

### Appendix 3 - Consultation Feedback and Officer Response

Feedback	Officer Response
<p>Document in relation to the Councils review of Street Trading policies Dated 30th August 2015</p> <p>To Whom it may concern.</p> <p>This letter is regarding the prohibiting of ice cream vans from operating in or near Pittville park. For several years I have been asking the council to relax this law to allow me to operate my ice cream van on a road near the park, earlier this year I attended a committee meeting where this topic was discussed. It was agreed by the committee that I must remain unable to trade near Pittville park.</p> <p>I am willing to stick by the committees decision but what I am unhappy with is the policy surrounding private events. I'm not 100% sure why ice cream vans are not allowed to trade near the park but I can only imagine it has something to do with the councils interest in the cafe within the park who also sell ice creams. But what I am asking now is to simply allow my ice cream van to trade in the park when I am invited to attend a private event.</p> <p>Every year large, family orientated events are held in the park. There are no limits to the type of traders until it comes to ice cream vans. As a Cheltonian I attend all the events as a parent from the Nation Play Day to Paws In The Park, at these events you will find burger vans, coffee vendors, sweet sellers, doughnut sellers and many, many more. I just find it very hard to accept that all these traders (most of which are from outside of the county) are allowed to attend the event where I, who over the years have contributed tens of thousands of pounds to the town in licence fees is not allowed to be there due to some ancient policy. I also</p>	<p>The nature of the response is not relevant to the general policy review because it raises specific issues that have previously been dealt with by the licensing committee. In addition, officers have responded to the individual issues raised by the respondent.</p> <p>As a general policy point, officers have not proposed to vary the “Special Conditions for Mobile Ice Cream Traders” prohibiting trading by mobile ice cream traders in a number of locations including certain roads surrounding public parks.</p> <p>Reasons for this relates to problems associated with access, parking restrictions, public safety and obstruction.</p>

<p>find it difficult to accept this as we attend lots of events all over the county without any restrictions including events in Montpelier Park and Gloucester Park. If I am right in assuming ice cream vans are not permitted to operate in the park because the cafe sells ice creams then why are coffee vendors and hot snack sellers allowed in the park? Also these events are held near the Pump Rooms which is a 1KM round trip to the cafe which a long distance when you have small children and pushchairs. I am not writing this letter to reignite my attempt to trade in or near the park all summer long, all I am asking is that I am permitted to attend these events with the same rights as all the other food and non-food traders. I have been in contact with the organisers of these events and they have said they are happy for me to attend as we are a well known company who bring joy to all the people of Cheltenham.</p> <p>I would appreciate a reply to this letter and an explanation to why this policy exists, why are these coffee and snack sellers allowed to attend events in Pittville Park when I am not.</p>	
<p>Thank you for your letter 18 June 2015 Your Ref 15/STA/Policy. (Consultation on revised street trading policy)</p> <p>Could you please include this letter in the above Consultation.</p> <p>I respectfully ask that I am left in the same position outside M&amp;S where I have traded at for the last 23 Years.</p> <p>The reasons are that the Seating Plan has changed in the High Street and there is a safe space outside the entrance to M&amp;S by the lamppost where I trade. My age next year will be 66 and as I carry money around my waist I feel safe there as there is CCTV at this point on the wall of M&amp;S and my cart can be viewed from three visual topographic points.</p>	<p>Officers agree and have included the additional location on the plans.</p>

<p>At this stage I am not sure how many more years I can trade but have much enjoyed my seasonal licence.</p>	
<p>Concerning the Draft document on Street trading ,speaking as a busker I think the description of 'Busking (when also selling merchandise)' a bit misleading ,at the risk of being pedantic I'd say 'selling merchandise when Busking' is more accurate because it's the selling you are trying to regulate.</p> <p>Sticking with the 'Busking (when also selling merchandise)' it does imply the two are interconnected which is true with busking musicians selling CD's. This argument some Councils accept. Liverpool, York and soon Bath through 'good practice guide on busking' allow buskers to sell CD's as long they have a notice stating "In order to comply with Street Trading Legislation these CDs are not being offered for sale, any contribution you make is voluntary and your discretion, suggested contribution... £xx".</p> <p>Gloucester in its Busking Code of Conduct allows Buskers to sell CD's as long as it's a fairly small display. In the good practice guide the key point being that the merchandise is part of the act and by way of compromise the busker is taking the risk of people taking Cds for nothing.</p> <p>The Keep Streets Live which has support from the Musicians Union general advice to Busking Musicians is to have a sign saying "Cds available ,suggested donation £xx" wherever they play as opposed to having a blatant display of priced CDs.</p> <p>I apologise for the length of this email which hopefully gives some understanding from a busking point of view.</p> <p>The response was supplemented with a petition calling on the council to "Allow buskers to have a small display of CDs with a sign stating "CDs available suggested donation £x""</p>	<p>On the initial point of the phrasing of the policy, the policy seeks to make a distinction between the activity of busking (which does not require a licence per se) and the selling of merchandise (which does require a street trading consent). For this reasons officers are not suggesting a rewording.</p> <p>Regarding the point raised about a suggested donation as an alternative approach, officers are of the view that this will not contravene street trading licensing requirements and will be permissible.</p> <p>Officers will update the current buskers' code of practice to clarify to this effect.</p>

At the licensing committee on 4<sup>th</sup> September 2015 the Committee ratified their comments of the previous committee meeting (31<sup>st</sup> July 2015), shown below, as an accurate reflection of their response to the consultation, with the following additional comment: That the committee was concerned about the amount of prescription of the products to be sold in the various locations, whilst recognising the general need to avoid the sale of certain products where these locations were unsuitable.

## **4. Committee's Response**

### **4.1 Permitted Locations (para 4.1)**

Members of the Licensing Committee felt that the proposal to have a limited number of prescribed locations in the town centre where trading will be allowed, thereby prohibiting street trading in any other location in the town centre, is far too restrictive. Whilst the Committee did not disagree with the proposal for having a number of pre-approved locations (listed in Annex 1 of the draft policy), Members felt that the Committee should retain the ability to determine applications on a case-by-case basis where they are not in an approved location.

Members felt that this power should be explicitly expressed in the Policy so that when the Committee approves such an application they will not be doing so in contravention of the Policy. The Committee felt strongly that the proposal to have prescribed, limited locations in the town centre should be referred to as *guidelines* to which the Committee should have regard when making its decisions, without it being a prescribed policy position.

The policy cannot fetter the council's discretion and applications for street trading consent for locations not approved can still be made and must still be determined. In these cases, officers will refer applications to the committee in accordance with the scheme of delegation.

Officers do not consider this to be necessary as the relevant powers and delegation is already set out in the council's constitution.

The prescriptive nature of the policy is intentional to meet the policy's stated objectives. To lessen the nature of the policy to merely "guidelines" would in officer's view fundamentally undermine the policy and its intended objectives:

1. prevent the obstruction of the streets by street trading activities;
2. sustain established shopkeepers in the town;
3. maintain the quality of the townscape and add value to the town;

<p>In terms of the locations proposed in Annex 1 of the draft policy, Members felt that the sites shown are suitable but said that another location should be included, that being the site outside Marks and Spencer on the High Street (currently and in previous years occupied on a seasonal basis by a static ice cream trader).</p> <p>In terms of “security of tenure”, members proposed the adoption of a 3 year street trading consent (subject to the ability for the Committee to review where necessary), however it has been clarified that the law permits a maximum 12 months for the duration of a street trading consent.</p> <p><b>4.2 Special Conditions for Mobile Ice Cream Traders (Annex 2)</b></p> <p>The current and proposed policies both prohibit trading by mobile ice cream traders in the following locations:</p> <ol style="list-style-type: none"> <li>1. a) High Street (from Sandford Park entrance to Townsend Street)</li> <li>b) Promenade (from High Street to Montpellier Walk)</li> <li>c) Clarence Street</li> <li>d) North Street</li> <li>e) Pittville Street</li> <li>f) Regent Street</li> <li>g) Rodney Road</li> <li>h) Winchcombe Street (from High Street to Warwick Place)</li> </ol>	<ol style="list-style-type: none"> <li>4. encourage inward investment; and</li> <li>5. promote quality markets.</li> </ol> <p>Officer will commit to an annual review of the locations and will include representation from members of the licensing committee.</p> <p>See comments above. Additional site will be included.</p>
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<p>i) Imperial Square j) Montpellier Walk k) Montpellier Street l) Warden Hill Road (within 100 metres of frontage to Bournside School), both sides of the road in any direction, except in the lay- by opposite to number 89, during the period half an hour before school opening to 1 hour after closing during school terms). m) Loweswater Road (from the junction with Alma Road to the junction with Langdale Road during the above period and times). n) Evesham Road and roads adjacent to Pittville Park. 2. Trading prohibited within 75 metres of the gates of all schools, except Bournside School (see Special Condition 1) on both sides of the road in any direction during the period half an hour before school opening to one hour after closing during school terms.</p> <p>Members of the Licensing Committee expressed a desire for this list of prohibited locations to be reviewed to ensure that they are still appropriate.</p> <p>In terms of location (l), Warden Hill Road, Members felt that the section “except in the lay-by opposite to number 89” should be removed because trading is not appropriate in that location due to the heavy traffic and the proximity of the school.</p> <p>In terms of the prohibition of trading within 75 metres of gates of all schools, Members felt that consideration should be given to increasing this prohibition to 200 metres.</p>	<p>Officers consider the “Special Conditions for Mobile Ice Cream Traders” to still be fit for purpose but have committed to a more comprehensive review on 2016.</p> <p>Officers agree with this recommendation.</p> <p>Officers consider this to be too excessive and, in some areas, impractical.</p>
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<p>Please find as follows Environmental Protection's comments on the proposed policy:</p> <ol style="list-style-type: none"> <li>1. We remain supportive of the principles of the policy and welcome the consistency it gives</li> <li>2. Section 1: purpose – reference to 'nuisance and annoyance' – recommend this wording is changed to 'public or statutory nuisance', unless licensing are able to regulate against 'annoyances'?</li> <li>3. Section 4: the licensing and determination process – from a customer perspective, it may be useful to mention the role of consultees and what they would be commenting on or looking for in an application. 4.1 only states that the licensing committee will assess applications against the council's criteria for assessment. In systems thinking terms, we are more likely to get 'clean' applications if we set out the requirements of each consultee as well as committee</li> <li>4. Para 4.2, second bullet point 'Public Nuisance' – we would have worded this para differently if it only applied to EP assessment of public nuisance, but we understand this in relation to the licensing committee's assessment of it? For example – EP would deal with 'misbehaviour' as ASB not public nuisance. The other examples of emissions and smells are also more likely to give rise to statutory rather than public nuisance.</li> <li>5. Para 4.2 Public nuisance – as an applicant or a complainant or Member, it would be useful to know what you mean by 'a substantial risk of nuisance' and how the cumulative impact of these applications will be assessed</li> <li>6. There is no reference to statutory nuisance but this is covered in comment 3 above. Noise from a loudspeaker in a street is more likely to be a stat nuisance than a public nuisance for example.</li> <li>7. Para 4.2 third bullet point – public safety – would be useful to</li> </ol>	<p>Agreed and policy amended accordingly.</p> <p>The criteria for assessment are set out in the policy and will be reflected in amended guidance notes in an appropriate manner.</p> <p>Noted.</p> <p>The intention is that the likelihood of a "substantial risk of nuisance" will be assessed through consultation and be based on a case to case basis taking into account the individual merits of an application and drawing on the knowledge, assessment and experience of consultees.</p> <p>See response above.</p> <p>See comment to point 5 above.</p>
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<p>expand on what is meant by 'substantial risk to the public'. If the 'unhygienic conditions' is supposed to relate to food safety, - please can you change the wording accordingly. It would be for useful to know how licensing assess this please, or maybe this is something we can work on together.</p> <p>8. Para 4.2 last bullet point – environmental credentials – great to see this in the policy as sustainability should be a key consideration of all commercial enterprises/operations – as long as such schemes do not have the potential to give rise to a nuisance. We understand the council does not have a sustainability officer at the moment so it would be good to know who has the expertise to assess against this criteria in the interim. If we can be of help in this respect, do let us know.</p> <p>9. Section 5, renewals – 'the council may consult further to determine if the street trader is a cause for concern or has been the subject of complaints' – for our information, please can you advise who else would be consulted and what, if any, impact this would have on an EP representation</p> <p>10. Also section 5 – 'where a renewal application has bene made and: 1) there have been no significant complaints or enforcement issues' – please expand or define what is meant by 'significant' for example do you mean a certain number of complaints or enforcement issues, or substantiated ones or ones that you or LC would consider to be the most serious?</p> <p>11. Section 7 markets – please be aware that although 'the council...would be inclined to be supportive of market applications of this type' – in the world of EP, the usual considerations re nuisance and pollution would still apply</p> <p>12. Annex 2 standard conditions – 2.3 – we would prefer this wording please 'To adequately manage the street trading activity so as not to cause a statutory or public nuisance (from noise, fumes and odour, for example).</p> <p>13. Annex 2, para 2.13 – please advise who in the council gives this</p>	<p>Noted.</p> <p>This will be determined on a case to case basis taking into account the relevant matters and information.</p> <p>See comment above.</p> <p>Noted.</p> <p>Agreed and policy amended accordingly.</p> <p>This will form part of the application and therefore also the consultation.</p>
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<p>express permission for the use of generators? We note there is reference to fumes and noise in this clause, which indicates the 'permission giver' would need to liaise with EP.</p> <p>14. Special conditions for ice cream traders – the 1984 CoP was revised in 2013 so these conditions should match the revised CoP please and reference should be to the current version</p> <p>15. Food safety – where the application relates to a food vendor, the Licensing Officer or committee could use the national food hygiene ratings website to ensure a high standard of food hygiene through street trading consents, if this is appropriate. A rating of 3 or above means the business is broadly compliant with food safety and hygiene legislation.</p>	<p>Any issues identified will be considered as part of the consultation process and taken into account in the street trading determination.</p> <p>Agreed and policy amended accordingly.</p> <p>Noted.</p>
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