

APPENDIX 3

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

STREET TRADING

The Isle of Wight Council has by the powers invested in it resolved that for the purposes of controlling Street Trading all current and future streets, Council car parks, recreation grounds and open spaces along with all public parks, gardens, amenity areas, sports areas, play areas and parking bays adopted by the Council in the Isle of Wight be designated as 'consent streets' from **28 May 2004**.

POLICY

1. This Policy will be applied to street trading activities in the Isle of Wight to ensure consistency in decision making. However, each application will be considered on its own merits so that individual circumstances, where appropriate, are taken into consideration.

2. **Definitions of terms used in these Guidelines**

Within the terms of the Isle of Wight Council's Street Trading Consent Scheme the following definitions apply:

The Council:- The Isle of Wight Council.

Street Trading:- The selling or exposing or offering for sale of any article (including a living thing) in any street,

Street:- Includes:
(a) any road, footway, beach or other area to which the public have access without payment.
(b) a service area as defined in section 329 of the Highways Act 1980,
and also includes any part of a street.

Consent Street:- Means a street in which street trading is prohibited without the consent of the Isle of Wight Council.

Consent:- A consent to trade on a street by the Isle of Wight Council.

Consent Holder:- The person or company to whom the consent to trade has been granted by the Isle of Wight Council.

Static Street Trader:- A trader granted permission by the Isle of Wight Council to trade from a specified position.

Mobile Trader:- A trader who moves from street to street but trades for less than 60 minutes at any one point and does not return to a similar trading position within 2 hours.

Authorises Officer An officer employed by the Isle of Wight Council and authorised by the Council to act in accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1982.

3. **Procedure for determining Street Trading Consent applications**

The application and approval procedure comprises of the stages as set out at Appendix 1. The descriptions on the side of the boxes refer to the explanatory notes in the subsequent sections of this guide.

4. **Submission of the application**

An application for a Street Trading Consent must be made to the Isle of Wight Council in writing.

The following will be required to be submitted with the application

- (a) A completed and signed Street Trading Consent application form and a Notice of Application for a Street Trading Consent.
- (b) A deposit of 25% of the full fee. Fees for periods of less than 15 days will require submission of the full fee with the application.
- (c) Where the proposed street activity is from a fixed position, 5 copies of a map of at least 1:1250 scale. The map should clearly identify the proposed site position by marking the site boundary with a red line.
- (d) Three colour photographs of the stall, van, barrow, cart etc that will be used for the street trading activity.
- (e) An original copy of the certificate of insurance that covers the street trading activity for third party and public liability risks.

An applicant for the initial grant of a Street Trading Consent should give a minimum of 60 days notice of the application.

5. **Consultations on applications made**

Before a Street Trading Consent is granted or renewed the Council will carry out a consultation process with various persons and groups. In particular the following organisations or persons are consulted.

- Highways
- Food Section
- Hampshire Constabulary
- Isle of Wight Fire & Rescue Service
- Local Councillor
- The appropriate Parish or Town Council
- Local Business Association
- Wight Leisure

For new applications, in addition to the above, further consultations will be carried out with property owners within 100 metres of the proposed site. This consultation will be by the Council sending copies of the Notice of Application to

the relevant property owners.

Written observations from the above organisations and occupiers of properties will be sought and taken into consideration when determining an application.

Consultees will be given 14 days in which to make comments.

6. **Site Assessment**

Street Trading Consents from static locations will not normally be granted where:

- a. A significant effect on road safety would arise either from the siting of the trading activity itself, or from customers visiting or leaving the site, or
- b. Where there are concerns over the recorded level of personal injury accidents in the locality where the street trading activity will be sited, or
- c. There would be a significant loss of amenity caused by traffic, noise, odour or fumes, or
- d. There is already adequate like provision in the immediate vicinity of the site to be used for street trading purposes, or
- e. There is a conflict with Traffic Orders such as waiting restrictions, or
- f. The site or pitch obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use for street trading purposes, or
- g. The trading unit obstructs the safe passage of users of the footway or carriageway, or
- h. The pitch interferes with sight lines for any road users such as at road junctions, or pedestrian crossing facilities, or
- i. The site does not allow the Consent Holder, staff and customers to park in a safe manner, or
- j. The street trading activity is carried out after dusk and the site is not adequately lit to allow safe access and egress from the site for both customers and staff.

7. **Inspection of the Street Trading Unit**

The vehicle, van, trailer, stall or other device to be used for the proposed street trading activity will be inspected by an Authorised Officer of the Council, prior to the issue of any Street Trading Consent, where this is reasonably practicable. The unit to be used for the street trading activity shall comply in all respects with the legal requirements relating to the type of street trading activity proposed. In particular the unit to be used shall comply with the following legislation:

- Food Premises (Registration) Regulations 1991.
- Food Safety Act 1990.
- Food Safety (General Food Hygiene) Regulations 1995 (as amended).
- The Food Safety (Temperature Control) Regulations 1995.
- Health and Safety at Work etc Act 1974 and any Regulations made under this Act.
- Environmental Protection Act 1990.

Further advice on any of the above requirements can be obtained by telephoning: 01983 823162.

8. **Objections to the Application**

If objections are received against the granting of a Street Trading Consent from:

- k. Occupiers of property within 100 metres of the proposed site, or
- l. Isle of Wight Council Ward members, or
- m. Parish or Town Councils, or
- n. Police and/or Fire Authorities

the application will normally be referred to the Council's Licensing (Determinations) Sub Committee for determination.

Before such a referral is made officers will assess the objections according to the following criteria:

1. Potential, or actual, nuisance to a property occupier from noise, fumes or smells.
2. Concern for public order problems resulting from the proposed street trading activity.
3. Any other valid reason raised that would affect the occupier of a property as a result of the application made.

Where appropriate, the application will be referred to the next available meeting of the Licensing (Determinations) Sub Committee for consideration and determination of the application. The applicant will be informed in writing and notified of the date when the application will be considered.

Persons making written objections will also be informed of a decision to refer an application to the Licensing (Determinations) Sub Committee and notified of the date of the hearing.

The appropriate Isle of Wight Council Ward Members for the proposed street trading site will be informed of a referral of an application to the Licensing (Determinations) Sub Committee.

9. **Determination of the Application**

The Licensing (Determinations) Sub Committee and delegated officers will use the criteria listed below in determining any Street Trading Consents. All criteria should normally be satisfied, and equal weight will be applied to the criteria listed. Each case will be assessed on its merits and individual circumstances, where appropriate, may be taken into consideration.

a) Public Safety: The location of the proposed street trading activity should not present a substantial risk to the public in terms of road safety, obstruction and fire hazard. The term "public" refers to both customers requesting the street trading activity, and other members of the public using the street. In particular reference will be made to the guidelines set out in section 5 on site assessment criteria.

b) Public Order: The street trading activity should not present a risk to good public order in the locality in which it is situated. Observations from the Hampshire Constabulary will be taken into consideration.

c) Avoidance of Nuisance: The street trading activity should not present a substantial risk of nuisance from noise, smells or fumes to households and businesses in the vicinity of the proposed street trading site. Observations from Council Officers shall be taken into consideration.

d) Needs of the Area: The sufficiency of other trading outlets will be taken into consideration in relation to:

1. The presence of like outlets already existing in the immediate locality of the proposed street trading site.
2. The general needs of a locality, should no comparable outlets exist

Applicants will have to demonstrate to the Council the need for the proposed street trading activity in relation to either points 1 or 2 above, whichever applies.

e) Compliance with legal requirements: The proposed street trading activity should be carried out from a trading unit that complies with the relevant legislation. Observations from Council Officers on the compliance with the requirements of Food Safety and Hygiene, Health and Safety and Environmental Protections legislation shall be taken into consideration.

f) Consultees Observations: In relation to points a) – d) above, consideration will also be given to written observations from consultees. Any objections made to the proposed street trading activity will be considered in terms of relevancy and appropriateness to the application that has been made.

g) Permitted Trading Hours: The Council generally will only permit street trading between 6.00 am and Midnight on any one day. Any trading outside these hours will have to be approved by the Council. Street Trading outside the guideline hours will be assessed in terms of the criteria detailed above.

The Council however retains the right to specify permitted hours of trading that are less than those specified above if local circumstances dictate

h) Officer decisions on applications made: If an Officer of the Licensing Section acting on a delegated basis is unable to grant a Street Trading Consent the applicant will be offered a meeting with the Licensing Officer to discuss the reasons for a potential refusal of the application. At the meeting the applicant will be informed of the criteria from these Guidelines that have not been met. The applicant will be given an opportunity to discuss any relevant matters in relation to the application that has been made. If after the meeting officers are still unable to proceed with the granting of a Consent, and the applicant wishes to continue with the application, the application will be referred to the Licensing (Determinations) Sub Committee for determination.

The outcome of the meeting with the applicant will be confirmed in writing within 5 working days of the meeting taking place. If an applicant refuses an offer of attending a meeting with officers, or fails to attend, a letter will be sent to the applicant confirming the reasons for being unable to proceed with the application.

10. **Approval of Applications**

The Council's Licensing (Determinations) Sub Committee, or delegated officers (where appropriate) may approve applications meeting the criteria contained within these guidelines.

On approving the application the Council will issue a Street Trading Consent to which conditions will be attached. The Consent will also contain specific terms such as days and hours when street trading is permitted, the goods that may be sold. A copy of the Council's standard conditions, which are attached to Street Trading consents, are shown at Appendix 3. Additional conditions may be attached if special circumstances apply to the Consent being granted by the Council.

The conditions attached to the Consent form part of the approval to carry out street trading in the Isle of Wight. They **MUST** be complied with at all times and failure to do so could lead to the Consent being either revoked, or not renewed.

Consent Holders are therefore requested to familiarise themselves with the terms and conditions attached to the Street Trading Consent and comply with the requirements.

11. **Issue of Street Trading Consents**

A Street Trading Consent for any particular site will be issued for a maximum period of 3 months for the first year and thereafter for 6 months providing there have been no problems. Shorter term Consents may be issued on a daily, weekly or monthly basis. These particular Consents will expire, unless renewed, on the date specified in the Consent.

In all cases when a Consent has expired, and an application has not been submitted to the Council for renewal, a new application will have to be made. In such cases the application will be required to go through the full consideration process outlined in these guidelines.

If a cheque is dishonoured by a bank this will result in the revocation of the Street Trading Consent issued by the Council unless payment of the outstanding fees is made in cash within 5 working days. In such cases an administration charge will also be imposed on the Consent Holder.

Street Trading Consents will be issued only at the Council Offices. The applicant must attend in person to collect any documentation.

12. **Consideration of applications by the Licensing (Determinations) Sub Committee**

The Council's Licensing (Determinations) Sub Committee has been established to consider applications and hear objections and appeals in relation to licensing matters. The Committee consists of elected members of the Isle of Wight Council who have received specific training in licensing issues. The Committee is supported by a Committee Administrator and a solicitor and meets on a regular basis. Licensing (Determinations) Sub Committee meetings are usually

held in public unless there are matters to be considered that are of a confidential nature.

The role of the Licensing (Determinations) Sub Committee is to:

1. Determine applications to which objections, as defined in section ** above, have been made, or
2. Determine un-opposed referred applications that do not meet the criteria contained within this Policy, or
3. Hear appeals from applicants against the imposition of a condition on a Consent by an officer on a delegated basis.

On receipt of a written objection, or an unresolved application that does not meet the criteria in these Guidelines, or an appeal against an officer's decision, arrangements will be made to have the appeal or application heard at the next available meeting of the Licensing (Determinations) Sub Committee.

Once arrangements have been made for the application to be heard by the Licensing (Determinations) Sub Committee persons making the objection, appeal or reference to the Committee will be advised in writing of the date, time and place where the application will be heard.

The person making an application or an appeal to the Licensing (Determinations) Sub Committee are expected to attend the hearing. The applicant can be represented by a solicitor, or supported by a friend or colleague. The Licensing (Determinations) Sub Committee will follow a set procedure that will be notified to the applicant in advance of the meeting, along with any officer reports that will be presented at the meeting.

The decision of the Licensing (Determinations) Sub Committee will be confirmed in writing to the applicant within 5 working days of the meeting at which the application was considered.

The Licensing (Determinations) Sub Committee will always adhere to the rules of natural justice when it is considering an application to ensure that all persons get a fair hearing.

13. Refusal of Applications

Where the Council refuses an application the applicant will be informed in writing. The decision of the Licensing (Determinations) Sub Committee is final.

The Local Government (Miscellaneous Provisions) Act 1982 does not allow any legal appeals against the decision of the Council in relation to the refusal of Street Trading Consents. A person aggrieved against a decision of the Licensing (Determinations) Sub Committee may seek a Judicial Review of the decision of the Licensing (Determinations) Sub Committee, should it be felt necessary.

14. **General Information on Street Trading Consents**

- i) Reimbursement of Fees:** Fees will be reimbursed to Consent Holders where they cease to trade and surrender their Consent to the Council. Any reimbursement will be strictly from the date the Consent is surrendered to the Isle of Wight Council.

Refund of any fee paid in connection with the granting of a Street Trading Consent will be based on the following formula:

Number of complete days remaining divided by the fee paid **less** the current administration fee.

- ii) Persons under the age of 17 years:** The Council will not grant a Street Trading Consent to persons under the age of 17 years.

- iii) Access by Council and Police Officers:** Consent Holders should allow access to Authorised Officers of the Council and Police Officers at all reasonable times. Council Officers will carry with them and produce on request official identity cards issued by the Isle of Wight Council.

- iv) Street Trading Consents:** The conditions attached to all Street Trading Consents stipulate that a Consent Holder shall not assign, sub-let or part with his interest or possession of a Street Trading Consent.

*The Consent granted is specific to the person to whom it is issued and is **non-transferable**.*

15. **Enforcement of Street Trading**

The Isle of Wight Council will actively enforce the provisions of the Street Trading legislation within its area in a fair and consistent manner. All enforcement activities will comply with the Departmental Enforcement Policy, copies of which are available free of charge from the Licensing Office.

16. **Complaints against the Service**

The Licensing Section has an agreed procedure for dealing with complaints. Any complaints should in the first instance be sent to the Principal Environmental Health Practitioner, Jubilee Stores, The Quay, Newport, Isle of Wight PO30 2EH, telephone 01983 823152.

If the matter cannot be resolved advice will be given on how to further your complaint under the Council's Complaints Scheme.

PROCEDURE FOR DETERMINING STREET TRADING CONSENT APPLICATIONS

The application and approval procedure comprises of the following stages. The descriptions on the side of the boxes refer to the explanatory notes in the subsequent sections of the guide:

