

Street Trading Policy

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Policy: Street Trading Policy

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Purpose

1. The Council's street trading aim is to create a street trading environment which compliments premises based trading, is sensitive to the needs of residents, provides diversity and consumer choice, and seeks to enhance the character, ambience and safety of local environments.
2. The policy recognises the importance of street trading to the Borough of Ashford and that it can add to the vibrancy and vitality whilst not adding to nuisance and crime and disorder.
3. Through its tourism service and by other means, the Council will seek opportunities to promote street trading activities.
4. This policy will complement and inform other Council initiatives including those on street markets and life in the public realm.
5. This policy will be the subject of monitoring and review after five years.
6. This policy will be applied in a manner which is consistent with the Council's equalities policies.

What is Street Trading?

7. Street trading means selling, exposing or offering for sale any article in a street. The term 'street' includes any road, footway or other area to which the public have access without payment.
8. Ashford Borough Council has adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 for the whole of its area and has designated all streets in the area as 'consent streets' for street trading purposes, with the exception of the High Street and Lower High Street in Ashford Town Centre, which are designated 'licence streets'.
9. The effect of this designation is that street trading in any street is prohibited, subject to legal exemptions, without first obtaining a street trading consent or licence from the Council.
10. This includes all streets, car parks, parks and all adjacent paved, grassed and ornamental areas.

Exemptions from the need to obtain a Consent or Licence

11. Some types of trade are legally exempt from the need to obtain a street trading consent or licence. These include:

- a person trading under the authority of a pedlars' certificate granted under the Pedlars Act 1871
- trade carried out by roundsmen e.g. milkmen
- trade carried on at a petrol filling station
- market created by statute or grant
- trading as a news vendor
- trading in and around shops
- charity collections

12. In addition to the legal exemptions, the following examples clarify our approach to trading on private land where the public have access without payment.

<p><i>If any of the below scenarios apply, the you will be unlikely to require a street trading consent.</i></p> <p><i>Planning permission, food business registration, business rates etc. will however still be required as appropriate</i></p>
<p><i>Trading on private land, were the stall/trading is not adjacent to the public highway. The term 'adjacent' is not strictly defined, but it is suggested to be within 25 meters of a public highway</i></p> <p><i>Example – An ice-cream trader operating outside the front doors of a supermarket with the landowner's permission, but away from the public highway.</i></p>
<p><i>Trading on private land, that is adjacent to the public highway (carriage of pavement), where there is no direct access from the highway due to continuous hedging/fencing. The term 'adjacent' is not strictly defined, but it is suggested to be within 25 meters of a public highway</i></p> <p><i>Example - Trading at a retail unit car park alongside the highway but where customers from the street would need to walk around the site boundary to the public entrance and then back across the car park</i></p>
<p><i>Trading on private land regardless of proximity to the highway, but only trading to occupiers of the private land with no trading to the public from the highway (carriageway or pavement).</i></p> <p><i>Example – Sandwich van serving industrial unit employees, or, a food stall at a promotional event for retail unit customers.</i></p>

Street Trading Consents or Licences for which fees are not payable

13. Ashford Borough Council will not require the payment of fees for the following street trading activities:

- fetes, carnivals or similar community based and run events
- non-commercial or charitable events
- farmers markets (producer-managed marketplace for local producers to sell their own produce direct to local people)
- sales of articles by householders on land contiguous with their homes

Types of Consents and Licences

14. The types of consents and licences issued by this council are detailed below:

Static Consents

15. This will be for those wishing to trade on a street, at the same location, more than twice a week and/or for more than 4 hours a day. This licence is likely to require planning permission.

Examples would be: Tenterden market, burger vans and fruit and vegetable stalls.

Short Term Static Consents

16. This will be for those wishing to trade at the same location, no more than twice a week and less than 4 hours a day. A separate licence would be required for each location traded in. This licence will not usually require planning permission.

Examples would be: Food vendors such as Fish & Chip vans serving rural locations.

Hawker (previously known as Itinerant)

17. This will be for those wishing to trade at different locations within the Borough, for no longer than 20 minutes and do not return to the same location or within 200m, on the same day. No planning permission required.

Examples would be: Sandwich vendors and ice cream vans.

Licence

18. Ashford Market (Lower High Street)

The town Market operates on a Tuesday, Friday and Saturday between the hours of 0900 and 1500.

Some traders have 'inherited rights' to trade on Thursday.

Site Assessment for Consents

19. The Council will identify suitable 'pitches' for street trading and will maintain a list of available pitches via the Council's website.

Planning Permission

20. If a consent or licence is required, the onus is on the applicant to obtain both planning permission and permission to trade from the landowner prior to making an application for street trading consent. It is not the responsibility of the issuing Authority to investigate and obtain this information.

21. Having established that the site(s) is suitable in principle, a planning application must be submitted to the Planning and Development Unit. Advice on making a planning application may be obtained from the Council (www.ashford.gov.uk).

22. Operators should not submit a Street Trading Consent application until planning permission has been obtained. If planning permission has been granted, consultation requirements for street trading will be reassessed.

23. Before a new pitch is created by the Council or an applicant applies to use Council land for the purposes of street trading (non market) we may consult and seek written observations from some or all below. The site may also require planning permission which needs to be sought separately and will incur an additional fee.

- occupiers of premises immediately adjacent and opposite
- ward councillors
- parish or town council/community forum
- Kent Police
- Development Control (ABC)
- Highways (KHS)
- existing holders of street trading consents in the immediate area

24. In determining whether to create a street trading pitch the Council will have regard to:

- any effect on road safety, either arising from the siting of the pitch or from customers visiting or leaving
- any loss of amenity caused by noise, traffic or smell
- existing Traffic Orders e.g. waiting restrictions, parking, etc
- any potential obstruction of pedestrian or vehicular access
- any obstruction to the safe passage of pedestrians
- the safe access and egress of customers and staff from the pitch and immediate vicinity
- congestion,
- impact on the character of the area

25. The Council will also consider any responses received in relation to a public notice on the highway.
26. Twenty-eight days will be given to consultees to make comments / objections. If no comments are received, the application will be granted in the terms applied for with standard conditions attached to the consent.
27. Any proposed change to standard conditions will be consulted with consent holders and others, if relevant.
28. There is no right of appeal against refusal to issue consent, but where an application is refused, payment of the application fee shall be refunded.

Issue of Street Trading Consents/Licences

29. Licences and consents will specify the trading day(s) and timings in accordance with varying factors including their location.
30. Fees for the grants of consents and licences must be paid in full on application. In the case of renewals, payments must be made on a monthly basis via standing order.
31. Pitch fees for Ashford Market are payable on a monthly standing order.
32. Failure to maintain payments as above may result in the permission not being renewed or being revoked.
33. It should also be noted that a consent/licence cannot be issued to a person under the age of 17 years. An application may be refused if the applicant is unsuitable to hold the consent/licence by reason of having been convicted of an offence or for any other reason.
34. In addition to the requirement of having a street trading permission, applicants who sell hot food or hot drinks between 11.00 pm and 05.00 am will need a premises licence under the Licensing Act 2003. Information is available at www.ashford.gov.uk/premises-licence

Fee Structure

35. The fee structure for consent pitches will primarily reflect pitch location, trading days and hours and the Community Safety and Wellbeing Manager has delegated authority to set fees and to annually review the fee structure.

Special Events

36. At special events, Ashford Borough Council will issue one consent or licence to the person organising the event, rather than to each individual trader if that person or company is responsible for all traders under their permission.
37. The Council will require that the company produces a list of the individual traders before the trading day and that the traders hold and are able to produce some authorisation from the company organising the event.
38. The Council will require the operating company to hold an insurance certificate covering all the individual traders to the value of £10,000,000.
39. This policy is aimed at promoting events and encouraging more traders to attend them.
40. We will issue a single consent or licence, which will cover a number of traders. The number of traders covered is as follows:
 - Category 1 – Up to 20 traders
 - Category 2 – Over 20 traders
41. If the event is being held on behalf of raising funds for a charity, etc the fee will be waived.

Markets

Ashford Town Market

42. The market operates on a Tuesday, Friday and Saturday with some traders historically entitled to trade on a Thursday also. Stalls should be set up and vehicles removed off site by 9am when the market opens. Traders typically set up between 0700 – 0800 until 3pm. From 3pm, vehicles are allowed on site and stalls should be packed away as quickly as possible giving attention to health and safety as public will be in the area. This may be altered during the winter months and/or during periods of bad weather with consent of the Market Toby and/ or Licensing.
43. All waste generated from each stall should be removed from site by the stall holder at the end of the trading day. Traders are required to dispose of their waste themselves ensuring legal compliance.

Ashford Farmers Market

44. Ashford Farmers Market is operated by Ashford Borough Council in the Lower High Street every 4th Sunday of the month selling local produce.
45. To enquire regarding this market please contact 01233 331111

Tenterden High Street Market

46. This Friday market, located in the High Street outside Tenterden Town Hall is operated by Tenterden Town Council.

47. To enquire regarding this market please contact;
townhall@tenterdentowncouncil.gov.uk

Ashford Orbital Market

48. This market is not operated by Ashford Borough Council

Tenterden 'Market Square' Market

49. This market is not operated by Ashford Borough Council

Conditions

50. Standard conditions will be attached to every street trading consent and licence detailing the holder's responsibilities to maintain public safety, avoid nuisance and generally preserve the amenity of the locality.

51. The Head of Community Safety and Wellbeing may review the conditions set out in Appendix A & B of this policy and may add to, delete or amend the conditions as they see fit.

52. Specific conditions will also be attached such as the days and hours when street trading is permitted, the goods which may be sold and the size of the pitch.

53. Failure to comply with conditions, non-payment of fees or non-attendance may lead to revocation or non-renewal of a consent/licence.

Enforcement

54. Persons trading without a street trading permission, applicants who fail to disclose relevant information, traders whom breach conditions or display unsuitable behaviour will be the subject of enforcement action. This also includes any person who holds a certificate granted under the Pedlar's Act 1871, but who fails to operate in accordance with the Act.

55. There are a range of enforcement options available including (but not limited to) a verbal warning, a written warning, prosecution and revocation of licence/consent.

Appendix A: Pool of conditions

Pool of conditions that may be imposed on a consent to trade

In these conditions:

"The Council" means Ashford Borough Council.

"You" means the holder of the consent to trade.

"Your Assistant" means any person or persons who assists the holder of a consent to trade whilst trading under that consent.

1. In addition to these conditions, the Council may also impose conditions which are specific to individual consents to trade.

2. Trading consents for Tenterden market will be conditional on the design of the stalls.

3. Traders wishing to use generators whilst trading at Tenterden market will require permission from the licensing authority.

4. The consent is personal to the trader and is not transferable.

5. The consent holder may only site the permitted structure at the approved location(s).

6. A copy of the consent shall be displayed in a conspicuous place or be made available on demand by an Officer of the Council or Kent Police, whilst trading.

7. The consent holder may only trade on the approved days and between the approved times as indicated on the street trading consent.

8. The consent holder may only sell articles approved by the Council as indicated on the street trading consent.

9. The consent holder shall write to the Council giving details of the new home address or new address of the registered office within seven days of change

10. The consent holder shall write to the Council giving full details of any conviction(s), caution(s) or fixed penalty notice(s) imposed within seven days of the imposition of the conviction(s), caution(s) or fixed penalty notice(s).

11. The holder shall indemnify the Borough Council against any claims in respect of injury damage or loss arising out of the grant of this consent (except insofar as any claim in respect of injury damage or loss is attributable to the negligence of the Council) and shall maintain a public liability insurance policy with a limit of indemnity of up to £5 million (£2 million for market traders) for any one incident. The holder shall produce the certificate of insurance and any renewal thereof within 24 hours of the original expiry date.

13. The consent holder shall ensure full compliance with relevant food safety and health and safety legislation.

14 The consent holder must ensure that staff who prepare open high risk foods, or handle food and have a supervisory role, have training to the level equivalent to the Chartered Institute of Environmental Health (CIEH) Level 2 Award in Food Safety in Catering within three months of the consent being issued.

15 The consent holder shall take all reasonable and proper precautions for the safety of all other persons using the street(s) and to prevent danger to persons using the street(s).

16 The consent holder shall not cause any obstruction of the highway.

17 No article or thing shall be caused or allowed to project beyond the front of the stall or be placed alongside it in such a way as to cause any obstruction to users of the highway.

18 The consent holder shall ensure that trading is conducted in a manner which avoids any nuisance or annoyance to the occupiers of neighbouring premises. In particular the holder shall ensure that any power driven equipment (including generators) are sited to minimise noise and attenuated where necessary.

19 The consent holder shall comply with the reasonable requests of a duly authorised officer of the Council to take such action as is considered necessary to abate any nuisance or obstruction.

20 Public highways shall be maintained in a clean condition during each day's trading and all rubbish and waste paper accumulated throughout the daily operation of this consent shall be removed at the end of each day's trading. Suitable refuse facilities shall be provided to encourage customers to dispose of rubbish and waste paper so as to avoid causing a nuisance by the littering of the highway and private land bordering the approved location.

21 The consent holder shall observe, perform and comply with all relevant statute law, common law and byelaw provisions, including Road Traffic Regulation Orders made by the Highway Authority.

22 All vehicles that are traded from will have a valid certificate of motor insurance, where appropriate, a valid MOT Certificate and be fit for purpose.

23 A consent may be surrendered at any time.

24. The consent holder shall, where applicable, at all times when trading comply with all "Codes of Practice" relating to noise in particular the "Codes of Practice on Noise from Ice Cream Vans Chimes etc 1982".

25. No animal shall be present on any stall or vehicle.

Appendix B: Ashford Town Market - Standard Subsidiary Terms and Conditions

1. A licence holder or his assistant shall engage in street trading at all times in accordance with the directions of authorised Officers of the Council.
 - 1.1 A licensed trader shall:-
 - (a) Cause all refuse arising from the business to be suitably stored/contained to prevent escape and ensure removal of all waste by the end of the trading day and arrange for its lawful disposal.
2. The licence holder shall not attend at the street before 6 a.m. on the day(s) for which this licence is valid, but shall attend there by 8 a.m. failing which it may be assumed that he will not be trading that day. The licence holder shall remain at the stall until the ceasing of trading at 3 p.m. following which he shall immediately vacate the stall
3. The licence holder will ensure the appropriate person (either market “Toby” or Licensing Officer) is contacted in advance of a designated trading day if they are unable to trade. Continued non attendance without good reason may result in revocation of the licence.
4. All vehicles being used by the licence holder or his assistant for servicing his trading shall be loaded or unloaded and leave the Town Centre without delay and without causing obstruction to pedestrians and traffic in the Town Centre and shall be parked away from the Town Centre and no such vehicle shall, except in cases of emergency, be in the Town Centre between 9 a.m. and 3 p.m.
5. A licence holder shall only engage in street trading on the days and during the hours specified in the licence.
6. A licence holder shall sell or expose or offer for sale no article or thing of any class other than as specified in the licence.
7. All stalls used under the authority of this licence must:
 - (a) be used in such a manner that no damage is caused or is likely to be caused to the surface of the street or any person, building, structure, article or thing therein and
 - (b) no stall or article associated with it shall be physically attached in any manner to the surface of any street or any building, structure, article or thing therein.
8. The holder shall indemnify the Borough Council against any claims in respect of injury damage or loss arising out of the grant of this licence (except insofar as any claim in respect of injury damage or loss is attributable to the negligence of the Council) and shall maintain adequate insurance (including both public and products liability), with a limit of

indemnity of up to £5 million. The minimum being £2 million, for any one incident. The holder shall produce the certificate of insurance and any renewal thereof within 24 hours of the original expiry date.

9. The licence holder shall pay to the Council the cost incurred by the Council in making good any damage to the Town Centre or its furniture or landscaping caused by the licence holder or his assistant.
10. No article or thing shall be caused or allowed to project beyond the front of the stall or be placed alongside it in such a way as to cause any obstruction to users of the highway.
11. A licence holder shall cause no nuisance, injury or offence to any user of the street or any occupier of any premises and in particular, but without prejudice to the generality of the foregoing, shall not:-
 - (a) engage in noisy or disorderly conduct;
 - (b) use any amplified music and shall not use any musical instrument, radio, gramophone, tape or cassette player or noisy apparatus in such a way as to cause annoyance to or lead to reasonable complaint from any other person.
12. A licence holder shall immediately remove his stall and any articles or things associated therewith for so long as may be necessary if required to do so by an authorised Officer of the Council (who if so required shall produce his authority) or a Constable in the event of an emergency or in the exercise by the Council of any of its powers or duties or in the event of works being carried out in the street by statutory undertakers.
13. A licence holder shall:-
 - (a) at all times while engaging in street trading, have in his possession his Street Trading Licence, as issued by the Council;
 - (b) if so required by the Council at all times while engaging in street trading, carry about his person a badge or such other means of identification (if any) as may be prescribed by the Council;
 - (c) on being required to do so by an authorised Officer of the Council (who if so required shall produce his authority) or by a Constable, produce this licence;
 - (d) on changing his address, or the address at which articles will be stored when not being offered for sale, within 7 days of such change give notice to the Council, of such change and at the same time produce this licence in order that a memorandum of such change may be endorsed thereon.
14. A licence holder shall not at any time lend or purport to transfer or assign this licence to, or permit it to be used by any other person.
15. This licence must not be altered, defaced or tampered with in any way.

16. In these conditions:-

- (a) "The Act" means the Local Government (Miscellaneous Provisions) Act 1982;
- (b) "The Council" means Ashford Borough Council;
- (c) Except where the context otherwise requires words and phrases shall have the meanings assigned to them by paragraph 1 of the fourth Schedule to the Act;
- (d) "Licence holder" means any person who is licensed by the Council to engage in street trading under Section 3 and the fourth Schedule of the Act;
- (e) The term "stall" in this licence includes any stall or mobile shop or similar vehicle from which trading is conducted;
- (f) "Assistant" means any person (not being a licence holder trading under the authority of and in accordance with any condition in a street trading licence) who engages in street trading on or from a stall which is under the control of a licence holder whether in return for payment or not;
- (g) "The Schedule" means the Schedule to this street trading licence.

17. A licence holder and any assistant must comply strictly with any statutory provisions relevant to his street trading activities, and in particular persons carrying on a food business must comply with the Food Safety Act 1990 and the Food Hygiene (England) Regulations 2006.

18. The licence holder's attention is drawn to Schedule 4 of the Local Government (Miscellaneous Provisions) Act which provides that failure to comply with the above conditions could lead to revocation of this licence and would be taken into account in considering any application for renewal. Contravention of any of the principal terms of this licence constitutes an offence.

Appendix C: Guidelines relating to the relevance of convictions

1. General policy

- 1.1. It should be advised that the relevance of prior convictions applies to persons applying for grant or renewal of a licence or street trading consent.
- 1.2. Each case will be decided on its own merits
- 1.3. The Council will assess whether an applicant for the grant or renewal of a street trading consent or licence is a suitable person to hold or to continue to hold a street trading consent
- 1.4. In considering the previous convictions of the applicant, the Council will consider the following:
 - whether the conviction is relevant;
 - the seriousness of the offence;
 - the length of time since the offence occurred;
 - whether there is a pattern of offending behaviour;
 - whether that person's circumstances have changed since the offence occurred; and
 - the circumstances surrounding the offence and the explanation offered by that person.

2. Offence types

The following is a description of the Council's general approach to certain categories of offences.

2.1. Dishonesty

The holders of a street trading consent and licence and their assistants have to be persons who can be trusted. It is easy for a dishonest trader or assistant to take advantage of the public.

Members of the public using a street trading outlet expect the holder and his assistant to be honest and trustworthy.

For these reasons a serious view will be taken of any conviction involving dishonesty. In general, an applicant for the grant or renewal of a street trading consent is unlikely be granted a street trading consent where the application is made within 3 to 5 years of a conviction or the date of release from jail.

2.2. Violence

As street traders and their assistants have close contact with the public, a robust approach will be taken with applicants who have

convictions for violence. In cases where the commission of an offence involves loss of life, a street trading consent or licence will normally be refused. In other cases, a period of 3 to 10 years free of conviction from the date of conviction or the date of release from jail where a custodial sentence has been imposed, depending upon the nature and seriousness of the offence(s), will generally be required before an application is likely to be considered favourably.

2.3. Drugs

Where an applicant has a conviction for an offence that relates to the supply or importation of drugs and the date of the conviction or the release from jail, where a custodial sentence has been imposed, is less than 5 to 10 years before the date of the application, an application will normally be refused. After 5 years from a conviction or the date of release from jail, where a custodial sentence has been imposed, the circumstances of the offence and any evidence which shows that a person is now a suitable person to hold a street trading consent will be taken into consideration.

An application will normally be refused where the applicant has a conviction for an offence relating to the possession of drugs and the date of the conviction or the release from jail, where a custodial sentence for such an offence has been imposed, is within 3 to 5 years of the date of the application. After a period of three years from conviction or the date of release from jail where a custodial sentence has been imposed, consideration will be given to the circumstances of the offence and any evidence to show that an applicant is a suitable person to hold a street trading consent

An application will normally be refused where an applicant has more than one conviction for offences related to the possession of drugs and the last conviction or the date of release from jail, where a custodial sentence has been imposed, is less than 5 years before the date of the application.

2.4. Sexual and indecency offences

As the holders of street trading consents and their assistants, and in particular those who sell ice cream, have access to children, applicants who have convictions for rape, indecent assault, any sexual offence involving children and any conviction for an offence under the Sexual Offences Act 2003 will normally be refused a street trading consent. Where an applicant has a conviction for a sexual offence such as indecent exposure they will normally be refused a street trading consent until they can show a substantial period usually between 5 and 10 years free of any such convictions from the date of conviction or the date of release from jail where a custodial sentence has been imposed.

After a period of 5 years from conviction or the date of release from jail, where a custodial sentence has been imposed, consideration will be given to the circumstances of the offence and any evidence to show that an applicant is a suitable person to hold a street trading consent.

When considering applications, the Council may take into account any information of a sexual nature which does not amount to a criminal offence that is brought to its attention where that information may indicate that an applicant may not be a suitable person to hold a street trading consent. In cases where the Council considers that information shows an applicant is not a suitable person, it will normally require a period of not less than 5 years free of such incidents from the date on which the incident occurred or, if more than one from the date of the last incident.

2.5. Motoring convictions

In most cases, motoring offences are unlikely to be relevant when deciding if an applicant for a street trading consent is a suitable person. However, there may be instances where the offences are of a very serious nature. In those cases, an applicant for a street trading consent would be expected to show a period usually between 3 and 5 years free of any such convictions from the date of conviction or the date of release from jail, where a custodial sentence has been imposed.

2.6. Formal cautions and fixed penalty notices

For the purposes of these guidelines, the Council will treat Formal Cautions issued in accordance with Home Office guidance and fixed penalty notices as though they were a conviction before the courts