

STREET TRADING CONSENTS

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS ACT 1982

GUIDANCE NOTES

What is Street Trading?

Street trading means the selling or exposing or offering for sale **any article** (including a living thing) **in a street**. It is controlled under the Local Government (Miscellaneous Provisions Act 1982: which is referred to as the 1982 Act in this note.

There are 10 categories trading which are excluded from the definition of street trading under the Act. These are:-

1. Trading as a pedlar under the authority of a pedlar's certificate (Pedlars Act 1871). However, the Council has adopted Section 30 Cheshire County Council Act 1980 which introduces a separate licensing system which applies to pedlars/hawkers. There is an information sheet on this under the general title of "Hawking".
2. Anything done at an authorised market or fair.
3. Trading at a trunk road picnic area under section 112 Highways Act 1980.
4. Trading as a news vendor: but only of newspapers and periodicals and (if a stall is used) only from a stall of a certain size.
5. Trading carried on at premises used as a petrol filling station.
6. Trading carried on at premises used as a shop or in a street adjoining premises so used and as part of the business of the shop.
7. Selling things as a roundsman.
8. The use for trading under Part VIIA Highways Act 1980 of an object or structure placed in, on or over a highway.
9. The operation of facilities for recreation or refreshment under Part VIIA Highways Act 1980.
10. The doing of any thing authorised under section 5 Police, Factories, etc (Miscellaneous Provisions) Act 1916.

What is a "street" for these purposes?

A "street" includes any road, footway, beach or other area to which the public have access without payment and also highway service areas.

The Council is allowed to designate **three** types of street:

1. A **prohibited** street where no street trading is allowed
2. A **licence** street where no street trading without a licence is allowed
3. A **consent** street where no street trading without consent is allowed

NOTE: The Council has not designated any licence streets and does not issue street trading licences.

There have been different interpretations as to what constitutes a street for a number of years. The law was clarified in 2009 by case of *West Berkshire District Council v Simon Paine* [2009] EWHC 422 (Admin). Extracts from this case are contained in the Appendix to these Guidance Notes. The essential point from the case is that a street can include private land such as a private car park. It does not just mean land which is part of a highway. This means that a number of activities that have not previously been considered to require a street trading consent will require one from now on.

Designation of streets is subject to the following special procedures

1. The Council must publish notice of its intention to pass the resolution mentioned below (and containing a draft resolution) in a local newspaper giving at least 28 days for representations to be made.
2. A copy of the notice (containing a draft resolution) must be served on the police and highway authority also giving at least 28 days for representations to be made.
3. (In certain circumstances consents are also required from various authorities but this is unlikely to apply in Halton)
4. Representations must then be considered.
5. If proposals are to be proceeded with there must be a resolution stating that the designation will take effect on a specified day (being not less than one month from the date of the resolution).
6. Notice of the resolution is published in two consecutive local newspapers (the first not later than 28 days before the designation comes into effect).

Where can I find the law relating to street trading?

1. The law is set out at Schedule 4 to the 1982 Act.
2. In this note all paragraph numbers shown in bold type refer to paragraphs in Schedule 4 to the 1982 Act.
3. Street trading licences are dealt with at **paragraphs 3 to 6**.
4. Street trading consents are dealt with at **paragraph 7**.
5. The following paragraphs apply to both: **8 to 11**.
6. In addition to the above, there have been a number of judicial cases on the subject over the years. The Appendix to these Guidance Notes gives details of one such case.

Is there a standard form of application ?

No. There is no statutory form of application. The Council has designed its own form.

Consents

1. Consents **cannot** be granted:
 - to persons under the age of 17 years;

- for trading in a highway to which a control order under is in force under Section 7 Local Government (Miscellaneous Provisions) Act 1976, other than trading to which the control order does not apply. (There are no such control orders in Halton).
- 2. Subject to the above the Council may grant a consent “if they think fit”.
- 3. The Council may attach such conditions “as they consider reasonably necessary”. For example, there may be conditions to prevent:
 - obstruction of the street and danger to persons using it;
 - nuisance or annoyance.
- 4. The Council may vary conditions from time to time.
- 5. Unless **specific** permission is included in the consent the holder of a consent may **not** trade from a van or other vehicle or from a stall, barrow or cart.
- 6. Consents may also control the streets which may be traded in and the times between which or periods for which trading may take place.
- 7. Consents may be granted for any period not exceeding 12 months but may be revoked at any time.
- 8. The holder of a consent may employ any other person to assist him in his trading (without a further consent being required for that person).
- 9. Any employee must also be at least 17 years of age (section 20 Children and Young Persons Act 1933). The prohibition on employing children in street trading is echoed in section 3(o) of the Council's Byelaws dated 2nd December 1998 which prohibits a person who is not yet over compulsory school leaving age being employed in street trading.

Fees

1. Fees are charged by the Council. These alter from time to time and the Licensing Section can advise as to the current levels of fees.
2. Different fees may be charged for different durations of licences, different streets being authorised for trading and even for different articles being sold.
3. The Council may require that fee deposits are paid with applications and such deposits would be repayable if applications are refused.
4. The Council does not allow fees to be paid by instalments.
5. There is provision for remitting or refunding fees where consents are surrendered or revoked.
6. Extra fees may be charged for the collection of refuse, the cleansing of streets and other services provided. However, special notice procedures apply if such extra fees are to be charged.

Offences

1. The main types of criminal offence are:
 - Engaging in street trading in a prohibited street.
 - Engaging in street trading in a consent street without being authorised so to do under Schedule 4 to the 1982 Act.
 - Trading in a consent street (with a consent issued by the Council) from a stationary van, cart, barrow or other vehicle or from a portable stall without having first been granted permission so to do under **paragraph 7(8)**.

- Contravening a condition imposed under **paragraph 7(9)**.
- 2. All offences are level 3 offences.
- 3. It is a defence to prove that the accused took all reasonable precautions and exercised all due diligence to avoid commission of the offence.
- 4. There is a further offence specifically related to making applications. It is an offence for the applicant to make a false statement which he knows to be false in any material respect or which he does not believe to be true.

Appendix to Guidance Note

West Berkshire District Council v Simon Paine [2009] EWHC 422 (Admin).

LORD JUSTICE SCOTT BAKER:

7. The Justices found the following facts:

"The 'business village' is an office development occupied by the companies shown on the key annexed to the plan ... The car park areas are used by the employees of those companies and their visitors and the usual delivery personnel.

There was no direct evidence of any use of the parking areas by the public. Further, there was no inference of public use - the office area itself is self contained and sufficiently away from domestic or retail sales areas for it to be unlikely that members of the public would use - or misuse - the parking area. There was no evidence that any member of the public was present on 14th March 2007.

In summary the 'business village' is an example of a multiple office development forming an office community on private land and solely for the use of office personnel. There is no reason why a member of the public who does not work there would venture on to the site unless he had a prearranged business appointment or was a contractor or deliveryman of some kind. The site is quite different from, for example, a retail park where goods are sold over the counter to members of the public."

The Justices noted that there was no evidence of parking bays for the public; they were all designated for office staff or business visitors:

"The Appellant's investigators had chosen to assume that the area was one 'to which the public have access without payment' (schedule 4 para 1(1) of the Act, defining 'street') on the basis that no physical barrier prevented such access and without any further enquiry or observation."

8. The question with which this court is concerned is whether the place at which the respondent was trading was a street within the meaning of paragraph 1(1)(a) of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 ("the 1982 Act"). "Street" is defined in that subparagraph as including:

"(a) any road, footway, beach or other area to which the public have access without payment; and

(b) a service area as defined in section 329 of the Highways Act 1980,

and also includes any part of a street."

- 23 In my judgment, it is important not to confuse the description of public place in the Road Traffic Acts with "other area to which the public have access without payment" in the provision presently under consideration.

35. The court in the present case is not concerned with private property or public places. It is concerned with areas to which the public have access without payment. For my part, I accept the submission of Mr Banwell that on examination the Road Traffic Act authorities are of no assistance and nor is it relevant whether there was any evidence that members of the public, other than those connected with the business village, were using the place in question.

36. It is in my judgment necessary to keep in mind the purpose of the legislation. The 1982 Act provided *inter alia* the first codified statutory scheme for the control of street trading. Its purpose is to ensure that district councils are able properly to regulate those who sell without the use of ordinary business premises. It is obviously more difficult, absent regulation, to keep track of itinerant traders and to ensure they are complying with the consumer protection legislation.
37. Local authorities are concerned not only with consumer protection but also with the suitability of those who are street traders, what they sell and also any nuisance and inconvenience or obstruction that they may occasion to those using the streets in question. It is therefore in my judgment not surprising to find that wide consideration can be given to various matters when considering an application for a licence or for permission to trade in a particular place.
38. It is accordingly in my judgment not surprising, indeed it is to be expected, that a locality in respect of which a consent to trade is required is widely defined. Any area to which the public have access without payment is on its face a wide definition. There is, in my judgment, no reason to narrow it down by introducing the concept of public place from other legislation.
39. It is also to be noted that the words in the definition are "to which the public has access without payment". What is relevant, in my judgment, is the ability of the public to go there without payment. It is not necessary to establish that the public actually go there. That seems to me to be a distinction between a public place and an area to which the public has access without payment. It is to be noted that the Justices appear to have given no consideration in the case to the critical words at the tail of the provision "without payment".
40. In my judgment, the Justices were wrong to conclude that the place where the respondent was trading was not a street as defined by paragraph 1(1) of Schedule 4. There was ample evidence for them to reach the conclusion that it was and on the facts found they should have reached such a conclusion.