

**Local Government
(Miscellaneous Provisions) Act
1982**

**Street Trading Local Policy and
Guidance Document
(2013-2016)**



WELCOME TO SWALE

Swale has a prime location within 40 miles of the Channel Ports and London but set within the Kentish countryside. The borough has three distinct areas including Faversham, Sittingbourne and the Isle of Sheppey as well as extensive rural surroundings.

Set within the ‘Garden of England’, Swale provides historic towns, seaside resorts and beautiful villages combined with exceptional landscapes, wildlife and maritime and aviation history.

Swale is more deprived than the national and Kent average but with a higher percentage of diversity with a growing population of 133,400.

There is an increasing demand for new jobs and street trading provides an opportunity for employment and economic growth which will contribute towards the regeneration of Swale.

The Council aim to regulate street trading in a way that enhances the character of the borough, for the benefit of the whole community and those visiting.

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

STREET TRADING LOCAL POLICY and GUIDANCE DOCUMENT

Introduction and Scope

Local Authorities have a legal discretion to regulate street trading in their area. Street trading is covered by the Local Government (Miscellaneous Provisions) Act 1982 Schedule 4 – Street Trading, which Swale Borough Council adopted in 1993 and resolved to control within its boundaries. Any licence/ consent or permits issued prior to February 2010 are now obsolete. In Swale, streets are designated as ‘consent’ streets for the purposes of street trading.

The Council has designated **all** streets within its boundaries as “Consent Streets”. The effect of this designation is that if you want to sell goods on the street, you are classed as a street trader and, subject to legal exemptions, will need to have the appropriate consent. Conditions can be attached to the consent as is considered ‘reasonably necessary’. Trading without the required consent is a criminal offence.

What is Street Trading?

Street trading is defined as *‘selling, exposing or offering for sale any article (including a living thing) in a street’*. This includes food and beverages or other services and activities such as arts and crafts, face painting, hair braiding etc.

Purpose

The purpose of this Street Trading Policy is to provide a framework for consistent decision-making. The Council wishes to create a vibrant street scene which complements retail activity, events and activities. Street trading is therefore seen by the Council as a regeneration tool.

Objectives of the policy

Central to the Council's policy are a number of key objectives which are:

- To protect public health through the control of street trading within Swale by improving standards of food safety, health and safety and environmental management and enhance the image of the area.
- To address commercial need by ensuring that permitted street trading is properly regulated as to where, when and how it takes place.
- To prevent public nuisance by taking measures to reduce the risk of nuisance from noise, refuse, vermin, fumes and smells.
- To ensure that traders operate within the law and act fairly in their dealings with the public so as not to present a risk to public order.
- To ensure the suitability of the structures used for the sale of goods.
- To ensure that traders and the people that they employ are "fit and proper" in accordance with the Act and that may include a requirement for basic criminal record checks.
- To permit temporary or occasional street trading, where appropriate.

Can I apply?

Any persons aged seventeen years or over may apply for a consent. The consent to trade will be allocated at the sole discretion of the Council. The allocation of a consent(s) will be directed at obtaining a wide range of trades and a high quality style of trading. Applicants are required to provide full details including where possible photographs, of their trading style.

Applicants must ensure that their proposed trade is compatible with the locations being applied for as the Council will have regard to the interests of nearby permanent traders. Permanent traders is defined as other local shops and market traders. The aim is not to discourage competition, rather to ensure an adequate mix of trades so as to avoid over saturation of any given area. Similar trades are unlikely to be allocated to different permanent consent sites in the same street unless reasonable justification is given.

Where can I trade?

Street Trading consents from fixed locations will **not** normally be granted where:

- Road safety would be compromised either from the citing of the trading activity itself, or from customers visiting or leaving the site.
- Where there are concerns over the recorded level of personal injury accidents in the locality where the street trading activity will be sited.
- There would be a significant loss of amenity caused by additional traffic, or disturbance (e.g. noise, odour or fumes, etc.).
- There is already adequate provision of similar goods in the immediate vicinity of the site to be used for street trading purposes.
- There is a conflict with Traffic Management Orders such as waiting restrictions.
- 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.
- The trading unit obstructs the safe passage of users of the footway or carriageway.
- The pitch interferes with sight lines for any road users such as at road junctions, or pedestrian crossing facilities.
- The site does not allow the Consent Holder, staff and customers to park in a safe manner.
- Any new pitch would be in competition with an existing business premise within the immediate locality selling identical items.
- Any new pitch would detract from the aesthetics of the local area.
- The pitch would be sited on the A249 or M2 as these locations are prohibited by the Highways Agency. Lay'bys on any other roads will be considered on a case by case basis.
- The pitch would be in conjunction with one of the permanent Town Markets. Applications to trade within the market footprint on market days will not be considered (for information on market footprints please contact the Licensing department).
- The pitch would be on a Council owned carpark.

Exemptions

The following are considered exempt from the need to obtain a Street Trading Consent:

- Fetes and Carnivals – outdoor events staged for public entertainment and benefiting charitable concerns
- Non-commercial or charitable events organised by not-for-profit organisations, charitable trusts
- Farmers' Markets (producer managed marketplace for local producers to sell their own produce direct to local people, separate to a Town Market)
- Sale of articles by householders on land contiguous with their homes
- Trading on private land, more than 7 metres away from the Highway, the Highway is defined as any road and pavement or any land where the public

have access without payment. In this instance the trader would only require the consent of the landowner

- Door to door sales, these are not considered Street Trading as they are dealt with by way of a Peddlars Licence. The Police issue and regulate Peddlars. Peddlars licences are also issued for traders that move and only stop temporarily to complete a sale.
- A Trader operating as part of a licensed market area (e.g. Rose Street Car Park, Sheerness, Forum Car Park, Sittingbourne and The Market Place, Faversham) or fair (e.g. Faversham Recreation Ground, Milton Recreation Ground)
- Trading in a trunk road picnic area as defined in Section 112 of the Highways Act 1980
- Trading carried out by 'rounds men' e.g. milk deliveries, window cleaning
- Trading carried on at a petrol station
- Trading carried out as a news vendor only selling newspapers or periodicals (this is subject to conditions about the size and position of the stand)
- Shops utilising the pavement outside their premises, offering and/ or selling goods which are part of the business of the shop; subject to Highways and Health and Safety legislation.

Street Trading consents for which fees are payable

Swale Borough Council will require payment of fees for the following street trading activities:

- One-off application (Temporary Consent, up to 96 hours/4days)
- An annual application for a fixed location
- An annual application for a non fixed location (such as Ice Cream Vans)
- A six month* application for either a fixed or non fixed location.
- Annual renewal of a fixed location consent
- Variation of a consent (all types)
- An application a Event Organisers Consent (Multiple Stalls)

*If applying for a 6 month consent the months must run concurrently.

Application procedure for a one off consent that is not part of an Event

An individual can make an application for a one off consent in the prescribed format to the Licensing Department, one off consents are designed for events and festivals and can last for a maximum of 96 hours/4 days. The following documentation must accompany the application:

- A passport sized photograph (for the ID card)
- The fee of £30.00

The application will be assessed by the Licensing Officer, provided all of the relevant information has been submitted, the consent will be granted and issued.

The Licensing Officer will pass details of the stall holder to the Environmental Health Department and any relevant Enforcement Officer for information, no further consultation takes place.

Application procedure for annual or 6 month consents (not Events)

It is essential that you contact the Planning Department prior to making an application, to check if there will be a need for you to obtain Planning Consent. It is generally the case that if you will be in situ for more than 28 days per calendar year, planning consent WILL be required.

An individual can make an application for an annual consent (fixed site) to the Licensing Department, the following documentation must accompany the application:

- An outline of desired trading area(s) (several can be proposed but only one will be granted) The proposed area will be reserved until the application has been considered
- Consent of the owner if the proposed trading area is private and you will be within 7 metres of the Highway.
- A passport sized photograph (for the ID card)
- The fee of £100.00 or £50.00 for 6 months

Your business will need to be registered with Environmental Health if you wish to sell food.

KCC Highways does not condone the use of the public highway for commercial purposes. KCC Highways will not give approval for mobile vending units but will, as part of the consultation process, provide advise on the safety aspects of a proposed location. KCC Highways **may** offer pre-application advice and applicants are advised to e-mail roadworkseast@kent.gov.uk stating the proposed location together with a small plan or map of the proposed site; in these circumstances advise does **not** constitute a consent.

The application will be assessed by the Licensing Officer, provided that all of the relevant information has been submitted and the application will be processed and a letter of acknowledgement will be sent to the applicant.

The Licensing Officer will then consult with the following:

Kent Police
Kent Fire and Rescue Service
KCC Highways
Environmental Protection Team
Environmental Response Team
Environmental Commercial Team
Ward Councillors.
Parish and Town Councils*

* Parish and Town Councils would not normally be consulted in the case of mobile Ice Cream Sellers requesting a 'Whole Borough' consent.

The Promenade in Leysdown on the Isle of Sheppey has been highlighted as historically suffering from seasonal illegal traders, for this reason no temporary consents will be accepted for this area.

Each Consultee (as listed above) has 28 days from the date that they receive the application notification in which to respond (in writing) to the Licensing Department. Consultees are notified of applications by either e-mail or post.

At the end of the consultation period, if no representations have been made the Licensing Officer **may** grant the consent. If representations have been made **and no agreement between parties can be reached** the application will be referred to the Licensing Sub Committee for a decision.

Application procedure to renew an Annual Consent (not Events)

Once granted an annual consent must be renewed each year. Approximately 6 weeks prior to its expiry the Licensing Officer will send a renewal reminder. Although no consultation takes place on annual renewals you should allow 28 days for the application to be processed.

You will need to submit the completed application and fee. You will not need to submit plans and photographs as these will already be held by the Council.

In some instances the Licensing Officer may deem it inappropriate to automatically renew the licence and the application would then undergo consultation with the relevant Authorities. This would be the case if complaints had been received and/or any offences had been committed since the licence was issued.

Application for an Annual Consent, non fixed location (Ice Cream Sellers only)

Ice Cream vans, by the nature of their business move from location to location but still fall under this legislation. They are not classed as 'Fixed Site' traders but must obtain consent from the Local Authority to carry out trade on the Highway.

The application and consultation procedure is the same as that for a 'Fixed Site' pitch with the exception of nominating a single street, instead applicants are required to nominate an area.

The consent is granted to the individual making the 'sale' and not the overall business.

Each individual/ business operating ice-cream vans will need to nominate a unique chime at the application stage and **where possible** no traders will have the same chime. Should an individual/ business be found copying another chime

or purposely changing their chime to evade enforcement action, their consent may be revoked or any renewal application rejected.

'Fixed Site' Ice Cream Sellers should follow the same application procedure as anyone applying for a 'normal' annual or 6 month consent.

Trial period

Companies who employ multiple drivers must ensure each driver is individually licensed. To allow time for a company to evaluate the suitability of a driver this authority has implemented a three week 'trial' period. Companies wishing to use this facility should contact the Licensing Department prior to the individual trading. After the trial period expires the company must make an application to authorise the driver otherwise any further trading would be considered illegal.

Application procedure for Event Organisers Consents

Unique to Swale Borough Council this allows an Event Organiser (on behalf of all the street traders) to make an application to the Licensing Department, stating how many trade stands they wish to have consent for. Event organiser(s) should consider any existing shops within the boundary of their event and establish whether they intend to trade on the street scene; if not, with their agreement the 'pitch' can be offered to another trader.

For Health and Safety purposes a list of stallholders and their intended locations should accompany the application.

The fee must accompany the application and be based on the number of stalls requested as follows:

- 1 – 19 = £65.00
- 20 – 49 = £130.00
- 50+ = £200.00

The application will be assessed by the Licensing Officer, provided all of the relevant information has been submitted and the consent will be granted and issued. No consultation takes place on Organiser Permits as in most cases details of the event have already been given to the Licensing Officer for consideration under different legislation.

No enforcement is carried out by the Council on Festival Organiser Consents, it is the responsibility of the consent holder to ensure the suitability, position and legality of each stall at their event.

The Licensing Officer will copy the list of stall holders to the Police and Fire Safety Officer for information, no further consultation takes place.

Revocation of a Trading Consent

The Council can revoke a Street Trading consent after it has been granted. This could be for a variety of reasons such as:

- Trading outside permitted hours
- Non compliance with conditions
- Non use of site for three months
- Other Statutory Notices served on a specific trader

Notice will be given of the intent to revoke a licence and the matter would be put before the General Licensing Committee for consideration. There is no automatic right of appeal against revocation of a licence and no refund of the consent fee paid.

Conditions

Standard conditions based on this policy document will be attached to every consent detailing the holder's responsibilities. 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 detail. Failure to comply with conditions may lead to revocation or non-renewal of a consent. Any contraventions will be considered prior to any further consent being issued. If a person is convicted of an offence then further consents may not be issued.

Enforcement

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. Decisions regarding enforcement action will be made in accordance with this policy and the Council's Enforcement Policy (available on our website www.swale.gov.uk).

In regards to mobile traders, a 'Code of Conduct', issued by the Department of the Environment (London) provides guidance to traders and Local Authorities on aspects of the ice-cream trade such as the sounding of chimes. The Local Authority's Environmental Department may refer to this guidance when investigating allegations of noise nuisance.

The Borough Council will only carry out enforcement on Ice Cream Sellers in the following circumstances:

- Trading in an area not defined on the Street Trading Consent
- Trading outside of the permitted hours
- Incorrect disposal of waste
- Health and Safety/ Food Hygiene and Environmental Issues

Any Statutory Notice served on a consent holder (in respects to nuisance) may result in a consent being revoked.

The enforcement function for any breaches in relation to street trading is currently delegated to the Head of Service Delivery, supported by the Licensing Enforcement Officer.

Waste/ Refuse

At the end of each day trading, the consent holder will clear the area around their permitted site and shall under no circumstances, deposit litter, rubbish or refuse in the street, suitable containers should be provided for the disposal of waste.

No waste liquids shall be disposed of into any highway channel, gully or manhole or in any other manner likely to cause pollution of any surface water channel.

All refuse generated by the business must be taken to a licensed waste disposal site. Consent holders must identify their method of waste disposal at the time of application and keep records of their waste management, which must be available on request by the Borough Council or the Environment Agency.

How The Council Makes Its Decision

The Council is bound to act reasonably and consistent with its general obligations (e.g. those under the Human Rights Act) but has a 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. There is no statutory right of appeal against the Council's decision. However, if your application is refused or revoked, you can discuss the matter with the Licensing Officer/Head of Service in the first instance, who will consider any objections you put forward.

Where adverse representations are received and remain unresolved the application will usually be considered by the Licensing Sub-Committee. At this point the applicant, will be expected to attend and 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. The Licensing Officer will be responsible for preparing a report for the Licensing Sub-Committee regarding the application. The report will be made available to the applicant at least five working days before the date of the meeting.

You can also ask for a Judicial Review, which is a decision made by a High Court Judge who will look at all aspects on the application and then give a judgement on the facts.

General

The Council can charge such fees as it considers reasonable but should cover the cost of administration, monitoring and enforcement. The Head of Service in consultation with the relevant Cabinet Member has delegated authority to set and review the fee structure in determining service pressures, if necessary at half year review but at least once a year.

Consents are issued to the individual and not the business, the named individual should be present throughout trading hours. The names of any assistants should be included in the initial application. If the named holder of the consent will not always be present, additional consents for the assistants may be required, Should the consent holder wish to vary the consent at any time, an administration fee will be charged and the variation will undergo a consultation process.

A street trading consent can not be transferred or sold to another person except that the consent may, with agreement from the Licensing Officer, be transferred to a member of the Consent Holder's immediate family in the event of the Consent Holder's death or incapacity. In these cases no fee will be charged.

This policy will be subject to a basic annual review and monitoring is undertaken by the Licensing Officer/Head of Service in conjunction with the appropriate Cabinet Member. Every three years the Policy will undergo a full review and widespread consultation in line with Government guidelines.

This policy will form the basis of the detailed conditions attached to every street trading consent. This policy will be applied in a manner which is consistent with our equality duties.

Trading conditions/ locations where different rules apply

Parks and publicly owned open spaces in Swale are not considered part of the policy relating to "Consent Streets". Enquiries relating to trading in parks and publicly owned open spaces must be directed to Swale Borough Council's Greenspaces Manager on 01795 417127.

Any food traders in these circumstances would need to be compliant with food hygiene regulations.

Exposing vehicles for sale on a road does not form part of the street trading legislation and instead is regulated under Section 3 of the Clean Neighbourhoods and Environment Act 2005. Complaints relating to commercial sales, of two or more vehicles within 500 metres should be reported to Swale Borough Council on 01795 417850.

Promotional Standards are not covered under this legislation as no 'sale' takes place. In most cases the main aim of such stands is to raise awareness of a business or charity. Anyone wishing to erect such a stand should, in the first instance contact the Licensing Department to check suitable locations and then KCC Highways as a Temporary Structure Permit may be required. This Council will only allow one promotional stand in any one area on any one day.

Street Trading and the Licensing Act 2003: These pieces of legislation come together when the holder of the Street Trading consent wishes to sell alcohol, this would normally only be the case with one off consents issued for events and festivals. In these circumstances the consent holder would also be required to

apply for a Temporary Event Notice (TEN) from the Licensing Department, The Street Trading consent alone does not authorise the sale of alcohol.

In respect of a consent issued to a Festival Organiser, it is the responsibility of the organiser to ensure that any stalls wishing to sell alcohol are aware of the requirement to apply for a TEN at least **5 working days** prior to the event. It should be noted that the day the paperwork is served and the day of the event are **not** included in the 5 days, therefore it is recommended that you allow at least 7 working days.

Trading in conjunction with any of the Town Markets is not covered by this legislation, for help and advice in obtaining a Market Pitch please contact Swale Borough Councils Economy and Community Services Manager on 01795 417420.

Further Information

For further information in relation to street trading please contact: The Licensing Department, Swale Borough Council, Swale House, East Street, Sittingbourne, Kent ME10 3HT

Tel: 01795 417364

Email: licensing@swale.gov.uk

Appendix I: General Consent Conditions

1. When consent is granted the Consent Holder and any assistants will be issued with a badge, which must be worn at all times while street trading;
2. The consent holder will ensure that his/her street trading activities do not create any obstruction to the flow of pedestrians or other traffic using the street or part of the street to which his/her consent relates, or create any danger to persons using it;
3. The consent holder will ensure that his/her street trading activities do not cause nuisance or annoyance, whether to persons using the street or part of the street which his/her consent relates or otherwise;
4. No signs advertising the trade are placed on the highway (or abutting the highway);
5. The consent must be available for inspection at all times during the hours of trading at the place of trading;
6. A consent number is displayed in an appropriate place;
7. If assistants are employed, they each have a copy of the consent within their possession at all times of trading. (***Assistants must be accompanied and supervised by the consent holder at all times. Where this is not the case, assistants must apply separately for a consent in their own name submitting the appropriate fee***);
8. The consent holder will not deposit trade refuse or litter of any kind on the street or part of the street to which his/her consent relates; (***Note under the Environmental Protection Act 1990 you are under a duty of care to dispose of any refuse in a correct manner.***)
9. The consent excludes trading in conjunction with the Town markets.
10. The consent does not automatically entitle the holder to trade at any festival or event, irrespective of whether you ordinarily trade in that location, permission must be sought by the event organiser(s).
11. That the consent holder has been granted permission for the use of land adjacent to the highway from the landowner and adjoining landowners when appropriate. The granting of a consent does not imply that landowners permission has been granted;
12. Consent to trade in a certain location does not imply the grant of planning permission and applicants are strongly recommended to consult the Planning Officer prior to commencement of trading;
13. Where food is sold the consent holder must comply at all times with ALL current hygiene legislation including EU hygiene regulations and Food Hygiene (England) Regulations 2006, as applicable.

Note: The Council may at any time vary conditions of a Street Trading Consent.

Appendix II: Organisers Consent Conditions

- 1 When consent is granted the consent holder will be issued with a paper licence which should be available for inspection.
- 2 The consent holder will ensure that the street trading activities do not create any obstruction to the flow of pedestrians or other traffic using the street or part of the street to which his/her consent relates, or create any danger to persons using it;
- 3 The consent holder will ensure that the street trading activities do not cause nuisance or annoyance, whether to persons using the street or part of the street which his/her consent relates or otherwise;
- 4 No signs advertising the trade are placed on the highway (or abutting the highway);
- 5 The consent holder will not deposit trade refuse or litter of any kind on the street or part of the street to which his/her consent relates;
(Note under the Environmental Protection Act 1990 you are under a duty of care to dispose of any refuse in a correct manner.)
- 6 The consent excludes trading in conjunction with the Town markets as these are covered under separate legislation.

Notes: The Council may at any time vary conditions of a Street Trading Consent.

The Council carries out no Enforcement over stalls covered by an Organisers Consent, other than those selling alcohol.

The Council has no power to move on any person in possession of a Peddlars Licence issued by Kent Police.