



Havering

LONDON BOROUGH

CABINET	
Subject Heading:	Decision to Consult on Havering's Street Trading Policy
Cabinet Member:	Councillor Viddy Persaud Lead Member for Public Protection and Safety
SLT Lead:	Barry Francis Director of Neighbourhoods
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Policy context:	The Street Trading Policy has been produced. A decision is required to consult with residents and businesses on the proposed new Policy.
Financial summary:	It is anticipated that the cost of the consultation will be less than £10,000, which is currently budgeted for and will be funded from existing budgets. The budget identified is A26210.641640
Is this a Key Decision?	Significant impact on two or more Wards
When should this matter be reviewed?	June 2021
Reviewing OSC:	Towns and Communities

The subject matter of this report deals with the following Council Objectives

Communities making Havering

[X]

Cabinet, 7 July 2021

Places making Havering
Opportunities making Havering
Connections making Havering

[X]

[X]

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SUMMARY

1.1 Havering adopted Street Trading in 1999 as part of its Environment Strategic Policy. Following natural changes in the borough since the adoption of the relevant provisions of the London Local Authorities Act 1990 (as amended) in 1999 a new Policy is now required for street trading in the borough.

1.2 A Street Trading Policy enables the authority to control various factors such as

- **Economic promotion**
- **Public order and decency**
- **Prevention of crime and disorder**
- **Public safety**
- **Effective traffic and pedestrian progress on the highway**

1.3 Before the authority can introduce a new Street Trading Policy there is a requirement under the London Local Authorities Act 1990 to consult on the proposed policy.

RECOMMENDATIONS

2.1 Cabinet is recommended to:

Authorise the commencement of a 10 week public consultation on a draft Street Trading Policy beginning on 1st September 2021.

REPORT DETAIL

3.1 Havering adopted Street Trading in 1999 as part of its Environment Strategic Policy. Following natural changes in the borough since the adoption of the relevant provisions of the London Local Authorities Act 1990 (as amended) in 1999 a new Policy is now required for street trading in the borough.

3.2 A decision is required to begin a consultation with the public before the Policy can be adopted. This will allow the council to regulate street trading effectively across the borough.

3.3 It is intended that this consultation follow the standard public consultation format and that additional direct consultation be focused on business users.

3.4 In accordance with the London Local Authorities Act 1990 we will also consult with the Commissioner of Police of the Metropolis, existing street trading licence holders or bodies representing them, Highways, British Railways Board, London Regional Transport, Network Rail Infrastructure Limited and Transport for London

3.5 A copy of the draft Street Trading Policy to be consulted on is included as Appendix 1

3.6 The United Kingdom is currently experiencing a public health emergency as a result of the COVID 19 pandemic. Current provision has been made by the Government to allow for specific street trading, namely the sale and service of food and drink adjoining a premise, until September 2021, by virtue of the Business and Planning Act 2020.

3.7 Other activities such as licensed pitches and shop front goods will still be covered by the London Local Authorities Act 1990 (as amended) and subject to this policy once adopted. However many aspects of street trading including the provision of tables and chairs will not take effect until the Business and Planning Act 2020 comes to an end.

Details of the proposed policy for consultation

4.1 Havering adopted the London Local Authorities Act in 1999 to deal with problems caused by some street vendors. The council would now look to publish a new street trading policy to provide a level playing field for all businesses wishing to use the highway for trade, and to ensure that regulated use meets with our approach to street licensing.

4.2 Local authorities may regulate street trading activities and apply local controls in their area. A street trading policy enables the authority to control various factors such as;

- economic promotion,
- public order and decency,
- prevention of crime and disorder,
- public safety and
- effective traffic and pedestrian progress on the highway.

4.3 The policy is intended to provide a framework for the Council to administer and regulate street trading to ensure a consistent approach is taken. It also serves as a reference for licence holders, relevant stakeholders and enforcement officers as to the Councils intended vision and approach to street trading activities.

4.4 Street trading activities are regulated by Part 3 of the London Local Authorities Act 1990 (as amended) which provides local authorities in London with an authorisation process to control the following activities;

- **Street Trading Pitches**
- **Tables and Chairs on the Highway**
- **Shop Front Displays**
- **Advertising Boards**

4.5 In order to establish this policy, Havering will need to follow guidelines to consult and allow representation on the following:

- **Havering Street Trading Policy** – the decision making process requires a 28 day consultation. A copy of the draft policy is included as Appendix 1.
- **Conditions** – this requires a statutory 28-day public consultation and notification to existing license holders and any bodies representing them before passing regulation. Draft conditions are included in an Appendix B in the draft policy document itself.
- **Designated Streets** – this requires a statutory 28-day public consultation preceding resolution by council, followed by a 28-day notice published before coming into force. The proposed designated streets are included in Appendices 2A and 2B.
- **Fees** –there is a statutory requirement for a 28 day public consultation, publicising how fees are derived, and direct consultation with current license holders or their representatives preceding resolution by council. This is then followed by a 28 day public notice of the decided fees and notice to licensees or their representatives. Details on the proposed fees and how they were derived is included in Appendix 3.

4.6 It is proposed to process the separate areas for consultation concurrently where appropriate.

4.7 The Council has powers to designate a street as a 'licence street' and can prescribe the types of commodities or services that will be authorised by a licence. The designated streets at present represent parts of Romford Town Centre, and some isolated pitches around the borough. They do not include the other town centres or commercial areas. There are therefore large parts of the borough that are unable to be licensed under the existing regime. This is particularly restrictive for premises with outside seating, shop front goods and those that use A-boards.

4.8 This policy seeks to differentiate designated streets into the following categories:

- **Pitches.** The number of proposed pitches remains limited to areas where there is adequate space on the highway to accommodate them.
- **Other activities such as tables and chairs, shop front goods and A-boards.** In order to capture all business use premises the business rates database was used to identify all traders that could avail themselves of this part of the licensing regime. The list of these designated streets is extensive however it is the most effective way of ensuring that all premises are included whilst also excluding residential premises.

As with all applications they will be subject to an application and consultation process which will ensure that sites are suitable for the proposed use.

4.9 The council may appoint further streets to those already designated by varying or passing a resolution under s24(1) London Local Authorities Act 1990, provided that they:

- (a) before passing a designating resolution, consult with the Commissioner of Police of the Metropolis on their proposal; and
- (b) before rescinding or varying a designating resolution, consult with the licence holders trading in the street in question, or a body or bodies representative of them, on their proposal.

4.10 The statutory time period for the overall consultation process is not less than 28 days in advance of the date of the resolution.

4.11 The council may determine charges in the aggregate across one or more years to recover the associated costs of administration and enforcement of the licences. The authority must both notify licence holders in advance with a statement as to how these have been calculated, and publish a notice of proposed charges.

4.12 The statutory consultation period for representations to be made is 28 days from publication of the notice.

4.13 Although the statutory consultation period is only 28 days is proposed to undertake a longer consultation as this is a new policy and to ensure that as many views as possible can be considered. The consultation will begin on 1st September 2021 for a period of 10 weeks. The date may be subject to change depending on the status of the pandemic at the time.

4.14 The consultation will be conducted using an online survey promoted through:

- Advertising on the local authority website
- Direct mailing to interested parties and statutory consultees
- Social media messaging
- Posters in public buildings
- Local newsletters including the Living magazine and Business Briefing newsletter

4.15 Representations will also be accepted by email to the licensing mailbox and written representations can be sent by post to the Town Hall.

4.16 In accordance with the London Local Authorities Act 1990 it is intended to consult with the Commissioner of Police of the Metropolis, existing street trading licence holders or bodies representing them, Highways British Railways Board, London Regional Transport, Network Rail Infrastructure Limited and Transport for London.

4.17 It is also intended to consult with interested parties which will include, other council departments, trade groups, businesses, residents and groups representing people who may be affected by the proposed changes such as charitable organisations and disability advocates.

4.18 All comments will be carefully considered and amendments to the policy will be made if appropriate.

4.19 The Street Trading Policy will then go to Full Council for final approval and for a resolution to designate further identified streets for legal street trading.

4.20 Following the passing of a resolution by council, a notice must be published for not less than 28 days.

4.21 The Street Trading Policy includes provision for enforcement by way of Fixed Penalty Notices. This option was not available in 1999, and provides a more efficient way of dealing with non-compliance than lengthy prosecution. The use of FPNs can run alongside existing sanctions and discretion can be used to prosecute if this seems to be the most effective mechanism given the circumstances. London Councils set the fixed penalty levels as part of their statutory duty for all London authorities.

4.22 Human Resources implications have been identified in terms of the capacity to process the anticipated number of applications; this has been assessed as equating to approximately 24 weeks work, which is roughly half an FTE.

4.23 This is discussed and analyzed in the risks and implications, which can be found further in this document.

4.24 At this stage, the decision required is to commence a consultation. There is no immediate proposal to appoint staff to manage the consultation. This can be met within existing staffing levels.

4.25 The service is currently reviewing its licensing processes and systems to see if efficiencies can be found through automation and reprioritisation of workloads, this could significantly mitigate the necessity for additional staffing.

Key Documents:

Appendix 1 Draft Street Trading Policy

Appendix 2A Proposed Streets for Designation: Pitches

Appendix 2B Proposed Streets for Designation: Shop Fronts, Tables and Chairs and A-Boards

Appendix 3 Proposed Fees and Charges

Appendix 4 Equalities & Health Impact Assessment

REASONS AND OPTIONS

5 Reasons for the decision:

5.1 Havering adopted Street Trading in 1999 as part of its Environment Strategic Policy. Following natural changes in the borough since the adoption of the relevant provisions of the London Local Authorities Act 1990 (as amended) in 1999 a new Policy is now required for street trading in the borough.

5.2 The policy is intended to provide a framework for the Council to administer and regulate street trading to ensure a consistent approach is taken. It also serves as a reference for licence holders, relevant stakeholders and enforcement officers as to the Councils intended vision and approach to street trading activities.

5.3 Before the authority can introduce a new Street Trading Policy there is a requirement under the London Local Authorities Act 1990 to consult on the proposed policy.

6 Other options considered:

6.1 Option 1 - Not to adopt a Street Trading Policy

This was rejected, as it would encourage unregulated activity which would leave Havering streets looking untidy and unattractive, and would make the streets difficult to maintain and keep safe for pedestrians.

This would also leave the borough with potentially unmanageable street trading issues.

IMPLICATIONS AND RISKS

7 Financial implications and risks:

7.1 It is anticipated that the cost of the consultation will be less than £10,000 which is budgeted for and will be met from existing budgets. The budget identified is A26210.641640. Fees will be set on a cost recovery basis to cover the costs of processing licence applications.

7.2 The fee levels are intended to provide full cost recovery of all street trading licensing functions including the preparation, consultation and publication of the Street Trading Policy. Fees may be aggregated over more than one year, and may be varied during the aggregation period chosen. Accounts in excess or deficit at the

end of this stated period are legally required to be shown to be carried forward for the purposes of Street Trading Licensing.

8 HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

8.1 There will be a requirement for further staff to implement, license and enforce this legislation if uptake is as expected, as the additional requirements cannot be met from existing staff resources.

Licence type	Estimated number per annum	Hours per application	Total hours
Street Trading/Shop Fronts	50	10	500
Pitches AM	6	14	84
Pitches PM	6	20	120
A Boards	50	2	100
Temporary Markets	5	2	10
Hearings	6	7	42
			856 hours

8.2 856 hours at 36 hours per week equates to approximately 24 weeks work which is approximately half an FTE.

8.3 Current licensing officers are on grade 7. Their salary at top of their scale 34 is £39,575. With on costs this comes to £49,998. (Assuming a 2% increase from the previous year).

8.4 The service would therefore require an expansion of the salary budget of £24,507.50 to deal with the increase in demand. The service is currently reviewing its licensing processes and systems to see if efficiencies can be found by automating some of the processes. By increasing automation it may be that the salary needed to be funded could be reduced.

8.5 Any recruitment/resourcing activity that was needed would take place in accordance with Council policies.

9 Legal implications and risks:

9.1 Consultation with affected parties regarding the designation of streets, the introduction of conditions and the variation of fees is mandatory under The London Local Authorities Act 1990 ("The Act"). Any failure to implement the procedures set out in the Act could result in a legal challenge against the Council.

9.2 A Consultation exercise should be carried out in a proportionate, fair, and inclusive manner following the principles in *Gunning*. The principles are that consultation must take place when the proposal is still at a formative stage, sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response, adequate time must be given for consideration and response to allow consultees to comment meaningfully and the responses must conscientiously be taken into account by the decision maker.

9.3 Inclusion of Fixed Penalty Notice mechanism

Sections 15-18 of the London Local Authorities Act 2004 sets out the process of how Fixed Penalty Notices are applied in respect of offences related to street trading as set out in Schedule 2 of the Act. Officer delegations under the Constitution must be updated.

Street trading without a licence is an offence under Section 38 of the Act which carries a maximum fine not exceeding level 3 on the standard scale, Section 34 of the Act sets out further offences. Any prosecution will be carefully considered in line with the Code of Crown Prosecutors.

9.4 Consultation for variation / new designation of licenced streets for street trading

9.4.1 Under s24 of the Act to the council must consult with the Commissioner of Police of the Metropolis and licence holders or a body representing them before varying the designated streets. A draft resolution must be published with advice on how to make representations to the council for no less than 28 days before the date that resolution is to be passed.

9.4.2 The resolution to designate or vary the designation of licenced streets will specify the day that this is to take effect.

9.4.3 The council will publish a notice in a local newspaper for 2 consecutive weeks. The first of these publications must not be less than 28 days before the specified effective (appointed) date.

9.5 Consultation for variation of fees

9.5.1 The procedure for consultation is set out at s.32(7) - (10) of The Act. Before determining the charges the council must give notice of the proposed charges to licence holders or to a body or bodies representative of them and publish a notice of the proposed charges in a local newspaper. The notice must be accompanied by a statement showing how the proposed charges have been calculated. Licence holders and body representatives can request further information regarding the calculations. A notice must specify a reasonable period (not less than 28 days from

the date of publication of the newspaper), within which written representations can be made to the council.

9.5.2 If further information regarding the calculation of the fees is made within the 28-day period, that period will be extended until the Council has complied with the request.

9.5.3 The Council must consider the representations and make a determination. Once that has been made, the decision to set the fee level must be notified to the licence holders and body representatives. It must also be advertised in the newspaper again

9.6 Consultation for variation / new standard conditions for street trading

9.6.1 Under s27 of the Act the council may make regulations prescribing standard conditions which they may attach to the licence when granted or renewed.

Before making the regulations the council must publish a notice of their intention to do so in a local newspaper. The notice must contain a draft of the resolution and state that representations may be made in writing to the council not less than 28 days after the publication of the notice. The council must consult the licence holders or a body or bodies representative of them.

9.6.2 After the council have considered those representations they may make the regulations and must notify the licence holders or a body or bodies representative of them of the making of those regulations.

9.7 Right of Appeal

9.7.1 A right of appeal is open to current licensees regarding the variation of conditions of a license by regulation, or as an objection to fees. Variation or revocation of these cannot take place before the end of the appeal period of 3 months from the published notice regarding variation / fees.

9.7.2 It is recognised that there has not been enforcement of non-licensed tables and chairs previously. Consideration has been given to the potential impact of any grounds for claims under promissory and proprietary estoppel. Where the council has not given an undertaking not to enforce against individuals previously then estoppel is not feasible in this case; where land has been used, the council has not given reason for any trader to believe they have ownership or legal interest in the land.

10. Equalities implications and risks:

10.1 The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- (i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) Foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

10.2 The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

10.3 It is both Council policy and recently renewed SLT direction/expectation that EqHIAs (Equality and Health Impact Assessments) are carried out when appropriate and in sufficient time to enable informed decision-making. As a basic rule, one should be undertaken whenever staff, service users, or the wider public are impacted by decisions or the intended or planned activity

10.4 An EqHIA has been drafted and is included at Appendix 4. We will collect information during the consultation however it is anticipated that the policy if adopted will have a positive effect on the streets and pavements in the borough by controlling the use of the pavement to allow good access for all people using it. Consideration will be given to the predominant socio-economic status of the business operators affected by this policy change.

10.5 What are the potential impacts?

The potential identified impacts of this change that may affect service users with protected characteristics are:

- Maintain clearance for pedestrians and wheeled conveyances on the highway for users with and without mobility restrictions.
- Confirm which areas can have tables and chairs and that this complies with Planning requirements, providing a level playing field for all businesses.
- Potential uptake unknown and could mean that outside seating is not available for customers at some premises. It is likely that other premises would be available. Details of uptake rate were sought from neighbouring local authorities operating comparable schemes, but as discussed above, this was very variable.

10.6 *Who is likely to be affected?*

- Businesses – many businesses already operate with tables and chairs on the highway. While this is an offence outside of the designated licensing area, this has not been enforced under the London Local Authorities Act in recent times. Businesses will now be required to pay for use of the highway or may be subject to a fixed penalty notice. The types of business affected range from multi-site chain pubs and restaurants to small independent cafes with a much lower turnover.
- Residents and visitors using the highway – Setting standards for using tables and chairs the highway will ensure that we are able to maintain clearance for pedestrians and persons using wheelchairs and pushchairs and prams.
- Residents and visitors using the licensed premises – some residents and visitors may choose to sit outside due to steps preventing them accessing some eateries and restaurants. These residents may be affected with regards to their choices if some businesses choose not to pay for licences.
- Smokers* - residents and visitors may choose to sit outside to smoke or vape. ONS data has been reviewed to take account of the percentage of the population who smoke, and what the breakdown by protected characteristics is. The data from 2018 shows that 14.4% of the population in England smoke, of which 16% were male and 13% were female; of these that the highest proportion worked in manual and routine occupations (25% of these workers compared to 10% of those in managerial and professional roles) which is likely to be indicative of lower income earners; and that the highest prevalence of smoking according to ethnicity is among Polish nationals, followed by persons defining themselves as mixed race. There is a higher rate of smokers among unemployed, and those with no qualifications. Data on all protected characteristics were available via this data set.
- Local authority – staff will be required to undertake new works and licensing schemes, and we will need to ensure this can be met without negatively impacting on current staff resource and wellbeing.

10.7 The consultation should take account of the varied population using outdoor seating in cafes and restaurants, and of the diversity of business owners to ensure that all persons are appropriately and effectively consulted.

*Source for Equalities Data: Adult Smoking Habits in the UK: 2018 Office of National Statistics

11 Health and Wellbeing implications and Risks

11.1 The decision to consult does not give rise to health and wellbeing implications.

11.2 The Street Trading Policy allows for licences to be reviewed and conditions imposed on an individual basis. This allows for consideration of other surrounding residents and pedestrians.

11.3 The policy requires that the applicant complies with all other legal and council requirements regarding food hygiene registration, food storage, waste disposal, planning, footway accessibility, and similar. The individual application can be granted with conditions that can be used to take account of potential nuisance to residents, businesses or other highway users. The policy requires applicants to state how their use of the highway will improve the aesthetic, promoting a more positive surrounding and with potential for greening that could contribute to air quality schemes.

11.4 The policy provides for the use of temporary licensing where previous problems have occurred or to allow any potential issues to be identified on a new previously unlicensed site.

11.5 At the implementation of the proposed policy, The Business and Planning Act 2020 will have allowed a simple process for businesses to use the highway to allow for social distancing of customers. When the Street Trading Policy is proposed to come into effect in 2021 it is not known at this time what the requirements will be with respect to Covid-19 or any further unknown public health issues. The policy has been written to cover the administrative elements and it is proposed that the required public health and safety elements could be managed within this policy.

Appendices:

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Appendix 2B Proposed Streets for Designation: Shop Fronts, Tables and Chairs and A-Boards

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Appendix 4 Equalities & Health Impact Assessment

BACKGROUND PAPERS

None