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# Street Trading Policy



Council of the  
ISLES OF SCILLY

LICENSING

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March 2017

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# COUNCIL POLICY ON STREET TRADING

## INTRODUCTION

The Council of the Isles of Scilly is a small unitary authority delivering a broad range of services to a unique island community, located 45km south west from mainland Britain. The main industry over the summer months is tourism; the population on the Islands grows considerably with an influx of tourists and seasonal workers. The Council controls and maintains 14.5km of highway on St. Mary's, including the A3110. All local authorities have a legal discretion to regulate street trading in their area. Street trading is governed by the Local Government (Miscellaneous Provisions) Act 1982 Schedule 4.

## PURPOSE

The purpose of this street trading policy is to provide a framework for consistent decision-making and to provide guidance to applicants. This policy is guided by the Council's vision statement, 'a strong, sustainable and dynamic Island Community' as the Council's approach towards new or different forms of trading must be dynamic and adaptable to strengthen and sustain the island community. It also fits into one of the key strategic priorities, 'Promoting economic vitality' as street trading could potentially be a route for economic growth or diversity in the future.

## WHAT IS STREET TRADING?

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 in a street that forms part of the public highway and specifically excludes Holgates Green, Parsons Field and Parade Gardens.

## EXEMPTIONS FROM THE NEED TO OBTAIN A STREET TRADING CONSENT

Some types of trade are legally exempt from the need to obtain a street trading consent. 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

## STREET TRADING CONSENTS FOR WHICH FEES ARE NOT PAYABLE

The Council of the Isles of Scilly 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

## PROCEDURE FOR APPLICANTS

- (1) An application for the grant or renewal of a Street Trading Consent shall be made in writing to the Licensing Section.
- (2) The Licensing Section shall determine the form of the application and supporting documents for a Street Trading Consent or the renewal of such consent and shall from time to time review and amend the form of application and supporting documents as is considered necessary.
- (3) An application for the grant or renewal of a Street Trading Consent shall be accompanied by a statutory declaration of convictions of -
  - (a) the applicant who must be over 17 years of age, and
  - (b) any person or persons who is/are to assist the applicant in the course of street trading.
- (4) An application for the grant or renewal of a Street Trading Consent shall be accompanied by
  - (a) A passport sized photo (for the ID Card) for each person.
  - (b) Evidence of Public Liability insurance if deemed necessary according to the type of application, whether a Grade A or B License up to the amount of £5,000,000. The production of this may be deferred until provisional permission is given, but sight of the actual policy will be required before documentation is issued confirming the permission.
  - (c) Photograph/scale drawing of the proposed vehicle/hitched trailer/stand to be used for the purpose of sales.
- (5) An application for the grant of a Street Trading Consent shall be;
  - a) advertised by way of a notice in such form as the Licensing Section may determine. That notice shall be displayed for a period of not less than 28 days from the date on which the application is made to the Council at or near to the location for which the application is made or advertised on the Council's website [www.scilly.gov.uk](http://www.scilly.gov.uk) and notice board for 28 days.
  - b) consulted upon with the Isles of Scilly Fire and Rescue Service, Devon and Cornwall Constabulary, the Council's Highway section, Planning and Development Section and Environmental Health will be enabled by the provision, by the applicant, of full copies of the application, to the above named. Additionally, the Council will consult occupiers of premises immediately adjacent and opposite and existing holders of street trading consents in the immediate area.
- (6) Any person who wishes to make a representation in respect of an application must do so no later than 28 days from the date on which the application is made to the Council.
- (7) The Licensing Section may
  - (a) grant or renew a Street Trading Consent either unconditionally or subject to one or more of the conditions as set out at Appendix "A",
  - (b) inform the applicant (1) that they intend to place the application before the Council's Licensing Committee with a recommendation for refusal and (2) the reasons for that recommendation.

- (8) An applicant may make representations orally and/or in writing to the Licensing Committee in circumstances where an application is placed before the Committee by the Licensing Section with a recommendation for refusal.
- (9) The Licensing Section may grant or renew a Street Trading Consent for a period not exceeding twelve months.
- (10) The Licensing Section shall not ordinarily grant a Street Trading Consent for the sale of motor vehicles subject to each application being considered on its own merits.
- (11) The Licensing Section shall from time to time review the Conditions set out at Appendix "A" and may from time to time add to, delete or amend the conditions as they see fit.

## VEHICLE

All vehicles must be road worthy, fully taxed and insured. No trailer can be unhitched from a licensed, taxed towing vehicle on the highway in accordance with Highways Act 1980 clause 143, which states that the Council has the power to remove structures from the highway. Trailers must also comply with the Road Vehicles Lighting Regulations 1989 which outlines the legal requirements for lights, indicators and reflectors.

## LITTER

You shall ensure that the area surrounding the consent site is kept free of litter, waste food, food spillage and grease staining originating from the business by the following means:

- (a) Cleaning the area as often as is necessary and at the end of each day.
- (b) Removing from the site at the end of trading on each day all litter contained in the waste containers provided by you and collected from the area of the site and dispose of it in a lawful manner, by way of a trade waste collection. You will need to provide the Technical Services department with an address from which collections will be made.

## UTILITIES

Any vehicle used for the purposes of street trading must be completely self-contained; the use of an external free standing generator is not permissible; any energy providing utilities must be kept within the vehicle. The Council cannot provide electricity from an outside source. Any waste water or sewerage must be collected and lawfully disposed of after trading and must not be allowed to run into the public highway.

## FOOD HANDLERS

Street traders must have relevant certification and registration documents, including a CIEH Basic Food Hygiene Certificate, registration with the Council as a food business and evidence of best practice using a system such as SFBB. Guidance for applicants can be sought from the Environmental Health Officer.



## FEES AND CHARGES

Fees and charges for street trading will be set by Full Council in advance of the following financial year. They will then be applied from 1<sup>st</sup> April – 31<sup>st</sup> March for applicants. A charging structure is attached to this policy as Appendix “C”. A six month permission for Street Trading is also available for the months of April to September inclusive or from October to March inclusive.

## PUBLIC SAFETY

Any indication that a vehicle is interfering with public safety will have to cease trading immediately; this includes blocking sight lines on the highway for other road users, endangering the safety of pedestrians and creating a risk to other road users, as deemed by the Council or the Police Authority.

In addition to this, the trader must ensure that any stopping position does not infringe any parking or traffic requirements or cause obstruction of the highway. No trader is allowed to stop within 100 metres of school grounds during the school day, unless allowed to do so by a specific consent.

## NUISANCE

No noise or smell nuisance is permissible where it interferes with residents quiet enjoyment of their homes. Or is detrimental to the amenity of the area.

## PUBLIC LIABILITY INSURANCE

The applicant must have public liability insurance which will be determined by your application, but in the case of food prepared, cooked and sold at the curb side which will be considered as a Grade A License, at least to the value of £5,000,000 to indemnify the Council against any claims. For Grade B Licenses it is expected that £1,000,000 public liability cover will be provided. A copy of the certificate must be submitted with the street trading application as listed in the procedure above.

## CONTROL OF ADVERTISEMENTS

The Council reserves the right to control the advertisements placed on the public highway, no structures can be erected on the highway according to legislation in the Highways Act 1980 clause 143 and will be removed without notice. Any advertisement the applicant will be placing on the vehicle must be approved by the Council in advance of trading and any subsequent changes to advertisements must be approved in advance by the Council by submitting pictures for approval to the Licensing Section.

## UNAUTHORISED STREET TRADING

Unauthorised street trading is prohibited; all prospective street traders must complete the application form for approval to trade. Any persons found to be trading illegally will be liable to prosecution under paragraph 10 of schedule 4 of the Act. See above for definition of street trading in regards to this policy.

## RIGHT TO WITHDRAW OR AMEND CONSENT

The Council may at any time reduce the number of days or the period in any day during which the consent holder is permitted to trade or restrict the description of goods in which he is permitted to trade or revoke a consent to trade on any of the following grounds:-

- (i) that owing to circumstances which have arisen since the grant of the Street Trading Consent there is not enough space in the street for the consent holder to engage in trading permitted by the consent without causing undue interference or inconvenience to persons using that street;
- (ii) that the consent holder is unsuitable to hold a Street Trading Consent by reason of having been convicted of an offence, caution or fixed penalty which falls within the Councils "Guidelines as to the Relevance of Convictions" listed in Appendix "A";
- (iii) that since the grant or renewal of the Street Trading Consent, the consent holder has failed to pay any fees due to the Council for the grant of the consent;
- (iv) that the consent holder has since the grant or renewal of the consent failed without reasonable excuse to make use of the Street Trading Consent;
- (v) that, where the consent authorises the sale of food in a street the consent holder or any person who assists the consent holder has been convicted of an offence under food safety or health and safety legislation.
- (vi) any other reasonable cause.

Where consent to trade is revoked, amended or surrendered, the Licensing Section shall not ordinarily remit any part of the consent fee subject to each application being considered on its own merits.

## CONSENT STREETS AND PROHIBITED STREETS

All streets which are maintained at public expense by the Council on the Isles of Scilly are 'consent streets' and will require consent from the Council before trading may commence. The list attached to this policy in Appendix "B" is not exhaustive and if further clarification is needed, the Licensing Department are contactable for this information.

## MISCONDUCT

A serious view is taken of misconduct involving drugs, anti-social behaviour, violence, dishonesty and convictions and can lead to revocation of a license without warning. Full conditions are set out in Appendix "A" of this policy with guidelines relating to the relevance of convictions also outlined in Appendix "A".

## TRADING TIMES

Any street trading must be between the times specified in the approval, after the trading time has elapsed, the vehicle must be removed from the public highway to a safe location under the trader's control. Street trading hours will normally mirror those of shops in the immediate vicinity. In the case of hot food takeaways trading hours will be determined on a case by case basis and will not exceed a maximum of six hours per day with the last sale being no later than 8pm and the site cleared by 8:30pm.



An exception has been agreed at the Licensing Committee of 11.2.2016 which permitted one site at the Atlantic slipway, to be allocated on a first come, first appointed basis between the hours of 9.00 am and 11.00 am and 3.00 pm and 6.00 pm. Also, with this site in particular, there will be a rule that the site is unavailable in the event of storm boards being erected as the site will be too small for the safety of pedestrians.

PLEASE NOTE: The site at the Atlantic slip is not available on a first come first served daily basis, it is allocated to the first trader who applies for it and will be granted to that trader for the whole period of their street trading licence, be it a six month licence or a 12 month licence. No-one to whom it is not expressly granted may use this particular site.

## CONSIDERATION OF SITES

The Council will have regard to the following when giving consent for a proposed site; The Licensing Section shall not ordinarily grant a Street Trading Consent within a radius of 25 metres from an existing business (including a consented street trader) dealing in goods of a similar nature, subject to each application being considered on their own merits. Due consideration will be given to parking and traffic restrictions as set out in the Public Safety section of this policy.

## RESTRICTION ON STREET TRADING

The Council reserves the right to restrict the number of street trading licenses granted approval in each year to:

**Grade A Licences:** 4 licenses to prepare, cook and sell hot food on the street.

**Grade B Licences:** 4 licenses to sell uncooked food or items prepared and cooked elsewhere under the appropriate environmental health regulations (not on the street) or distribute items that are not edible.

Full details of insurance requirements can be found in the Public Liability Insurance section of this policy and the charging structure is detailed in Appendix "C".

## POLICY DOCUMENT

The Council reserves the right to make alterations to this policy at a later date.



## APPENDIX "A"

### POOL OF CONDITIONS THAT MAY BE IMPOSED ON A STREET TRADING LICENSE

In these conditions :

**"The Council"** means The Council of the Isles of Scilly.

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

**"Your Assistant"** means any person or persons who assists the holder of a street trading license whilst trading under that consent and who has been notified to and approved by the Council.

- (1) You shall display the Street Trading Consent issued by the Council in a position where it can be clearly seen and read by a member of the public when you or your assistant are street trading.
- (2) You shall ensure that the identification badge issued by the Council shall be worn by (1) you and (2) your assistant (if any) in a position where it can be clearly seen by a member of the public.
- (3) If you or your assistant moves home or registered office, you shall write to the Council giving details of the new home address or new address of the registered office within seven days of moving.
- (4) If you or your assistant are convicted of any offence(s), given a formal caution(s) for any offence or have any fixed penalty notice(s) imposed, you shall write to the Council giving full details of the offence(s), caution(s) or fixed penalty notice(s) within seven days of the imposition of the offence(s), caution(s) or fixed penalty notice(s).
- (5) If there is any change in any of the circumstances on which the consent was granted, you shall write to the Council giving details of the change within seven days of it taking place.
- (6) You shall not trade under this consent unless you are registered in accordance with the Regulation (EC) 852/2004 (Hygiene of foodstuffs) (where appropriate).
- (7) You shall not cause any avoidable nuisance which affects any member of the general public or their right to the peaceful enjoyment of their homes or businesses in the vicinity of the trading site.
- (8) You 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".
- (9) You shall provide sufficient and suitable waste containers to enable customers to dispose of any litter generated by the business carried out under the consent.
- (10) You shall not place any table, chair or similar item on any highway.
- (11) You shall not display any signs, posters or similar other than those approved by the Council in writing.
- (12) No animal shall be present on any stall or vehicle.

- (13) No goods other than those set out in the application for the consent shall be sold.
- (14) You shall obtain insurance up to the sum of £5,000,000 depending on the type of street trading license applied for to insure against third party liability claims and to indemnify the Council against all claims, actions, demands and expenses arising in respect of the grant of this consent and shall produce evidence of that insurance on demand to the Council.
- (15) You shall ensure that, where applicable, you have the written permission of the landholder from whose land you are trading before you trade.
- (16) You shall not trade at any location other than that specified in the consent.
- (17) You shall not trade at any time or on any day other than those times and days specified in the consent.
- (18) The vehicle/hitched trailer/stand will be removed to a site off the highway immediately after permitted trading hours are ended.

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

#### GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS FOR

- (1) applicants for the grant or renewal of a street trading consent,
- (2) persons who wish to be registered as an assistant to a holder of a street trading consent or to renew such registration and
- (3) the holders of street trading consents and persons registered as an assistant to the holder of a street trading consent.

#### GENERAL POLICY

**Each case will be decided on its own merits.**

- (1) The Council will assess whether
  - (a) an applicant for the grant or renewal of a street trading consent is a suitable person to hold or to continue to hold a street trading consent,
  - (b) a person who wishes to be registered as an assistant to a street trading consent holder or to continue to be registered as an assistant to a street trading consent holder is a suitable person to be registered as an assistant to a street trading consent holder. In making that assessment, the Council consider the previous convictions of such persons.
- (2) In considering the previous convictions of those persons mentioned in paragraph 1 the Council will consider the following:-
  - (a) whether the conviction is relevant;
  - (b) the seriousness of the offence;
  - (c) the length of time since the offence occurred;
  - (d) whether there is a pattern of offending behaviour;
  - (e) whether that person's circumstances have changed since the offence occurred;
  - (f) the circumstances surrounding the offence and the explanation offered by that person.

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

### **(A) DISHONESTY**

The holders of a street trading consent 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 their 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 to 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.

Similarly a person wishing to be registered as an assistant to a street trading consent holder is unlikely to be registered where registration is sought within 3 to 5 years from the date of conviction or the date of release from jail.

### **(B) VIOLENCE**

As street traders and their assistants have close contact with the public, a firm line 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 registration as an assistant to the holder of a street trading consent 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.

### **(C) 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 fit and proper person to hold a street trading consent or to be registered as an assistant to the holder of 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 or to act as an assistant to the holder of 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.

## **(D) 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 or registration as an assistant to the holder of 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 or registration as an assistant to the holder of 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 or to be registered as an assistant to the holder of 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 or to be registered as an assistant to the holder of 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.

## **(E) MOTORING CONVICTIONS**

In most cases, motoring offences are unlikely to be relevant when deciding if an applicant for a street trading consent or to be registered as an assistant to the holder of 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 applicants for a street trading consent or to be registered as an assistant to the holder of 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.

#### **(F) 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.

## APPENDIX “B”

### CONSENT STREETS AND PROHIBITED STREETS

All streets are considered to be consent streets by the Council as outlined in the policy. However, some streets are classified as prohibited streets due to the width of the roads, the presence of parking and traffic restrictions and other public safety factors that have been taken into consideration.

In 2016 the Licensing Committee approved the inclusion of Porthcressa Bank, (the grassy area and the walkway) and one designated site at the Atlantic Slip for Street Trading. The latter is available only within specified hours and under special conditions (see “Trading Times”, page 6).

The following list of prohibited streets is not exhaustive and the Council reserves the right to amend the list at any time. Further advice regarding the classification of a specific street can be sought from the Technical Services Department.

Hugh Street  
Old Town Road  
Church Road  
High Cross Lane  
Old Town Lane  
Jerusalem Terrace



## APPENDIX “C”

### CHARGING STRUCTURE FOR STREET TRADING LICENSE APPLICATIONS

#### **1<sup>st</sup> April 2017 – 31<sup>st</sup> March 2018**

12 month Grade A license: £1,126.00

12 month Grade A renewal: £900.00

12 month Grade B license: £422.00

12 month Grade B renewal: £337.50

A renewal will only be accepted if the trader actually traded in the previous year. Gaps of one or more years are not acceptable.