



**Local Government (Miscellaneous Provisions) Act 1982**

# **Milton Keynes Council Street Trading Policy 2017 - 2020**

**VERSION 4.0**

## Milton Keynes Council Street Trading Policy 2017 - 2020

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## 1. EXECUTIVE SUMMARY

- 1.1 This document sets out the Council's policy on street trading. This document also sets out the legislative framework administered by the Council in respect of street trading consents, government guidance and the procedures for obtaining such consents and the conditions attached to them. This Policy, however, is not a comprehensive statement of the law and applicants should, where necessary, obtain their own legal advice.
- 1.2 Appendices that form part of this policy may be updated from time to time by the Regulatory Committee and any revision to the appendices will be publicised on the Council's website at least 28 days prior to commencement. Any amendments to the Policy itself shall be made by the Regulatory Committee and ratified by Cabinet and take effect immediately upon adoption unless a later date is specified.
- 1.3 The policy will be reviewed every 3 years but a review could be triggered at any time by a change in legislation or other relevant factors.

## 2. INTRODUCTION SCOPE AND PURPOSE

- 2.1 The Borough of Milton Keynes adopted street trading provisions under The Local Government Miscellaneous (Provisions) Act 1982 Schedule 4 in October 1988 in response to members concerns that itinerant traders were having an adverse financial impact on other food businesses within the borough and there was also a concern of an increased risk of highway related injury due to roadside trading.
- 2.2 The council's ability to regulate street trading is set out in Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 referred to in this policy as "the Act".
- 2.3 Where controls are in place streets may be designated as either '**prohibited**', or '**consent** streets for the purposes of street trading. However, community events may be exempted by the Council from the requirements of the street trading controls for the duration of the event. Definitions of the different street trading classifications are set out in section 2.
- 2.4 Milton Keynes has implemented a '60 metre rule', which prevents street trading taking place on any highway land (verges, footways) or private forecourts that are adjacent to and within 60 metres of the centre line of a Prohibited or Consent street. For dual carriageways this is centre line of the central reservation.
- 2.5 There was a consultation in 2013 on the street trading system in Milton Keynes. At this time only a small number of streets were classified as consent streets, the number of street traders on these streets were low and traders preferred to trade on streets not regulated by street trading controls.

- 2.6 Following a consultation in September 2013 the Regulatory Committee resolved to designate all Milton Keynes adopted highway streets and any future adopted highway streets as consent streets (unless they were designed as prohibited or exempted). At this time a number of 'unregulated streets became 'consent streets' and some streets became prohibited for the purposes of street trading.
- 2.7 The purpose of this policy is to provide guidance for the consideration of applications for street trading consents and to help create a street trading environment which is sensitive to the needs of residents and visitors. It will create a level playing field for traders encouraging higher service standards of food hygiene and providing a service which does not detract from the local neighbourhood scene.

### 3. PROHIBITED STREETS

- 3.1 If a street is designated as a "**prohibited street**" then a criminal offence is committed by any person engaging in street trading in that street. There could be a number of reasons to designate a street as prohibited. For example there may be road safety concerns, or the council may wish to restrict trading at a particular location because of business or resident concerns.
- 3.2 Certain trading pitches have been created in Central Milton Keynes to satisfy a need by the Late Night Trade. These pitches have been given consent status and are excluded from the prohibited street restrictions.

### 4. CONSENT STREETS

- 4.1 If a street is designated as a "**consent street**" then street trading without consent is a criminal offence. The council is required to act reasonably and be consistent with its general obligations (e.g. those under the Human Rights Act), but subject to that the council enjoys a wide discretion with regard to the granting or refusal of street trading consents. The council does not have to rely upon specific statutory grounds in order to refuse an application for grant or renewal.
- 4.2 There is no right of appeal against any decision made in respect of a street trading consent. A street trading consent can be granted for up to 12 months and can be revoked at any time through the Regulatory Sub-Committee. When granting or renewing a consent the council may attach any reasonable condition. Furthermore the council can at any time vary the conditions attached to a consent. Any such variations will be notified in writing to the person/business named on the consent and will take effect immediately or on another date if specified.

### 5. PUBLIC SAFETY

- 5.1 The proposed location of street trading activity should not present a significant risk to the public in terms of highway safety or/and obstruction. This would include consideration of factors such as: - interference with sight lines for road

users and access to pedestrian crossings. Applications in respect of sites that have previously been the subject of a refusal due to the unsuitability of the location are unlikely to be accepted.

## **6. COMMERCIAL NEED**

6.1 Any new application will include consideration of the number and type of existing traders and businesses in the vicinity. Consent is unlikely to be granted within 250 metres of an existing street trader.

## **7. PREVENTION OF CRIME AND DISORDER**

7.1 The proposed activity should not present a risk to public order. This is likely to be an issue in respect of applicants wishing to trade during later hours. This is because in some circumstances a trading location can act as a focus point of anti-social behaviour.

## **8. PREVENTION OF PUBLIC NUISANCE**

8.1 Consideration will be given to those measures to be taken by a trader to reduce and control the risk of nuisance from noise, litter, vermin, fumes, odours and the disposal of associated waste.

## **9. SUSTAINABILITY AND PRODUCT TYPE**

9.1 A trader should set out measures to reduce the environmental impact of their proposed activity as part of their application. Typically this could include the use of recyclable products and energy efficient processes.

9.2 Consideration will also be given to the type of products sold and the suitability of the products at the location concerned. It should be noted, applications which propose to sell articles of firearms, replica firearms, tobacco or animals will not be accepted.

## **10. SUITABILITY OF TRADING UNIT**

10.1 The vehicle, trailer or stall to be used will be of a good quality design/build and should not be of an appearance to the detriment of the quality of the street scene. The unit may be inspected by an authorised officer of Milton Keynes Council prior to any consent being issued. The unit shall comply with any legal requirement relating to the trading activity proposed and in particular with the following legislation (and any subsequent revisions):-

### **10.2 Food Hygiene legislation**

- (a) The Food Safety and Hygiene (England) Regulations 2013
- (b) Regulation (EC) 178/2002

- (c) Regulation (EC) 852/2004
- (d) Food Safety Act 1990
- (e) Food Standards Agency – Food Hygiene Rating Scheme - 3 star minimum for “Satisfactory” is mandatory.

#### **Health and Safety legislation**

- (f) Health and Safety at Work etc. Act 1974 and any regulations made under this Act.

#### **Noise control legislation**

- (g) Environmental Protection Act 1990

#### **Licensing**

- (h) Licensing Act 2003 – Sale of hot food between 11.00 pm and 05.00 am and sale of alcohol.

### **11. SUITABILITY OF APPLICANT**

11.1 When determining an application for the grant or renewal of a street trading consent the council will consider relevant information relating to the suitability of the applicant to hold such a permission including:

- (a) whether the applicant has any relevant unspent convictions:

We shall ask for a Basic Disclosure from the Disclosure and Barring Service (DBS check) (to be submitted with each application. The certificate must not be older than three months at the time of its submission. Any unspent convictions or proven criminal behaviour shall be taken into account in assessing the suitability of the applicant, such as dishonesty, violence, sexual and indecency related offences, drugs, theft and deception (attached as Appendix B).

- (b) refusal or neglect in paying fees due to the council for a street trading consent.
- (c) previous failures of the applicant, without reasonable excuse, in respect of a previous street trading consent.

### **12. LAND OWNER PERMISSION**

12.1 A person may already have permission from another department in Milton Keynes Council enabling them to engage in street trading on council owned land. In order to operate lawfully, such a person would also need to make a successful application for a street trading consent before they could trade.

### **13. PREMISES LICENCE – LICENSING ACT 2003**

13.1 If a Premises Licence has been granted under the Licensing Act 2003 which

permits licensable activities at a particular location, a street trading consent is still required before trading can commence.

#### **14. MOBILE TRADERS AT MULTIPLE LOCATIONS**

14.1 Many traders wish to operate from the same position every day but some businesses may wish to trade at a number of consent streets across the borough - for example ice cream vans or other similar operations may visit multiple locations each day. The Council recognises that these traders will only be in one location for a short period of time and as a result such traders will be able to apply for a borough wide street trading consent, based on the maximum number of hours they wish to trade per day. Such consents will be granted on condition that they allow no more than 20 minutes trading in any 100 metre part of any one street on any one day. This reflects the transient nature of their operation. Trading in one place for longer than this will require a specific consent for the street concerned.

14.2 If an applicant proposes to trade on streets where there is already an existing street trading consent, commercial need will be a relevant consideration when considering the application. The council will also consider restricting borough wide consents if issues develop with multiple traders visiting the same location.

#### **15. SUBMITTING A NEW APPLICATION**

15.1 Application forms and guidance are available from the Licensing section or can be downloaded from Milton Keynes Council' s website [www.milton-keynes.gov.uk/licensing](http://www.milton-keynes.gov.uk/licensing) and clicking on the Street Trading links via the food section.

15.2 The following documents will be required with the street trading consent application;

- a. A completed and signed application form
- b. A copy of a valid certificate of insurance covering third party and public liability risks of up to £1,000,000.
- c. A current MOT certificate and insurance documents where a motorised vehicle will be used for street trading.
- d. A plan detailing exactly where street trading is to occur.
- e. A DBS check for the street trading applicant and any staff involved in customer service, dated within 3 months of the application.
- f. Photos of the street trading vehicle or unit.

g. The relevant fee.

## **16. SUBMITTING AN APPLICATION - RENEWAL**

16.1 Application forms and guidance are available from the Licensing section or can be downloaded from Milton Keynes Council's website at [www.milton-keynes.gov.uk/licensing](http://www.milton-keynes.gov.uk/licensing) and clicking on the Street Trading links in the food section.

16.2 To ensure continuity of an ability to trade, renewal applications should be made at least 28 days prior to the expiry of the consent and the following will be required to be submitted to the Licensing Section;

- a. A completed and signed renewal application form or declaration of no changes.
- b. A copy of a valid certificate of insurance covering third party and public liability risks of up to £1,000,000.
- c. A current MOT certificate and insurance documents where a motorised vehicle will be used for street trading.
- d. A plan detailing exactly where street trading is to occur (except for borough wide consent applications).
- e. A DBS certificate for the street trading applicant and any staff involved in customer service if a period of 3 years has passed from when the last certificate was provided).
- f. Photos of the street trading vehicle or unit.
- g. The relevant fee.

16.3 Failure to apply to renew the consent at least 28 days prior to expiry may lead to a delay in the consent being issued or suspension of street trading consent. Refer to section 21 regarding fees.

16.4 The Council will aim to send renewal reminders to street traders 2 months prior to expiry date of consent.

## **17. TRANSFERS OF STREET TRADING CONSENT**

17.1 Street trading consents may be transferred to another operator subject to a 14 day consultation with:

- a. Thames Valley Police
- b. Environmental Health (Milton Keynes Council)
- c. Relevant Parish/Town council's
- d. Milton Keynes Council Ward Councillors

17.2 The following will be required to be submitted to the Licensing Section to transfer a street trading consent:



- a. A completed and signed letter from the original consent holder requesting a transfer to the new operator.
- b. A copy of a valid certificate of insurance covering third party and public liability risks of up to £1,000,000.
- c. A current MOT certificate and insurance documents where a motorised vehicle will be used for street trading.
- d. A DBS certificate for the street trading applicant and any staff involved in customer service. Existing consented traders may rely on certificates up to 3 years old
- e. Photos of the street trading vehicle or unit.
- f. The administration fee.

## **18 WHO WILL THE COUNCIL CONSULT?**

18.1 Before any new consent is granted the council will normally consult with the following agencies or persons in respect of new applications. A period of twenty eight days will be allowed for comments to be received:

- a. Thames Valley Police
- b. Highways (Milton Keynes Council)
- c. Relevant Parish/Town Councils
- d. Environmental Health (Milton Keynes Council)
- e. Milton Keynes Council Ward Councillors
- f. Trading Standards (Milton Keynes Council)
- g. Estates (Milton Keynes Council)
- h. Public Health (Milton Keynes Council)
- i. Any schools within the local area of the trading location.
- j. Any other consultee that officers consider appropriate.

18.2 The Council may choose not to consult with parties for applications for a site that has an existing consent (i.e. renewals) or where a consent has recently expired, provided that no complaints or concerns have been received, and the same goods are to be sold and the application is similar to the existing or previous consent.

## **19 WHAT DO I NEED TO DO ONCE I HAVE SUBMITTED MY APPLICATION?**

19.1 Once a valid application has been received the Licensing Office (with the environment permitting) shall display a site notice at the proposed site for 28 consecutive days. The notice shall state the application details of trading name, times applied for, consultation end date and where further details can be found. The notice requirement would not apply to borough wide street trading consent applications.

19.2 The Council will maintain a public register of applications including mobile traders on its website which will be updated regularly.

19.3 A link or contact details to the Milton Keynes Street Traders Association will be provided on the council's website.

19.4 If there are no valid objections / adverse comments to an application then the applicant may trade for a maximum of 3 hours per day. After a period of 21 days trading, an application to vary the hours of trading can be made which again will have to be notified to the consultees listed above.

## **20 THE DECISION MAKING PROCESS**

20.1 The Head of Service or other delegated officers have delegated responsibility for exercising the Council's functions in respect of determining a new application's suitability in whether to refuse or proceed with the application consultation process.

20.2 Where an application is accepted the consultation process begins, any representations will need to be made within 28 days from the date the application is accepted. Any representations must be 'relevant', in that the representation must not be considered by the licensing authority to be frivolous or vexatious. Where a valid representation is received the application will be referred to Regulatory Sub-Committee to be determined. Where no representations are made within the 28 days the decision will be made without referral to committee under the delegated powers.

20.3 If the application is decided by committee, the applicant, who will be expected to attend, will be advised in writing of the date, time and place when the application will be heard. The applicant can be represented by a legal representative or some other person.

20.4 The Regulatory Sub-Committee will deal with applications and disciplinary matters referred to it by Officers.

20.5 A Licensing Officer will prepare a report for the committee regarding relevant applications or other matters relating to traders. The report will be made available to the applicant/street trader at least five days before the date of the hearing. When considering the report and relevant documents the committee will ensure that all parties are heard. Unless otherwise stated fees for all General Licensing functions are payable on application. For any application withdrawn prior to a consent being granted or renewed then 50% of the application fee will be refunded. No refund is payable for those applications that are refused following a hearing by the Committee.

20.6 Where an application is refused and the applicant wishes to reapply for the same street, the application shall only be submitted after a minimum period of 12 months has passed from the date of refusal.

- 20.7 The Regulatory Committee or officers have delegated powers to grant or suspend, refuse or at Regulatory sub-committee, revoke street trading consents. Officers are also permitted to issue oral and written warnings, and cautions and may instigate prosecutions wherever appropriate.
- 20.8 The Council's decision to refuse to grant a consent or to impose any conditions has no right of appeal.

## **21 DURATION OF CONSENTS AND FEES**

- 21.1 Street trading consents will normally be granted for a maximum of 12 months unless a reduced period is considered appropriate.
- 21.2 No application to renew a consent will be determined until the appropriate fees have been paid (unless another arrangement has been made). This could mean the applicant is not permitted to engage in street trading once the previous consent has expired.
- 21.3 Failure to renew or to pay renewal fees may result in any subsequent application being treated as a new application.

## **22 CONDITIONS AND ENFORCEMENT**

- 22.1 General conditions (attached at Appendix A) will be attached to every consent detailing the holder's responsibility to maintain public safety, prevent nuisance and generally preserve the amenity of the locality.
- 22.2 Additional conditions may also be attached which relate to the type of consent granted. Such additional conditions may include conditions in respect of motor vehicles (attached as Appendix B).
- 22.3 Persons engaging in street trading (as defined in the Act) without a consent or who fail to comply with the conditions will be liable to prosecution under paragraph 10 of Schedule 4 of the Act. Decisions regarding enforcement action will be made in accordance with the Milton Keynes Councils Enforcement Policy.
- 22.4 Where an application is to be determined at a Regulatory Sub-Committee, the committee are permitted to amend any conditions to be attached to the street trading consent as required.

## **23 COMPLAINTS**

- 23.1 Legitimate complaints will be investigated and consent holders shall be expected to liaise with the Council to resolve them. Substantiated complaints may result in a consent being revoked following a hearing at Regulatory sub-committee.
- 23.2 Complaints may be taken into account when considering an application to renew a street trading consent .

## **24 DEFINITION OF STREET TRADING**

- 24.1 Street Trading is defined in paragraph 1 of Schedule 4 of the Act as:  
“the selling or exposing or offering for sale of any article (including a living thing) in a street”.  
The Act defines the term “street” as including:  
“any road, footway, beach or other area to which the public have access without payment”; and a service area as defined in section 329 of the Highways Act 1980”.
- 24.2 Any part of a street is a “street” for the purposes of the Act.
- 24.3 The Act at paragraph 1(2) of Schedule 4 states that the following types of trade are not street trading:
- a. a pedlar trading under the authority of a pedlar’s certificate granted under the Pedlar’s’ Act 1871;
  - b. anything done in a market or fair, the right to hold which was acquired by virtue of a grant, enactment or order;
  - c. trading in a trunk road picnic area provided by the Secretary of State under section 112 of the Highways Act 1980;
  - d. trading as a news vendor;
  - e. trading carried on at premises used as a petrol filling station;
  - f. trading carried on at premises used as a shop or in a street adjoining a shop where the trading carried on is part of the business of the shop;
  - g. selling things, or offering or exposing them for sale, as a roundsman.

## **APPENDIX A**

### **GENERAL CONDITIONS TO BE ATTACHED TO STREET TRADING CONSENTS**

1. The consent holder shall only trade on the days and between the times stated on the consent. The consent holder shall only trade in the description of articles stated on the consent.
2. The consent holder shall not carry on business on any street so as to cause obstruction to road users or cause obvious danger to people using the street.
3. The consent holder shall not carry on business from any vehicle or erect or place any stall or other structure in any street except in the area mentioned in the consent.
4. The consent holder shall not sell, offer or expose for sale any goods or articles other than those described within the principle terms of this consent.
5. The consent holder shall on all occasions, when trading, conduct themselves in such a way to not cause nuisance to a person in charge of any shop, business, resident, or any person using the street.
6. The consent holder shall ensure that a copy of the consent is clearly visible to the public whilst trading.
7. A copy of the consent shall be made immediately available upon request to an authorised officer of the Council or the Police.
8. If during the term of any consent any material change occurs in the trading arrangements (namely new staff or trading vehicle), the consent holder must report such changes to the Licensing Authority within 72 hours of that change.
9. Neither the consent holder nor any assistant shall display merchandise which is likely to cause offence or distress to any other person or which would be deemed an offence under any other legislation.
10. Advertisements or other notices shall not be placed in the immediate area of the premises without the approval of the Council.
11. The Consent Holder shall not place any furniture or equipment in the immediate area of the premises other than as permitted by the consent.
12. The council reserves the right to alter or amend these conditions at any time.
13. The subletting of any consent is prohibited.
14. The consent holder shall be responsible for the temporary storage of refuse, liquid and other material accumulated or created whilst trading and its subsequent removal from the site. The removal and disposal must be to the satisfaction of the council and relevant legislation.

15. The consent holder shall not cause nuisance or annoyance to persons using the street or to the occupants of any properties in the vicinity.
16. No articles of firearms, replica firearms, knives, tobacco or fireworks shall be sold.
17. A valid third Party Public Liability Insurance certificate shall be held by the consent holder at all times to the satisfaction of the Council.
18. If the consent holder or customer facing staff are convicted of any relevant or foreign offence during the period between when the application is made and when the application is determined or withdrawn, the consent holder or customer facing staff must notify the Licensing Authority in writing within 14 days from the date of conviction. Failure to do so without reasonable excuse could lead to the revocation of the street trading consent.
19. Borough wide consents for traders visiting multiple locations are restricted to Trading of no more than 20 minutes in any one 100 metre part of any one street on any one day
20. Ice cream traders shall comply with the requirements of the Code of Practice on Noise from Ice-Cream Van Chimes Etc. 2013
21. Consent holder or customer facing staff convicted of any relevant or foreign offence during the period of the consent must notify the Licensing Authority in writing within 14 days from the date of conviction. Failure to do so without reasonable excuse could lead to revocation of street trading consent.

**N.B This consent is issued without prejudice to any other statute, by-law or regulation. This consent does NOT over-ride any regulations regarding parking, food hygiene, obstruction, etc.**

## **APPENDIX B**

### **MOTOR VEHICLE CONDITIONS THAT MAY BE ATTACHED TO STREET TRADING CONSENTS**

1. Any trailers used for the purposes of street trading shall be in a road worthy condition and removed from the highway when the consent is not in operation.
2. Any motor vehicle used for the purpose of street trading shall at all times be in a roadworthy condition and have the relevant documents i.e. insurance, tax and MOT to make the use of that vehicle on a road legal. These documents will be produced by the consent holder to any police officer or authorised officer of the Council.

3. Any food mobiles in residential areas shall be removed from the trading location site once trading has finished.

## **APPENDIX C**

### **GUIDELINES ON THE RELEVANCE OF CONVICTIONS/CAUTIONS/WARNINGS**

1. Milton Keynes Council has a duty to ensure that a person is deemed suitable to operate as a street trader. The applicant must declare all convictions and cautions at the time of application. Failure to do so may result in the application being refused.

#### **General Principles:**

2. Each case will be decided on its own merits. However, the Council may refuse to grant a street trading consent on any of the following grounds:
  - a. There has been a conviction/caution for an offence involving dishonesty, indecency, any sexual offences, violence or drugs;
  - b. There has been a conviction/caution for an offence under the relevant licensing legislation;
  - c. Applicant or any entity, or person associated with the applicant has been associated with, have or had any outstanding debts owed to the Borough Council; and
  - d. Any other reasonable grounds.
3. If a period of imprisonment, community sentence or Court Order is imposed, the applicant must show a minimum of 3 years has passed without further convictions from the end of imprisonment or sentence, not from the end of any reduced sentence.
4. A person with an unspent conviction as defined in The Rehabilitation of Offenders Act 1974, for serious crime need not be permanently barred from registration, but should be expected to remain free of conviction for 3 to 5 years, according to the circumstances, before an application will be considered.
5. Some discretion may be appropriate if the offence is isolated, and there are mitigating circumstances. However, the overriding consideration should be the protection of the public.
6. Where an individual's suitability is called into question, the Senior Licensing Officer will normally determine the matter. In exceptional cases, the matter may be referred to a Licensing Sub-Committee for determination, whose decision is final.

#### **Offences involving violence:**

7. The following examples afford a general guide on the action to be taken where convictions are disclosed, or admitted, but it does not form an exhaustive list:

8. It is imperative that applicants with convictions for offences involving violence are considered carefully. When applicants have convictions for causing grievous bodily harm, wounding or assault, or other more serious offences involving violence, at least five years should normally elapse before an application is considered.

**Drug-related offences:**

9. An isolated conviction for a drug offence, whether for unlawful possession - or involving the supply of controlled drugs, need not necessarily debar an individual from registration, usually the applicant will have at least three years free of convictions/cautions or five years since detoxification, if he/she was an addict.

**Indecency offences:**

10. Applicants with indecency or sexual offences would normally be debarred. However, this will depend upon the age and circumstances of the offence, along with any registration on the Sex Offenders Register.

**Theft & Dishonesty:**

11. Convictions for isolated minor offences would not normally debar an applicant, but in cases involving serious theft or fraud at least three years should elapse since the conviction or end of any prison sentence, whichever is the longer, before an application is considered. When offences of dishonesty have been accompanied by violence, normally it is considered that at least five years should elapse before an application may be submitted.