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General Guidelines (all cases)

To help deal with applications quickly and to allow applicants to know at an early stage whether their application is likely to be supported Waverley Borough Council has adopted the following policy. The Council aims to provide a clear, consistent service for users.

The aim of the Street Trading in Waverley Policy (the Policy) is to prevent obstruction of the streets of the Borough and ensure the safety of persons using them. In doing so, it recognises the importance of local businesses to the local economy and that occasional, community-run events and those of a similar nature, are important factors in the life of Waverley. The Policy also seeks to ensure that activities do not cause nuisance or annoyance to the people of the area.

This Policy will guide the Council when it considers applications under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982. The Council has adopted this legislation and streets have been determined as either 'consent' or 'prohibited' - details of which are contained in Schedule 1 of this Policy. This means that anyone who wishes to trade on a consent street (which includes a street, highway or other area to which the public have access without payment) must hold a street trading consent. The definition does not include buildings themselves or commercial premises.

For clarification:

- Land adjacent to the street may also be included according to local circumstances
- There are some exemptions from requiring a consent to trade
- Street Trading is defined as "the selling or exposing or offering for sale of any article (or living thing) in a street"

and any queries regarding the above can be dealt with by the Environmental Health service on a case by case basis.

Certain community-run events, charitable events or those of a similar nature are the subject of special provisions in Schedule 2 of the Policy.

Schedule 1

Applications

Waverley's Licensing and Regulatory Committee is made up of 12 Members of the Council. Applications for street trading consents that fall within this policy are delegated to the relevant Head of Service. Applications that fall outside this policy or those which attract relevant objections will be determined by the appropriate Licensing & Regulatory Sub-committee. A relevant objection is one made by a person, business or body that is likely to be directly affected by a successful application. In addition, the objection must not be vexatious or frivolous and should concern itself only with matters likely to be affected by a successful application. The relevant Head of Service

will determine whether an objection is relevant according to its merit and any benefit of doubt will be given to the objector.

The police, highways authority and fire service are always consulted over any application and a 28 day consultation period will normally be allowed. Local ward Councillors, Chambers of Commerce and Town or Parish Councils, together with any relevant Portfolio Holder or Committee Chairman, will also be notified of an application – public notification will be achieved through the Council's webpages.

Where an applicant has not given sufficient notice, consent will not normally be granted unless agreed by the Head of Service, Chief Executive and Chairman of the Licensing & Regulatory Committee on receipt of satisfactory responses from the police, fire and highways authorities.

In considering any application for the grant or renewal of a street trading consent the following issues will be taken into account before determination:

Public order

Whether the street trading activity or activities represent, or are likely to represent, a substantial risk to public order

Public nuisance

Whether the street trading activity or activities represent, or are likely to represent, a substantial risk of nuisance to the public from noise or misbehaviour. Particular regard to this will be had in respect of consents in predominantly residential areas.

Public safety

Whether the location of the street trading activity or activities represent, or are likely to represent, a substantial risk to the public from the point of view of obstruction, fire hazards or unhygienic conditions, or danger that may occur when a trader is accessing the site.

Needs of the area

An applicant for the new grant of a Category 1 street trading consent shall provide a copy of a map or plan showing all streets and other public areas within a radius of half a mile (800 metres) from the proposed location of the site. The map or plan shall be a proper Ordnance Survey map, or of equivalent or similar standard, to a scale of 1:5000. It shall clearly indicate the position of the proposed site and indicate the locations of other street traders and outlets already trading in similar commodities to those proposed for sale. The applicant must deliver notices to traders and premises thus identified and to the nearest six premises (being residential, commercial or otherwise) to the proposed site giving details of the application.

In determining an application the sufficiency of other trading outlets to serve the needs of an area will always be considered. A new consent is unlikely to be granted where it is considered that adequate like provision

already exists. For special events falling under schedule 2 of this policy the needs test may be exempted where appropriate.

Renewals – Consents are normally issued for a period of up to one year. Applicants who wish to continue trading should submit renewal applications at least one month prior to expiry of any current Consent. Renewals are normally allowed but further consultations may be needed if there are causes for concern or if the Consent operation has been the subject of complaint.

Decisions

Following the determination of an application the Council will notify the applicant of the decision. Determinations made at Committee will be confirmed in writing and published on the Council's webpages.

Appeals

The governing legislation does not allow for appeals and grounds for refusal need not be given. However, in order to ensure the process is open, fair and transparent Waverley Borough Council will follow a formal appeals procedure on decisions to refuse under delegated powers. A sub-committee will be formed from three Members of the Licensing & Regulatory Committee who will hear from concerned parties. The sub-committee will operate in a similar way to a Licensing Panel, specific details of which are in Appendix I.

Fees

An annual fee is payable for Street Trading Consents and payment should be made on application. A partial refund of 50%, should an application be refused, will be made – the remainder to contribute to the initial administration costs and those of any appeal. Fees are reviewed annually and published on the Council's website. Current fees for Community and similar events will relate to the category of event as determined by the following table

| Category | Description | Fee (£) |
|----------|--|---------|
| 1 | Sole trader, annual consent | 240 |
| 2 | Schedule 2 event, up to 50 traders, annual consent | 60 |
| 3 | Schedule 2 event, 51 traders or more, annual consent | 120 |
| 4 | Schedule 2 event, up to 50 traders, single consent | 50 |
| 5 | Schedule 2 event, 51 traders or more, single consent | 100 |

Conditions

Consents will carry Standard Consent Conditions in all cases in order to promote public safety and avoid obstructions, nuisance and annoyance. Other conditions may be attached to a Consent and will be relevant to the category of Consent issued and the nature of the local environment. A pool of typical conditions, relating to operating hours, sites, locations, goods offered, safety, refuse collection, etc. is shown at Appendix II. A Consent may also

attract conditions in addition to or instead of those found in the pool of conditions according to its individual merit.

Schedule 2

Community and similar events

At such special events the Council will issue one Consent to the person organising the community or similar event, either on an annual basis for multi-use sites or on an occasional basis for single-use events. This policy is aimed at promoting and supporting such events and encouraging traders to attend.

The Consent will relate to the duration of the special event and may include specific conditions, in addition to Standard Consent Conditions, according to the individual merits of the event.

Community and similar events will normally be organised by a Town or Parish Council, Waverley Borough Council or by a recognised group or charity with aims of engaging with and providing support to the local community. Each special event application will be judged according to its merit and any applications which fall outside this policy, or those that attract relevant objections (see Schedule 1) will be determined by the relevant Sub-committee.

Special event applications would typically, but not exclusively, include:

Local Charity events
Community fairs and craft events
International markets
Events celebrating local anniversaries

Enforcement

1. The Council's Environmental Health Service and Economic Development & Partnerships Service aim to work closely with other enforcement authorities
2. Obtaining a Consent does not confer the holder immunity in regard to other legislation that may apply, e.g. Public Liability, Health & Safety at Work, Food Hygiene and Safety, Alcohol and Entertainment Licensing, Planning controls, and organisers should ensure all such permissions, etc. are in place.
3. Where street trading activities are conducted without appropriate Consents the Council will look to gather evidence and take appropriate enforcement action in accordance with its Enforcement Policy
4. If the Council feels there is an issue with public order or threat to public safety in any particular instance it will call for assistance from the Surrey Constabulary
5. The Council may call for assistance from appropriate CCTV recordings when dealing with such issues

6. The Council will enforce the provisions of all appropriate legislation and will ask persons causing a nuisance to cease the activity that they are conducting and leave the area.

Review Procedures

This Policy will be reviewed from time to time should changes occur in relevant legislation, the nature of street trading generally or as a result of local considerations within Waverley. In any case, this Policy will be reviewed within five years of adoption or within five years of any major changes resulting from the above.

Appeals Procedure

The Local Government (Miscellaneous Provisions) Act 1982 does not accord applicants the right of appeal. Refusals by a Local Authority do not have to be supported by a declaration of reasons. However, Waverley Borough Council recognises the rules of natural justice and that therefore this policy should include an appeals mechanism.

Applications for Consents that fall outside of this policy, or which are the subject of relevant objections, may be dealt with by a hearing held by a Sub-committee consisting of three Members of the Licensing & Regulatory Committee. The hearing will be held on the next suitable scheduled date of the Sub-committee after the closure of the consultation period. Persons dissatisfied thereafter must seek redress by way of Judicial Review. The following procedural rules will be followed at such Sub-committee hearings.

RULES OF PROCEDURE

1. General

- 1.1 Where in these procedure rules notice is required to be given to the Sub-Committee it may be given to the relevant Head of Service, currently Head of Committee and Member Services (01483 523222).

2. Composition of Sub-Committees

- 2.1 Each Sub-Committee shall comprise 3 members appointed by the Licensing and Regulatory Committee, in accordance with section 9 of the Licensing Act 2003 (the 'Act'). The quorum shall be three. One member of each of the Sub-Committees shall act as Chairman.

3. Notice of hearing

- 3.1 The Council shall give to the parties a notice stating the date and time and place at which the hearing is to be held
- 3.2 The notice of hearing shall be accompanied by information regarding the following: -
- (a) the rights of a party provided for in paragraphs 4.1 & 8.5;
 - (b) the consequences if a party does not attend or is not represented at the hearing;
 - (c) the procedure to be followed at the hearing;
 - (d) any particular points on which the Council considers that it will want clarification at the hearing from a party.

4. Right of attendance, assistance and representation

- 4.1 Subject to paragraphs 6.2 & 6.4, a party may attend the hearing and may be assisted or represented by any person whether or not that person is legally qualified.
- 4.2 Upon receipt of the notice of hearing and within the period specified in that notice, each party shall give to the Council a notice stating:
- (a) whether he/ she intends to attend or be represented at the hearing
 - (b) whether he/ she considers a hearing to be unnecessary.
- 4.3 In a case where a party wishes any other person (other than the person he/ she intends to represent him/ her at the hearing) to appear at the hearing, the notice referred to in paragraph 4.2 above shall contain a request for permission for such other person to attend at the hearing accompanied by details of the name of that person and a brief description of the point or points on which that person may be able to assist the authority in relation to the application, objections, representations or notice of the party making the request.
- 4.4 A party who wishes to withdraw any objections or representations they have made may do so:
- by giving notice to the relevant Head of Service, currently Head of Environmental Health and Community Safety (01483 523434), no later than 24 hours before the day or first day on which the hearing is to be held; or
 - orally at the hearing.

5. Right to dispense with hearing if all parties agree

- 5.1 The Council may dispense with holding a hearing if all relevant persons who agree that such a hearing is unnecessary, other than the Council itself, have given notice to the Council that they consider a hearing to be unnecessary.
- 5.2 Where all the persons required by 5.1 agree that a hearing is unnecessary have done so the Council, if it agrees that a hearing is unnecessary, shall forthwith give notice to the parties that the hearing has been dispensed with.

6. Hearing to be in public

- 6.1 Subject to paragraph 6.2 below, the hearing shall take place in public.
- 6.2 The Sub-committee may exclude the public from all or part of a hearing where it considers that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in public.

- 6.3 For the purposes of paragraph 6.2, a party and any person assisting or representing a party may be treated as a member of the public.
- 6.4 The Sub-Committee may require any person attending the hearing who is in their opinion behaving in a disruptive manner to leave the hearing and may –
- (a) refuse to permit that person to return, or
 - (b) permit him/ her to return only on such conditions as the Sub-committee may specify,
- but such a person may, before the end of the hearing, submit to the Sub-committee in writing any information which they would have been entitled to give orally had they not been required to leave.

7. Report

- 7.1 A report prepared by the case officer will be put before the Sub-committee.
- 7.2 A copy of the report at 7.1 shall be sent to the parties in advance of the hearing.

8. Procedure at hearing

- 8.1 The order of business shall be at the discretion of the Chairman, but will normally proceed in accordance with the following paragraphs.
- 8.2 The Chairman shall at the beginning of the hearing introduce the members of the Sub-committee, invite the parties to identify themselves and then explain to the parties the procedure that the Sub-committee intends to follow.
- 8.3 The Sub-committee shall then proceed to consider any request made by a party under paragraph 4.3 (request for permission for another person to appear at the hearing). Permission shall not be unreasonably withheld.
- 8.4 The Chairman may ask the case officer to introduce the report, and outline the matter before the Sub-committee. Alternatively, the Chairman may proceed directly to paragraph 8.5 below.
- 8.5 All parties shall be entitled to: -
- in response to a point upon which the licensing authority has given notice that it will want clarification under paragraph 3.2(d), give further information in support of their application, representations or notice (as applicable)
 - if given permission by the Sub-Committee, question any other party. Cross examination shall not be permitted unless the Sub-Committee considers that cross examination is

required for it to consider the representations, application or notice as the case may require.

- address the Sub-Committee.
- questioning that is, in the opinion of the Chairman, unnecessarily protracted, repetitious, oppressive, irrelevant or unfair, shall be discontinued at the request of the Chairman.

8.6 The parties if present, will normally be invited to address the Sub-Committee in the following order: -

- Applicant
- Police, Fire Authority, Highways Authority
- Interested Parties

8.7 Members of the Sub-committee may ask any question of any party or other person appearing at the hearing.

8.8 Where there is more than one objection or representation raising the same or similar matters or addressing the same or similar issues, the Sub-committee will request that only one party address them on behalf of the parties who have made such objections or representations.

8.9 In considering any objections, representations or notice made by a party the Sub-committee may take into account documentary or other information produced by a party in support of their application, objection, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing. [Note also the provisions of paragraph 12.1]

8.10 The Sub-committee shall disregard any information given or evidence produced by a party (or any person to whom permission is given to appear at the hearing) which is not relevant to: their application, objections, representations or notice (as applicable) or in the case of another person, the application, objections, representations or notice of the party requesting their appearance,

8.11 The parties shall be entitled to make closing submissions in addition to their address. The closing submissions of any applicant shall follow the closing submissions of any interested party or other agency.

8.12 The Sub-committee may place a time limit on the exercise of the rights set out in paragraphs 8.5 & 8.11 above. All parties shall be allowed an equal maximum period of time.

8.13 The Sub-committee may, after hearing the objections or representations of the parties, withdraw from the room to make their deliberations. The Committee Secretary will accompany the Sub-committee when they

retire to make their deliberations. Alternatively, the Sub-committee may ask all parties and the public to leave the room.

9. Role of Legal Adviser

- 9.1 The Sub-committee may seek advice or clarification of any procedural or legal matter from the legal adviser at any time during the course of the hearing. The Sub-committee may seek advice from the Licensing Officer on any technical matter during the course of the hearing, where necessary, in the opinion of the Case Officer. The Case Officer may procure the services or advice of a technical specialist(s) to advise the Sub-committee as an expert.
- 9.2 The legal adviser shall not remain with members of the Sub-committee when they retire to make their deliberations.
- 9.3 The legal adviser may join members during the course of their deliberations either when asked to do so or if he / she realises there is a point of law on which they may need assistance but on which he / she omitted to advise them in open session.
- 9.4 If the Sub-committee require advice on a legal matter during their deliberations the Committee Secretary will so inform the legal adviser on behalf of the Sub-committee and the legal adviser will join the Sub-committee to give such advice as he / she considers necessary on the point raised or any other legal matter relevant in his / her opinion.
- 9.5 Any advice given by the legal adviser to members of the Sub-committee shall be provisional until the substance of that advice has been repeated in open session and the parties have had an opportunity to comment on it. The legal adviser will then state in open session whether the advice is confirmed or varied (and if it is varied, in what way) before members act upon it.

10. Determination of applications

- 10.1 The Sub-committee shall make its determination at the conclusion of the hearing and it shall be announced by the Chairman in public before the closure of the meeting.

11. Failure of parties to attend the hearing

- 11.1 If a party has informed the licensing authority that he / she does not intend to attend or be represented at the hearing, the hearing may proceed in his / her absence.
- 11.2 If a party who has not so indicated fails to attend or be represented at a hearing the Sub-committee may:

- where it considers it to be necessary in the public interest, adjourn the hearing to a specified date, or
- hold the hearing in the party's absence

11.3 Where the Sub-committee holds the hearing in the absence of a party, the Sub-committee shall consider at the hearing the application, representations or notice made by that party.

12. Adjournments

12.1 The Sub-committee may

- (a) adjourn the hearing to a specified date
- (b) arrange for a hearing to be held on specified additional dates

where it considers it necessary for its consideration of any objections, representations or notice made by a party.

12.2 Where the Sub-committee adjourns the hearing to a specified date it shall forthwith notify the parties of the date, time and place to which the hearing has been adjourned.

12.3 Similarly, when the Sub-committee arranges for the hearing to be held on a specified additional date it shall forthwith notify the parties of the additional date on which, and the time and place at which, the continued hearing is to be held.

13. Record of proceedings

13.1 A record of the hearing shall be kept for 6 years from the date of determination.

14. Waiver of rules

14.1 The Sub-committee may in any particular case dispense with or modify these rules at its own discretion.

NOTES

Human Rights

The Human Rights Act 1998 obliges the Council to comply with the provisions and protections of the European Convention on Human Rights. It is unlawful for a local authority to act in a way which interferes disproportionately with a convention right. The Sub-committee will have regard to the rights protected by the European Convention on Human Rights when exercising its licensing functions.

Conditions

Standard Consent Conditions

(to be used on all Consents issued)

1. 'Consent Street' means a street in which street trading is prohibited without a Consent from Waverley Borough Council
2. 'Prohibited Street' means a street in which street trading is prohibited at all times
3. 'Street' includes any road, footway, lay-by or other open area to which the public have access without payment
4. 'Street Trading' means (generally) the selling, or exposing or offering for sale, any article in a street
5. The trader shall not cause any obstruction of the street or any danger to any persons or vehicles using the street
6. The trader shall not cause any nuisance or annoyance to any other person, whether that person is using the street or otherwise, or to the occupier of any building in proximity to the consent site
7. The council may at any time vary the conditions of a street trading consent or revoke at any time
8. Public liability insurance providing cover to a minimum amount of 5 million pounds must be in place for the consent site and a certificate of this must be produced on request of an officer of Waverley Borough Council
9. An individual trader shall conspicuously display the council issued Consent at all times whilst trading; for special events, the Consent will be displayed in at least two conspicuous places – typically these shall be attached to the first and last stalls
10. The Consent holder must provide facilities for use by him/herself and customers to collect any waste, refuse or litter. The refuse storage must be of a substantial construction, waterproof and animal-proof. All must be removed from the trading location at the end of each day's trading and properly disposed of, or if the amount of waste and refuse warrants it, when the container is full – whichever is the sooner.
11. The Consent holder shall ensure that all adjacent areas (except the carriageway if open for vehicular use) to a distance of 10 metres be kept free of litter and refuse at all times whilst on site.
12. Authorised vehicles must be roadworthy, have current relevant documentation and internal and external appearance of vehicles &/or stalls shall be maintained in a clean, neat and tidy condition.
13. Any stall or vehicle used for street trading must be immediately removable at all times in the event of an emergency, or at any other time, be removed at the request of any officers of the emergency services or officer of the Council.
14. The name and address of the operator and other address at which the stall or authorised vehicle is normally kept or garaged must be conspicuously and legibly displayed upon it in a place where the public may readily view it.

15. No stall or vehicle shall remain situated for longer than one hour after the authorised trading time(s).
16. No Consent holder shall trade at his / her authorised location on dates when road closure directives are in place for special events otherwise than with the permission of the organisation applying for same.
17. The Consent is non-transferable.
18. Where a structure or vehicle is not removed at the end of trading, no additional permanent or semi-permanent additions or paving shall be erected or constructed adjacent to the structure or vehicle.
19. Failure to comply with any conditions attached to the Consent may result in the revocation of such consent.

Pool of Conditions

Conditions applicable to special Events / Markets, etc

The Consent holder shall keep records of each stallholder present, to include the stall's site, name (and company name), address, vehicle registration and contact telephone number. This must be produced on the request of an officer from the Council

Other Conditions

There shall be no available means of attracting attention for the purposes of trading or any stands or signs away from the consent site

The consent holder must not permit the sale of offensive weapons, including imitation firearms, firearms, airguns, swords and crossbows

The Consent does not imply or give any other permission, consent, licence or authorisation to trade in any other products other than those granted on application or renewal

The trader shall not exhibit on the site any advertising signs, posters or such like except as may be approved by the Council

No animal shall be present on any stall or vehicle

The trader is not permitted to hold any auction or like sale

The trader shall reimburse the Council's costs in repairing all damaged caused by the trader's occupation and use of the consent site

There shall be no discharge of waste water or other liquid waste onto the consent site or surrounding areas

No form of amplified music shall be permitted