

<b>Council</b>	
<b>Meeting Date</b>	31st March 2021
<b>Report Title</b>	Review of the current Swale Street Trading Policy
<b>Cabinet Member</b>	Cllr Richard Palmer, Cabinet Member for Community
<b>SMT Lead</b>	Nick Vickers, Chief Financial Officer
<b>Head of Service</b>	Della Fackrell, Resilience & Licensing Manager
<b>Lead Officer</b>	Christina Hills, Licensing Officer
<b>Key Decision</b>	No
<b>Classification</b>	<b>Open</b>
<b>Recommendations</b>	1. Council is asked, following a recent consultation and consideration by the General Licensing Committee, to adopt the draft Swale Street Trading Policy 2021 – 2024 as attached as Appendix I in order that it can be published and come into effect from 1 <sup>st</sup> April 2021

## 1 Purpose of Report and Executive Summary

- 1.1 To apprise Members of the steps taken in reviewing the current Swale Street Trading Policy 2013 -2016.
- 1.2 A review of the existing Swale Street Trading Policy 2013 – 2016 and a new draft policy was presented to General Licensing Committee at its meeting of 20<sup>th</sup> February 2020 where it was approved for public consultation.
- 1.3 Following the public consultation a further report was presented to General Licensing Committee on 21<sup>st</sup> January 2021 where the draft policy was approved for formal adoption by Council.
- 1.4 Council is requested to approve the revised draft Street Trading Policy under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) attached as **Appendix I**.

## 2 Background

- 2.1 Under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, a local authority may regulate street trading in their area. Swale BC has adopted these provisions for the whole of its area and on 23<sup>rd</sup> July 2010 designated all streets in the area as 'consent streets'.

- 2.2 The effect of this designation is that any street trading in any street is prohibited, subject to legal exemptions, without first obtaining a street trading consent from the Council.
- 2.3 A Street Trading Policy was approved by the Council on 24<sup>th</sup> July 2013 and which, although set to be reviewed in 2016, is still in existence to date.
- 2.4 The Street Trading Policy outlines how the Council will execute its decision making functions when dealing with applications for Street Trading Consents.
- 2.5 There is no statutory requirement for a local authority to have a formal Street Trading policy; however, a Council can choose to adopt such a policy.
- 2.6 The adoption of a Policy benefits customers as well as reassuring the general public and other public bodies. It also reinforces effective practices and ensures proportionate, consistent and targeted regulator activity, whilst also developing a transparent and effective dialogue and understanding between regulators and those we regulate.

### **3 Proposals**

- 3.1 The existing policy was reviewed by officers. There have been no changes to legislation to take into account. The current policy has been expanded in some areas to provide clarification as to what is defined within the Local Government (Miscellaneous Provisions) Act 1982 and, where appropriate, exemptions contained within the existing policy have been deleted.
- 3.2 The draft Street Trading Policy is attached as **Appendix I**.
- 3.3 The existing policy has been amended as shown below:
  - Removal of '7 metre rule' within the existing policy whereby anyone trading more than 7 metres from the highway was exempted from the requirement of obtaining a Street Trading Consent. This exemption was taken from the London Local Authorities Act 1990 rather than the Local Government (Miscellaneous Provisions) Act 1982 and is not a legal exemption.
  - Removal of the requirement for ice-cream vendors to register and use a specific chime. This was originally imposed to assist with enforcement. However, it leads to complaints from ice-cream vendors that another vendor is using their chime and is difficult to enforce.
  - Ice Cream Vans and Mobile Food Vans will be required to supply details of their proposed routes, streets and stopping places (which may vary from day to day) again to decrease complaints from other traders.

- Removal of the 'Trial Period' which permits individuals, under the control of an existing consent holder, to try their hand at street trading for a limited period of three weeks.
- The surrender and revocation of a Street Trading Consent is now included in the Policy.
- Amendments to the application procedure to make it more comprehensive. This includes the requirement for applicants to obtain a standard Disclosure and Barring Service criminal records check for new and renewal applications and for one-off consents where considered necessary in order to check the suitability of the applicant.
- Event organisers will no longer apply on behalf of all stall holders, instead each individual stall holder will require a separate Street Trading Consent. The reason for this change is because currently the event organiser is the only person who would be legally accountable and the only person that the Council could take enforcement action against, should there be any problem (for example trading in counterfeit goods).
- Enforcement – this section has been expanded.
- Data Retention – this section has been expanded.
- The licensing fees were reviewed taking into account that they needed to reflect the increased administrative burden that will fall to the licensing team with this enhanced policy whilst at the same time ensuring they are not set at a rate that would be prohibitive to applicants for Street Trading Consents. Options were presented to Members of the General Licensing Committee on 21<sup>st</sup> January 2021 and the fees that were approved are shown as Appendix III of the draft policy.

## **4 Alternative Options**

- 4.1 The Council could choose not to introduce an updated policy on Street Trading, however, to do so would be contrary to best practice and may lead to a lack of clarity on the application of legislation

## **5 Consultation Undertaken**

- 5.1 A consultation ran between 30<sup>th</sup> March 2020 until 30<sup>th</sup> June 2020. The methods of consultation and consultees were as previously advised to General Licensing Committee.
- 5.2 Despite a wide reaching consultation, only 5 responses were received. All of them were either in support of the policy or contained proposals for sensible

minor policy amendments. None of them were contentious or contained any objections to the draft policy.

- 5.3 The General Licensing Committee considered the consultation responses at their meeting of 21<sup>st</sup> January 2021 and agreed amendments to the draft policy in line with officer recommendations.

## 6 Implications

Issue	Implications
Corporate Plan	Having an adopted Street Trading Policy satisfies the corporate objective of: A Council to be proud of.
Financial, Resource and Property	<p>There are no direct financial implications for Swale Borough Council. However, if at any time in the future the policy was subject to legal challenge, there could be costs associated with this process.</p> <p>There could be traders who previously were informed that they required no street trading consent because they were trading more than 7 metres from the highway. As this was an illegal exemption these traders will now require a street trading consent and to pay the requisite fee.</p>
Legal and Statutory	The relevant legislation in relation to street trading is contained within Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).
Crime and Disorder	It is a criminal offence to trade in the street without an appropriate consent. The policy provides a framework for consistent decision-making.
Environmental Sustainability	No implications.
Health and Wellbeing	No implications.
Risk Management and Health and Safety	It is important that Swale BC has a robust and accountable regulatory regime in relation to street trading in order to ensure fair trading, prevent crime and to protect consumers.
Equality and Diversity	<p>The Council has a legal obligation under section 149 of the Equality Act 2010 to have due regard to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups.</p> <p>When considering street trading consent applications, only issues provided for in Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 and provided for in the Street Trading policy for Swale BC will be taken into account. This will ensure a</p>

	consistent approach is adopted. Under the terms of the policy, every application will be considered on its own merits.
Privacy and Data Protection	Normal data protection and privacy rules apply.

## **7 Appendices**

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Draft Swale Street Trading Policy 2021 – 2024.

## **8 Background Papers**

None