

<b>Council</b>	
<b>Meeting Date</b>	5 <sup>th</sup> April 2023
<b>Report Title</b>	Amendments to the current Swale Street Trading Policy
<b>EMT Lead</b>	Emma Wiggins, Director of Regeneration and Neighbourhoods
<b>Head of Service</b>	Charlotte Hudson, Head of Housing and Community Services
<b>Lead Officer</b>	Christina Hills, Licensing Team Leader
<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 Licensing Committee, to adopt amendments to the Swale Street Trading Policy 2021 – 2024 as attached as Appendix I in order that it can be published and come into effect from 17 <sup>th</sup> April 2023

## 1 Purpose of Report and Executive Summary

- 1.1 To apprise Members of the steps taken in reviewing the current Swale Street Trading Policy 2021 -2024.
- 1.2 A review of the existing Swale Street Trading Policy 2021 – 2024 and proposed amendments to the policy was presented to Licensing Committee at its meeting of 15<sup>th</sup> February 2022 where it was approved for public consultation.
- 1.3 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 The Street Trading Policy outlines how the Council will execute its decision-making functions when dealing with applications for Street Trading Consents.
- 2.4 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.
- 2.5 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.
- 2.6 A draft revised policy was approved by General Licensing Committee on 2<sup>nd</sup> February 2020 for full public consultation which took place between 30<sup>th</sup> March 2020 and 30 June 2020. After this consultation the final policy was presented to General Licensing Committee on 21 January 2021 and was then formally adopted by full council on 31<sup>st</sup> March 2021. The current edition of the Swale BC Street Trading Policy 2021 – 2024 is available to view at <https://swale.gov.uk/news-and-your-council/strategies-and-policies/street-trading-policy>
- 2.7 Whilst the current provisions contained within the policy have worked well for those traders who have either six month or yearly trading consents, the situation for those individuals requiring one-off consents in order for them to trade at events held within the borough has not been so straightforward. This is mostly due to unclear wording within the policy and how the licensing team have administered applications as a result.
- 2.8 The 2 main areas where problems have arisen are the requirement for there to be an 8-week consultation for events at which there will be street trading, and the requirement within the policy for applicants to obtain a basic Disclosure and Barring Service check (DBS).
- 2.9 These 2 issues were brought sharply into focus regarding an application for a Street Trading Consent for Faversham Hop Festival in 2022 which was submitted too late for any of the current requirements contained within the policy to be complied with. As a result, an extraordinary meeting of the Licensing Committee was held on 22<sup>nd</sup> August 2022 to waive the requirements contained in the current policy for 1 year  
<https://ws.swale.gov.uk/meetings/ieListDocuments.aspx?CId=215&MId=3880>
- 2.8 It was at this meeting that Members discussed ambiguities within the current policy that had not been picked up and the Licensing Team Leader acknowledged that greater clarity on the Street Trading policy was needed for event organisers and a report to address this would be considered at a future Licensing Committee
- 2.9 Proposed amendments to the current policy were presented to Licensing Committee on 15<sup>th</sup> February 2023.

<https://services.swale.gov.uk/meetings/documents/s25130/Street%20Trading%20Report.pdf>

It was resolved that:

***Resolved:***

***(1) The amendments as set out in the minutes be included in the Swale Borough Council Street Trading Policy 2021 – 2024.***

***(2) That the policy consultation process to include the additional consultees as set out in the minutes be noted.***

### **3 Proposals**

- 3.1 Details of the proposed changes to the current Street Trading Policy are attached as **Appendix II**.
- 3.2 As mentioned at paragraph 2.8 there are two particular changes proposed to bring to Members attention which relate to:
  - a) The requirement for an 8- week consultation period for street consent applications
  - b) The requirement for DBS checks for one-off consents ‘where necessary’
- 3.3 With regards to the 8-week consultation for applications involving events, officers now consider this to be unnecessary as all event organisers submit an Event Management Plan to the Safety Advisory Group which involves the same agencies as those which are consulted for Street Trading Consents, and this is therefore unnecessary duplication.
- 3.4 With regards to the requirement within the current policy for applicants to obtain a basic Disclosure and Barring Service check (DBS) the policy states that these checks are mandatory for six month or yearly consents and also that DBS checks for ‘one-off’ consents are required ‘where necessary’ without defining what circumstances would require a DBS check to be obtained and what would not.
- 3.5 This has met with resistance from proposed “one-off” traders as they feel it adds an unnecessary cost of £23 for the DBS on top of the £10 they pay for the consent.
- 3.6 The reason that DBS checks were introduced was to ensure that no applicants for consents had a history of selling stolen or counterfeit goods and for safeguarding purposes. The Authority has identified a lawful basis for processing personal data and the policy is intended to ensure use of that data is fair, transparent and lawful.

3.7 It is still appropriate to require DBS checks for 6 month or yearly consents  
 However, since the policy was introduced the risk in respect of one-off consents does not support mandatory DBS checks. Additionally, there is a lack of clarity in the policy concerning when such checks would be “necessary” and accordingly the proposal is to remove the requirement for DBS checks for one-off consents.

## 4 Alternative Options Considered and Rejected

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. This is also likely to lead to traders deciding not attend events held within the borough which will have a negative impact both in terms of the events themselves and any publicity surrounding them.

## 5 Consultation Undertaken or Proposed

5.1 In line with Members wishes, a consultation of 4 weeks ran between 27<sup>th</sup> February 2023 until 24<sup>th</sup> March 2023. The consultees were those as instructed by the Licensing Committee of 15<sup>th</sup> February 2023.

5.2 A total of 4 responses were received.

5.3 Licensing Officers, in consultation with the Community Safety Manager have conducted an evaluation of each response and have given comments and recommendations as to whether or not to amend the policy statement, and if so, in what way and to what extent.

4.6 The grid is attached as **Appendix III**.

## 6 Implications

Issue	Implications
Corporate Plan	<p>The service is an important regulatory function undertaken to ensure the safety of the public consumers</p> <p>There are indirect links to:</p> <p>Priority 3:</p> <p>3.4 Ensure that the council plays a proactive role in reducing crime and antisocial behaviour.....</p> <p>3.5 Promote wellbeing and enjoyment of life by signposting and encouraging a wide range of sporting, cultural, leisure and</p>

	development activities appropriate and accessible to each age group.
Financial, Resource and Property	There are no direct financial implications for Swale Borough Council concerning this draft Policy as the consultation is being carried out by officers. However, if at any time in the future the policy was subject to legal challenge, there could be costs associated with this process.
Legal ,Statutory and Procurement	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.
Environment and Climate/Ecological Emergency	No implications.
Health and Wellbeing	No implications.
Safeguarding of Children, Young People and Vulnerable Adults	Licensing regimes are largely designed to protect public safety. DBS checks for Street Trading Consents are deemed to be necessary in some circumstances but not all to check that applicants are suitable to trade
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 consistent approach is adopted. Under the terms of the policy, every application will be considered on its own merits.</p>
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 revision of the current Swale BC Street Trading Policy 2021 – 2024
- Appendix II: Summary of proposed changes to the policy
- Appendix III: Consultation and Evaluation Grid

## **8 Background Papers**

None