



Licensing Committee 24th November 2014

Title	Review of the current Street Trading Regime
Report of	Strategic Director Growth & Environment
Wards	All
Status	Public
Enclosures	None
Officer Contact Details	Emma Phasey Trading Standards and Licensing Manager Emma.phasey@barnet.gov.uk

Summary

This report seeks approval from the Committee to consider options in relation to a review of the current street trading regime

Recommendations

1. That the Committee consider the current street trading regime and whether it remains the most effective way of managing street trading. In particular to consider and determine whether to introduce the designation of streets as "licence streets" or whether the temporary licence regime that is currently used is adequate.

1. WHY THIS REPORT IS NEEDED

The aim of licensing street trading is to balance the needs of businesses and residents with the public expectation of an unobstructed footway. In the London Borough of Barnet, street trading is regulated under the provisions of the London Local Authority Act 1990 (as amended). The 1990 Act provides for two types of licence, a “street trading licence” or a “temporary street trading licence”. They vary in many ways.

A street trading licence can only be granted if a local authority has passed a resolution to designate some or all streets as licenced streets. If a local authority has not passed such a resolution, it can only grant a temporary street trading licence.

The London Borough of Barnet has currently not made a resolution to designate any streets within the borough and it can therefore only grant temporary street trading licences. However, six street trading licences have been granted under the 1990 Act by virtue of licences held under the Middlesex County Council Act 1944. The 1990 Act entitles the holder to retain rights held under the 1944 Act and the council must therefore continue to renew the licences unless they lapse, are surrendered or revoked.

A “street trading licence” authorises a person to trade in a licence street and can be valid for a period of up to 3 years or for a shorter period as the local authority may determine. However a “temporary street trading licence” can only last a maximum of 6 months.

A local authority must grant a “street trading licence” application unless they consider that the application should be refused on one or more statutory grounds contained in sub section 25(6) of the 1990 Act. These are:

- There are already enough traders in the area selling the same type of goods
- The applicant is unsuitable to hold a licence
- The applicant has previously failed to obtain a licence
- The applicant has previously failed to pay fees due for street trading licence
- There are inadequate premises available for the storage of the goods when street trading is not taking place

A “temporary licence” allows more flexibility in this area. In the London Borough of Barnet, a policy has been developed around this area which sets out what is acceptable for a premises to be allowed a temporary licence. A local authority does not have a statutory obligation to grant a “temporary licence”.

If a local authority grants or refuses a “street trading licence” on the above grounds then this will provide the applicant/licence holder with a statutory right of appeal against the decision. With a “temporary licence” there is no statutory right of appeal. The appeal process is set out in the London Borough of Barnet policy, and is an internal appeal process.

If a local authority grants a street trading licence it may revoke or vary the licence only in accordance with section 28 of the 1990 Act. However, the licence holder shall first be given 21 days previous notice of the local authority's intention before it determines the matter and be given the opportunity to make representations. A temporary licence can be revoked with no notice.

Once a "street trading" licence has been granted the holder may specify the name of a relative to whom he wishes the licence to transfer upon his

- death
- retirement
- ill-health which prevents him from continuing to trade

and the council shall grant the licence to that person. There is no such right with a temporary licence.

REASONS FOR RECOMMENDATIONS

The initial decision in relation to this street trading regime was taken in 2008, which is 6 years ago. Since that time a "temporary" licensing scheme has been in effect. It is important that LBB ensure that they regulate street trading through a robust and accountable regulatory regime by fully utilising the provisions of the 1990 Act as appropriate to the London Borough of Barnet.

With the exception of the existing street trading licences which are in existence by virtue of the Middlesex County Council Act 1944, the current system only allows for "temporary licences" to be granted.

Option 1: Continue only with a Temporary Street Trading Licence regime

"Temporary licences" can only be issued for periods not exceeding six months. This increases the administrative burden on the local authority as applications must be submitted twice a year. This effectively doubles the amount of time taken for the administration of an application and increases the regulatory burden on businesses which is contrary to best practice.

In addition, by requiring an application to be submitted twice a year, this increases the risk of businesses failing to reapply and increases the risk of non-compliance. This subsequently increases the amount of time taken by officers in dealing with the administrative aspects of determining an application and enforcement officers in seeking compliance. This also increases risk of unlicensed street trading activity being carried out.

An application for a "temporary street trading licence" may be refused on any grounds.

Option 2: Designating some streets as licences streets

By designating streets for “street trading licences” traders are given more rights in relation to the public footpath and licence process.

A resolution to designate streets as licence streets has the effect of prohibiting street trading in that street unless the trader obtains a street trading licence. In deciding whether this is an appropriate option, the effects of designating streets should be carefully considered. A designation means that a street trading licence must be issued before trading is authorised.

It must be noted that a temporary street trading licence may still be granted for a non-licence street. However, the Council may refuse to issue temporary licences by way of policy.

An application for a street trading licence in a licensed street must be granted under the provisions of the 1990 Act unless specific grounds for refusal of the licence exist. These are:

- There are enough traders in the street in respect of the type of goods in which the applicant wishes to trade
- The applicant is unsuitable to hold a licence
- The applicant has previously traded without first obtaining a licence
- A previous licence held by the applicant could have been revoked on the grounds that the applicant has failed or refused to pay any outstanding fees
- The applicant is unable to provide adequate storage for perishable goods when street trading is not taking place

Although a “street trading licence” must be granted, there is still a method to control the street trading in that area. This is done a set of standard conditions that can be imposed, which are determined by the Local Authority. Which can be used to restrict location, trading times, products traded, how refuse is disposed of etc. Also individual conditions can be applied to each licence.

By designating licence streets, the applicant and holder of a “street trading licence” will also be entitled to statutory rights under the 1990 Act that do not exist for “temporary street trading licences”. These are:

- Rights of succession as discussed in paragraph 25.
- Statutory right of appeal to the magistrates court against the decision of the council not to grant or renew a street trading licence
- Statutory right of appeal to the magistrates court against the decision of the council to vary a street trading licence
- Rights to be given 21 days notice to make representations to the Council of its intention to revoke or vary the terms of a licence

Demarcation of street trading area

A further point to consider is whether the London Borough of Barnet would like to consider adopting a policy of demarcation licensed street trading areas. This is something that has been raised as an option by both traders and residents of a way of ensuring that traders stay within their allocated street trading area.

Currently, this is something that has not been considered by the London Borough of Barnet. There are a number of options that could be considered here, either a line marked on the pavement or stubs placed into the public highway.

2. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

Currently no recommendations have been given in relation to this decision as it is felt that it is the Licensing Committee who should lead with the review of the regime. Both options for the street trading regime have positives and negatives. Street trading remains a delicate balance between promoting business and innovation within the London Borough of Barnet at the same times as promoting clear and clean streets free of nuisance to local residents. Therefore it is felt that the Licensing Committee are best placed to lead on which direction this should take.

3. POST DECISION IMPLEMENTATION

Once considered the Committee will refer this to the next full Council/Environment Committee meeting with their recommendation on the review of the regime for further consideration.

4. IMPLICATIONS OF DECISION

4.1 Corporate Priorities and Performance

Street trading supports objectives contained within the Corporate Plan. In particular, in relation to “maintaining the right environment for a strong and diverse local economy” as street trading can contribute to the economic, cultural, environmental and social well being of the borough.

Street trading also supports the Sustainable Community Strategy 2010-2020 in relation to helping create a successful London Suburb as street trading supports enterprise within the London Borough of Barnet.

4.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

Administration and enforcement of street trading will be carried out by the Licensing team, together with support from Legal Services and from Governance Services, when arranging and co-ordinating arrangements for hearings in relation to Permanent Pitches.

The current fees were set in 2013 and are kept under constant review to ensure any expenditure will be contained within the licensing departments budget.

4.3 Legal and Constitutional References

The London Local Authorities Act 1990 allows Authorities to license street trading. Section 24 of the London Local Authorities Act 1990 (as amended) (“the Act”) deals with the Designation of Licence Streets. . Under section 24 of

the Act, if the Council consider that street trading should be licensed in their area they may pass a resolution designating any street within the borough as a license street. Section 25 of the Act deals with the application of grant or renewal of a street trading licence. Under the Act, the Council is responsible for granting, renewing, varying or revoking all street licences. Under section 30 of the Act, any person aggrieved by the refusal by the Council to grant or renew a licence has the right to appeal to the Magistrates Court at any time before the expiration of the period of 21 days beginning with the date upon which notification in writing is given of the refusal or decision.

Section 31 of the Act deals with Temporary Street trading licences which is the current regime that is operated by the Council. Under Section 31, the Council can grant a temporary licence to an applicant. The temporary licence is only valid for the day or period specified in the licence (maximum 6 months). There is no right of appeal in respect of the refusal of a temporary licence.

Annex A To Responsibility for Council Functions- Membership and Terms of Reference of Committees and Partnership Boards”, details the functions of the Licensing Committee which includes street trading

4.4 Risk Management

It is important that the London Borough of Barnet adopts a robust and accountable regulatory regime in relation to street trading. It needs to ensure that the risk of non-compliance and the regulatory burden to both the Local authority and to the trade is minimised. However it must balance this with the desire of residents to have an unobstructed pavements..

4.5 Equalities and Diversity

The Council has a legal obligation under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups.

When considering street trading applications, only issues provided for in the London Local Authority Act 1990 (as amended), in addition to the authority’s street trading policy 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.

An initial equalities impact assessment has been completed and there is no identified impact on any of the protected groups. Therefore a full impact assessment is not required

4.6 Consultation and Engagement

At this stage, there are no consultation requirements. However, before passing a designating resolution , the Council is obliged to consult with the Commissioner of Police of the Metropolis on their proposal. The Council have notice requirements under the Act and allows a period of 28 days for

representations to be made which the Council will consider. After the Council have considered these representations, they may if they think fit, pass such a resolution relating to the street.

5. BACKGROUND PAPERS

None
