employ any other person in the course of the business, then similar arrangements must be in place for each such employee. [All existing consent holders will be required to comply with these requirements within 2 months of the conditions coming into effect.] DBS requirements will apply in all circumstances except where the Head of Streetscene is satisfied that the nature of the trading does not involve contact with children, young persons or vulnerable adults. Where the council exercises discretion and the nature of trading subsequently changes a DBS disclosure may be requested during the period of the Street Trading Consent.

Where any convictions are disclosed the Council will have regard to the Street Trading Convictions Policy at Appendix B in determining the application. Controversial matters will be placed before Licensing Committee. There is no statutory right of appeal in relation to refusal of a street trading consent and disputes would be resolved within the Council.

8. The Local Government (Miscellaneous Provisions) Act 1982 provides that
- the council may at any time vary the conditions of a street trading consent .
 - the council may charge such fees as they consider reasonable for the grant or renewal of a street trading consent, and
 - the council may determine different fees for different types of consent and may determine fees differing according to the duration of the consent.

FINANCIAL IMPLICATIONS AND BUDGET PROVISION

- 9 The flexibility relating to consent durations may reduce income in the short term but is hoped to be more attractive to potential traders looking to trade within the borough.

POLICY IMPLICATIONS

- 10 As outlined in the report

DETAILS OF CONSULTATION

- 11 Executive Member Resources – Cllr Mark Townsend
Chair Licensing Committee – Cllr Ann Royle
Vice-Chair Licensing – Cllr Gary Frayling

BACKGROUND PAPERS

12 Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982

FURTHER INFORMATION

PLEASE CONTACT:

Peter Henderson

ALSO:

Karen Davies

STREET TRADING CONSENT PERIOD OF CONSENT:

Type of Consent	Fee to be set under officer delegations
12 months	£775
6 months	£422.50
3 months	£246.50
1 month	£129.00
12 months special event consent #	£221
6 months special event consent #	£146
3 months special event consent #	£108
1 month special event consent #	£83

Special Event Consents – permitting up to 6 days trading in any calendar month



POLICY GUIDELINES TO BE CONSIDERED WHEN DETERMINING APPLICATIONS FOR STREET TRADING CONSENTS

NOTE: In the Council's view this statement and the guidelines that follow are compatible with the rights and freedoms under the European Convention on Human Rights.

This document aims to provide guidance to any person with an interest in street trading consents. In particular, but not exclusively:

- Applicants for street trading Consents
- Existing street trading consent holders that are being reviewed
- Licensing Officers

Street Trading Consent Applications should be accompanied by a basic DBS disclosure no older than 1 month. Applicants granted consents are required to sign up to the DBS update service and provide access details to the Licensing Authority for as long as a consent is held. The same requirements are made of those persons employed by a consent holder to work from the premises.

The Rehabilitation of Offenders Act will apply to any convictions the individual has received. Officers considering Applications for consents will utilise these guidelines for unspent convictions when determining whether to grant such Applications

Whilst Officers will have regard to the guidelines contained in the policy, each case will be considered on its Individual merits and, where the circumstances demand, the Officer may depart from the guidelines.

Background

1. In this Policy the following words have the following meanings:
 - a. "Consent" means a Consent issued under The Local Government (Miscellaneous Provisions) Act 1982 to operate as a street trader in the Borough of Burnley.
 - b. "Applicant" means a person applying for a Consent, an existing Consent holder applying for renewal of a Consent, or an existing Consent holder whose Consent is subject to a decision by the Council to revoke, suspend or take no further action
 - c. "Application" means an Application for a Consent, or an Application for renewal of a Consent.
 - d. "Conviction" means an unspent conviction, caution or formal warning
 - e. "Council" means Burnley Borough Council
 - f. "Individual" includes an existing Consent holder, an applicant for a new Consent, and an Applicant for the renewal of an existing Consent

- g. investigation where there has been no further action due to the criminal burden of proof will still be considered if the Council is satisfied that the incident occurred based on the balance of probabilities)
 - h. "Consent Holder" means the holder of a current valid street trading consent granted by the Council
2. Where this Policy refers to a period free of Conviction:
- (A) Subject to paragraph (B), that period is to be calculated as commencing on the later of –
- a) the date of the Conviction (or where the Conviction is appealed, the date on which the appeal is finally disposed of or withdrawn or fails for want of prosecution);
 - b) in the case of a consent Holder, the date the Conviction was reported to the Council;
 - c) in the case of a consent Holder, the date the Council became aware of the conviction from any other source;
 - d) the date any custodial sentence was completed; or
- and ending on the date of determination of the Application.
3. The Council is concerned to ensure:
- a. That a person is suitable to hold a Consent
 - b. The public are not exposed to persons with a history of dishonesty, indecency or violence.
 - c. The safeguarding of children and young persons and vulnerable adults.
4. When submitting an Application, Individuals are required to declare all unspent previous Convictions they may have. Individuals are also required to declare all unspent formal, and any matters of restorative justice, and to provide details of all criminal matters of which they are currently the subject of criminal investigation or prosecution. It is an offence for any person knowingly or recklessly making a false declaration or to omit any material particular in giving information required by the Application for a Consent. Where an Applicant has made a false statement or a false declaration on their Application for the grant or renewal of a Consent, the Consent will normally be refused.
5. The information given will be treated in confidence and will only be taken into account in relation to the relevant Application to assist the Council in determining their Application
6. The disclosure of a criminal Conviction or other relevant information relating to an Individual's conduct will not necessarily debar an Individual from being granted, retaining or renewing a Consent. It will depend on whether or not the Individual can satisfy the Council that they are a suitable person to hold such a Consent.
7. The Council has adopted the following guidelines relating to the relevance of Convictions to which it refers in determining Applications for Consents and when considering whether to take any action against an existing Consent Holder, and references to the grant of a Consent in these guidelines shall be construed accordingly.

8. The guidelines do not deal with every type of offence, and do not prevent the Council from taking into account offences not specifically addressed in the guidelines, or other conduct, which may be relevant to an Individual. If an Individual has a Conviction for an offence not covered by the guidelines regard will be had to the factors at paragraph 12 when deciding whether any action should be taken.
9. Offences described in the guidelines and similar offences, though differently entitled in any statutory provision, modification or re-enactment, will be taken into account in accordance with the guidelines.

GUIDELINES ON THE RELEVANCE OF PREVIOUS CONVICTIONS AND OTHER INFORMATION

General Policy

1. Each case will be decided on its own merits.
2. The Council has a duty to ensure so far as possible that applicants for, and holders of street collection consents are suitable persons. One aspect of that is the extent to which previous Convictions, including but not limited to unspent Convictions for offences against children and young persons, dishonesty, sexual offences, violence and drugs indicate that a person is not suitable.
3. The Council has a duty to take into account any complaints made to the Council, Police, or any other agency, breaches of Consent conditions and any intelligence received from other agencies (including circumstances which have not resulted in a criminal Conviction or other disposal, e.g.
 - a) incidents that have resulted in a police investigation where there has been no further action due to the criminal burden of proof will still be considered if the Council is satisfied that the incident occurred based on the balance of probabilities.
 - b) Incidents that have resulted in the refusal or revocation of a consent by another Council.
4. Restorative justice and other criminal disposals are increasingly used by the police as a less formal way of dealing with issues and as an alternative to the criminal court system. The Council recognises that restorative justice and other out of court disposals tend to be applied in less serious cases or for first time offenders, nevertheless all such disposals will be taken into account when determining if a person is a suitable person.
5. An Individual with a Conviction for a serious offence need not be automatically barred from obtaining a Consent, but would normally be expected to:
 - a. Remain free of Conviction for an appropriate period; and
 - b. Show adequate evidence that he or she is a suitable person to hold a Consent (the onus is on the Applicant to produce such evidence). A person with a Conviction for a single serious offence or a number of separate offences is not barred from applying for a Consent, but would normally be expected to remain free from Conviction for an appropriate period (which will depend on the nature of the offence.)
 - c. Simply remaining free of Conviction will not generally be regarded as adequate evidence that a person is suitable to hold a Consent.
6. Some discretion may be appropriate if the offence is an isolated one with mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour, which will be taken into account. (In any case which involves certain specified sexual offences, murder or manslaughter a Consent will normally be refused.)

7. Where new offences are created or existing offences are consolidated or re-enacted etc. they will be treated in a manner appropriate to their severity whether or not this guidance has been updated to reflect the changes.

8. The following examples afford a general guide on the action, which might be taken where Convictions are disclosed.

A. OFFENCE OF DISHONESTY

Applicants are expected to be persons of trust. It is comparatively easy for a dishonest person to defraud members of the public who use their services

Those persons may include especially vulnerable people and children.

For these reasons a serious view is taken of any Convictions involving dishonesty.

A Consent will not normally be granted if an Applicant has an unspent Conviction for a dishonesty offence.

Applicants that are found to have intentionally misled the council, or lied as part of the Application process, will not be issued with a Consent. In general, any unspent conviction for a dishonesty offence will of

Offences involving dishonesty include (but are not limited to);

- Theft
- Burglary
- Fraud
- Benefit fraud
- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- Obtaining money or property by deception
- Other deception
- Taking a vehicle without consent
- And any similar offences
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

B. VIOLENCE (OTHER THAN SEXUAL AND INDECENCY OFFENCES)

Street traders have close, regular contact with the public. A firm line is to be taken with those who have Convictions for offences involving violence.

An Application will normally be refused if the Applicant has an unspent Conviction for an offence of violence.

Offences of violence include but are not limited to:

- Murder
- Manslaughter
- Manslaughter or culpable homicide while driving
- Terrorism offences
- Arson
- Malicious wounding
- Actual bodily harm which is racially aggravated
- Grievous bodily harm
- Robbery
- Possession of firearm
- Riot
- Assault Police
- Common assault with racially aggravated
- Violent disorder
- Resisting arrest
- Racially-aggravated criminal damage
- Racially-aggravated offence
- Common assault
- Assault occasioning actual bodily harm
- Affray
- S5 Public Order Act 1986 offence (harassment, alarm or distress)
- S.4 Public Order Act 1986 offence (fear of provocation of violence)
- S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
- Obstruction
- Criminal damage
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

C. DRUGS

An Application will normally be refused where the Individual has an unspent Conviction for a drugs related offence

If any Applicant was an addict then they will normally be required to show evidence of 5 years free from drug taking after detoxification treatment as required by the Council.

D. SEXUAL AND INDECENCY OFFENCES

Street Traders often deal with unaccompanied vulnerable customers.

Applicants with unspent Convictions for sexual or indecency offences that involve a third party will normally be refused a Consent. Such offences include (but are not limited to);

- Rape
- Assault by penetration
- Offences involving children or vulnerable adults
- Sexual assault
- Indecent assault
- Exploitation of prostitution
- Trafficking for sexual exploitation
- Possession of indecent photographs, child pornography etc.
- Indecent exposure
- Soliciting (kerb crawling)
- Or any sex or indecency offence that was committed in the course of employment as a street trader

Any Individual currently on the sex offenders' register would not normally be granted a Consent.

Intelligence and other information which has not resulted in a criminal conviction

The Council will sometimes be made aware of other intelligence or low level information about an Individual which has not resulted in the conviction of that person but is relevant in relation to their character. Officers will give appropriate consideration to this information and will seek to consult with other appropriate agencies in order to ensure that they have a comprehensive understanding. Any additional information gathered through this process may then be taken into account.