



# STREET TRADING POLICY



**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 – PART III**

Approved by Council on 29 January 2015



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# 1. GENERAL

## Introduction

- 1.1 Darlington Borough Council has adopted the provisions of the Local Government (Miscellaneous Provisions) Act 1982 in relation to street trading within the borough of Darlington. The 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 1982 Act”.
- 1.2 Street Trading can aid the local economy and add to the facilities offered to people who visit, live, and work in Darlington. The Council therefore supports and encourages the provision of street trading in the borough providing that it is located where it can make a positive contribution to add interest, vibrancy and diversity to the area and does not give rise to problems associated with crime and disorder. It is however important to ensure that the highway is not obstructed or that trading is not permitted where there is a high flow of fast moving traffic or where it creates a hazard for pedestrians(especially for blind, partially sighted and other disabled people).
- 1.3 The policies detailed in this statement have been adopted by the Council of the Borough of Darlington (the Licensing Authority) as a guide to applicants on the general matters, which the Council will take, into account when discharging its duties and responsibilities under the provisions of the Local Government (Miscellaneous Provisions) Act 1982.
- 1.4 The purpose of this policy is to
  - provide a decision making framework for applications for street trading consents
  - to create a street trading environment which is sensitive to the needs of the public including residents,
  - to provide diversity and consumer choice, and
  - to enhance the character, ambience and safety of the town centre area.
- 1.5 The Council has designated all of the borough’s streets as consent streets except those designated prohibited streets (i.e. places where street trading cannot take place). A list of all prohibited streets attached at Appendix 1.
- 1.6 When considering an application for a street trading consent, the Council will decide each case on its own merits. The following matters will be taken into account:-
  - Public Nuisance
  - Crime and Disorder
  - Road Safety
  - Health and Safety
  - Any history of complaints etc
- 1.7 If a street trading consent is granted, conditions may be applied to ensure that these factors continue to be addressed by Consent Holders and that any trading activity does not result in the pollution of land, or the highway.
- 1.8 Consent Street Trading is separate from the authorised Market which is held in Darlington Town Centre every Monday and Saturday. There are also authorised Speciality Markets which are held throughout the year and again these are separate from Consent Street Trading.

1.9 Consent holders wishing to trade on the market or at a speciality market will need permission from the Markets Office which is based in the Old Town Hall in Horsemarket. Contact details for the Markets Office are provided on Page 12 of this Policy.

1.10 A street trading consent will not normally be granted where:

- There would be a significant effect on road safety either from the siting of the consent or from customers visiting or leaving the area, and/or
- There would be a significant loss of amenity caused by traffic, noise, rubbish, potential for the harbourage of vermin, odour or fumes, and/or
- There is a conflict with Traffic Orders such as waiting restrictions, or
- The vehicle, trailer or stall or cart to be used obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use, and/or
- The site does not allow the consent holder, staff and customers to park in a safe manner, and/or
- The trading activity is carried out after dusk and the site is not adequately lit to allow safe access and egress from the site for both customers and staff, and/or
- The Council is not satisfied that applicants have made satisfactory arrangements for the storage and collection of all refuse associated with their business, and/or
- The proposed activity presents a risk to public order. This is likely to be more of an issue in respect of applicants wishing to trade at later hours.
- The proposed goods to be sold are deemed to be of an inappropriate nature and/or deemed to present a risk to the health and/or safety of members of the general public.

## **2 CRITERIA**

2.1 Nothing in a consent shall grant or be deemed to grant to the holder any other licence or permission required under any legal requirement. The holder is specifically advised to obtain any such other approval as may be required.

2.2 The consent is personal to the consent holder and shall not be construed as creating a tenancy or lease. The consent holder shall at no time have the exclusive right to trade from the street or any part of it.

2.3 The rights and benefits contained in the consent are limited to the person named on the consent and may not be re-assigned, sold or otherwise transferred without the written approval of the Licensing Authority.

2.4 The subletting of any consent is prohibited

2.5 No trade or retail sale may be conducted in any street other than in the area mentioned in the consent and on days and hours detailed in the consent.

2.6 The consent holder shall not trade or offer for sale any item or goods unless it is permitted by the consent.<sup>1</sup>

2.7 The consent holder shall be responsible for ensuring compliance with all legislation that may apply to the trading activity.

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<sup>1</sup> Where the consent gives permission for the sale of hot or cold food and/or beverages there no requirement to specify individual items. Where a consent permits the sale of eg jewellery, trading in goods other than jewellery shall not be permitted.

- 2.8 The consent holder shall be responsible at all times for control of their unit.
- 2.9 A consent does not convey or confer any rights of access or egress to footpaths, verges, or other areas of land, whether or not cultivated, forming part of or adjacent to a public highway. Local road traffic regulations/orders must be observed at all times.
- 2.10 The consent holder or their employee(s) shall comply with any reasonable request by an authorised officer or police officer to move to an alternative location within the consent street.
- 2.11 No animal shall be present on any stall, vehicle van or cart.
- 2.12 A copy of the consent shall be made immediately available upon request to an authorised officer of the Council or the Police.
- 2.13 The consent holder may terminate the consent by giving written notice to the Council at any time. The Council has the right to terminate a consent at any time.
- 2.14 Auction sales shall not be permitted as part of the consent.
- 2.15 If a consent holder fails to use the consent for 3 months or more the consent will be deemed to have been surrendered.
- 2.16 Consent holders have a duty of care in relation to their street trading sites and adjacent areas and must not damage in any way, either wilfully or by negligence, any part of the consent street including paved areas, signs, fencing etc.
- 2.17 Neither the consent holder nor any assistant shall advertise or display, sell or wear any article or merchandise which is offensive or which would be deemed an offence under any other legislation.
- 2.18 No process or operation shall be carried on which would give rise to nuisance such as noise, smoke, smell, lights or vibration.
- 2.19 The consent holder shall take adequate precautions to prevent the risk of an outbreak of fire at his/her stall or vehicle.
- 2.20 All street trading units shall be equipped with safe and adequate lighting for operation during the hours of darkness.
- 2.21 The consent holder shall, on all occasions when carrying on business, be strictly sober, and conduct him/herself in a proper, civil and courteous manner. He/she shall not carry on his/her business in such a way as to cause annoyance to the occupier or person in charge of any shop or business, to any resident, or person using the street.

### 3 DEFINITIONS

In this Policy, the following phrases shall mean:

Street:	The definition of a street includes any road, footway or other area to which the public have access without payment (such as public parks and gardens or supermarket car parks - this includes potential access, that is the right to access, rather than just actual use.). "
Consent Street:	A street in which street trading is prohibited <b>without</b> the consent of Darlington Borough Council. It is illegal to trade in a consent street without first obtaining permission from the Council.
Prohibited Street:	A street in which any trading is prohibited – For example the street may not be wide enough to facilitate a consent holder or the council may wish to restrict trading at a particular location
Street Trading:	The selling or offering for sale of any article in the street. This includes any type of food, household goods, flowers and vegetables
Market Day:	Usually Mondays and Saturdays
Speciality Market:	Examples include Love Your Local Market, The Food Festival, Summer Markets, Christmas Markets and Christingle Markets, Darlington People's Market.
Consent Holder:	The person(s) to whom consent has been granted or renewed and includes any persons employed or assisting the principal consent holder.
News vendor:	Seller of newspapers or periodicals
Roundsman:	Someone who follows the round of his customers taking orders and delivering earlier orders. – eg a milkman
Pedlar:	A pedestrian who goes to his customers rather than allowing them to come to him and trades as he travels rather than travels to trade. If he sets up a stall or barrow and waits for people to approach him rather than approaching them then he is a street consent holder and not a pedlar.

## 4 LEGAL SITUATION

4.1 A person will not require a street trading licence or consent for:

- Anything done in a market or fair, the right to hold which was acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of an enactment or order.
- Trading in a trunk road picnic area as defined in s112 of the Highways Act 1980.
- Trading as a news vendor (newspapers and periodicals) which are sold or offered for sale without a stall or receptacle for them or with a stall that does not exceed 1 metre in length or width or 2 meters in height or occupy a ground area exceeding 0.25 square meters or stand on the carriageway of a street.
- Trading which is carried on at premises used as a petrol filling station; or
- Trading which is 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.<sup>2</sup>
- Selling things as a roundsman (e.g. a milkman).
- The use for trading under Part VIIA of the Highways Act 1980 of an object or structure placed on, in or over a highway;(eg Pavement Café Licence)
- The operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980;
- The doing of anything authorised by regulations made under section 5 of the Police, Factories, etc. (Miscellaneous Provisions) Act 1916. (Street Collection)
- Trading by a person acting as a pedlar under the authority of Pedlars Certificate granted under the Pedlars Act 1871.

Further advice as what does or does not constitute street trading can be obtained by contacting the Licensing Section – details of which can be found at Page 12 of this Policy. Alternatively, applicants may wish to consult with a solicitor prior to making an application.

4.2 Consents are granted or renewed for such a period of time as the Council may specify. The period of consent granted will take into account the need to avoid unduly restricting other applicants who may wish to trade from a nearby site. Each application will be decided upon its own merits

4.3 When granting or renewing a street trading consent, the Council may attach such conditions to it, as it considers reasonably necessary.

4.4 The Council is under no duty to grant a street trading consent and need not specify statutory grounds for refusal.

4.5 The Council may suspend a street trading consent for

- non-payment of fees or
- because other agencies such as highways authority require access to the trading location or
- there are Council authorised events taking place at or in the vicinity of the authorised consent.

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<sup>2</sup>. The exclusion from control of street trading granted to sales outside shops is limited to the business of the shop. For example:- a fruit shop may legitimately sell fruit from the front of the shop premises, whereas if a chemist sold fruit outside the front of the premises, a street trading consent would be required. Where any shop proposes to sell goods from outside the premises clarification should always be sought as to any other legal requirements that may apply.

- 4.6 The Council may from time to time vary the conditions of a street trading consent. Any such variations will be notified in writing to the named person on the application form for the consent and will take effect immediately or on the date of the notification letter.
- 4.7 The Council may revoke a street trading consent after it has been granted. This may be for a variety of reasons such as repeated non-compliance with conditions, non-payment of fees or non-compliance with legislation. The Council will not revoke a licence without offering the consent holder the opportunity to be heard by the Council's Licensing Committee.
- 4.8 There is no statutory limitation on the Council's power to revoke or refuse to renew a street trading consent other than by way of a judicial review.
- 4.9 The holder of a street trading consent may at any time surrender his consent to the Licensing Authority and it shall then cease to be valid.
- 4.10 Where a consent is surrendered or revoked, the Licensing Authority shall remit the whole or part of any fee paid for the consent.
- 4.11 Any consent holder street trading selling hot food and/or hot drinks between the hours of 23:00 and 05:00 hours will also require a separate licence under the Licensing Act 2003. The application will be considered separately and obtaining one does not imply that the other will be granted.
- 4.12 The Council may specify that the holder of the consent may trade
- Only at a location or locations as may be specified in the consent, and/or
  - Only at a specified time or times as may be detailed in the consent, and/or
  - Only in accordance with a restriction of the sounding or chimes, calls or other means of attracting customers.
  - From a stationary van, cart, barrow or other vehicle, or from a portable stall,
  - Only selling specified types of goods
- 4.13 A street trading consent holder may only be prosecuted for a breach of a condition where he trades from a stationary van, cart, barrow, vehicle or from a portable stall in a place, or at a time not included in the consent, or for breach of a condition relating to the positions and times in which he may trade but not for a breach of a condition relating to the type of article to be sold.
- 4.14 A person guilty of an offence shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- 4.16 Persons granted a consent to trade are advised to ensure that they are fully aware of all legislative requirements.

4.17 Persons making an application may also need to be aware and ensure compliance with of the following legislation (and any subsequent revisions):

- Environmental Protection Act 1990
- The Human Rights Act 1998
- Food Premises (Registration) Regulations 1991
- Regulation (EC) 178/2002
- Regulation (EC) 852/2004
- Food Safety Act 1990
- Food Hygiene (England) Regulations 2006 (as amended)
- The Food Safety (Temperature Control) Regulations 1995
- Health and Safety at Work etc. Act 1974 and any regulations made under this Act.
- The Licensing Act 2003

Please note: This list is not exhaustive and there may be other relevant legislation.

## **5 PRIVATE LAND**

- 5.1 Trading from private land to which the public have access without payment is classed as street trading and requires a consent to trade.<sup>3</sup>
- 5.2 If a consent holder wishes to trade from private land, then, he/she will also require written permission pertaining to the use the land for the proposed trading from the landowner. This will be required to be submitted with any application for grant or renewal. In addition, planning permission may also be required and clarification should be sought from the Planning Development Management prior to any application being submitted.

## **6 ADVERTISING**

- 6.1 Consent holders wishing to advertise on or from their stall unit shall, prior to any advertisements being displayed, seek written permission from the licensing unit.
- 6.2 Advertising of alcoholic or smoking products or their manufacturers or any advertisement which is deemed to give offence will not be permitted on any part of the trailer, stall or vehicle.
- 6.3 The use of advertising “A” boards in the Town Centre is prohibited

## **7 APPEARANCE**

- 7.1 Persons wishing to apply for a consent to trade should seek advice from the Council as to their choice of vehicle, trailer or stall prior to purchase or submission of an application. See contact details at Page 12 of this Policy.

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<sup>3</sup> In an appeal to the High Court in 2009, the definition of “street” was considered The Court directed that it was necessary to keep in mind the purpose of the 1982 Act which is to regulate sellers who operated without premises and itinerant consent Holders and to ensure they are complying with the consumer protection legislation. (West Berkshire District Council v Paine 2009)

The court confirmed that local authorities are concerned not only with consumer protection but also with the suitability of those who are Street Consent Holders, what they sell and also any nuisance and inconvenience or obstruction that they may occasion to those using the streets in question.

The court also held that the definition of a street include any public place (whether private land or not) to which the public have access to without payment.

- 7.2 The vehicle, trailer or stall to be used for the consent must be of a high quality design and build and add to the quality of the street scene.
- 7.3 An authorised officer of the Council will inspect the unit prior to any consent being issued.
- 7.4 The unit shall comply in all respects with any legal requirement relating to the trading activity proposed

## **8. FOOD**

- 8.1 Food businesses are required by law to be registered with the Council
- 8.2 Food business registration is an entirely separate consideration to granting a street trading consent. Traders wishing to sell food should contact the Environmental Health section prior to, or in addition to any application made for street trading consent. Please see Contacts section on Page 12 of this policy.
- 8.3 The consent holder will be responsible for the cleanliness of the area immediately surrounding the trailer or stall at all times.
- 8.4 The consent holder shall ensure that any litter or food waste from the business is removed at regular intervals throughout trading hours and at the end of each trading day.

## **9 SUITABILITY**

- 9.1 When determining an application for the grant or renewal of a street trading consent the Council will consider all relevant information relating to the suitability of the applicant to hold such a permission including:
  - a) whether the applicant has any unspent convictions
  - b) refusal or neglect in paying fees due to the council for a street trading consent or for any other charges due for services rendered by the Council to the applicant in his capacity as the holder of a street trading consent
  - c) previous failures of the applicant, without reasonable excuse, to make use, to a reasonable extent, of a previous street trading consent.
- 9.2 The Council may ask for a basic Disclosure and Barring Service (DBS) disclosure to be submitted with each application. The DBS disclosure must not be older than one month at the time of its submission. Any unspent convictions or proven criminal behaviour will be taken into account in assessing the suitability of the applicant.

## **10 INSURANCE**

The consent holder shall provide insurance in the sum of £5,000,000 to insure against third party liability claims and to indemnify the Council against all claims, liabilities, actions, demands and expenses arising in respect of the grant or renewal of this consent. The consent holder shall provide on demand for inspection by the Council the insurance certificate and evidence of full payment of the premium.

## 11 APPLICATION REQUIREMENTS AND PROCESS

Each application for **grant and/or renewal** will be accompanied by:

- i) A completed application form; and
- ii) A certificate of Public Liability Insurance of at least £5 million. This must indemnify the Highway Authority against all claims for injury, damage or loss to users of the public highway, arising from the use of the highway for the permitted purpose, and
- iii) Details of any external lighting and heating equipment; and
- iv) Details of operating hours and days, and
- v) A site plan and/or map which identifies the exact location of the trailer, and
- vi) Photographs of the trailer or stall to be used, and
- vii) 2 Passport size photographs of the applicant and any assistants to be employed

**Applications shall be sent to**

**Licensing, Darlington Borough Council, Town Hall, Feethams, Darlington DL1 5QT**

## 12. PERMISSIBLE CONSENTS

### a) Town Centre (Stationary)

**Consents are subject to suspension in the event of speciality markets etc. If a consent holder wishes to trade at the market, permission will be required from the Markets Office.**

There shall be a maximum number of 11 town centre locations permitted

#### Day Time Sites

Site	Street	Position
1	Northgate	Cornmill Entrance/Clarks Shoes
2, 3 & 4	Prospect Place	Three sites between Queen Street and Pease's Statue
5 & 6	High Row	Peases Statue – two sites at the corner of Priestgate and Northgate
7	Skinnergate	Post House Wynd Entrance (10.30 am - 4.00 pm)
8	Skinnergate	Clarks Yard Entrance (10.30 am - 4.00 pm)
9	Skinnergate	Friends Meeting House (10.30 am - 4.00 pm)
10	East Row	Milletts outdoor clothing shop (excluding market days)
11	Duke Street	Mayor's Charity Shop

No motor vehicles shall be permitted in the designated areas<sup>4</sup> between the hours of 09:45 hours and 17:15 hours daily.

All non-motorised trailers shall be in their respective trading position by 09:45 hours and shall remain in position until 17:15 hours daily.

- i) Consents are subject to suspension in the event of speciality markets etc. If a consent holder wishes to trade at that market, permission will be required from the Markets Office.
- ii) Due to its width and footfall, only small stalls or units will be permitted to trade on High Row and Skinnergate. **Applicants will be required to specify the exact location required on these streets. Each case will be judged upon its own merits.**

<sup>4</sup> West Row and Pease Statue – no motor vehicles at any time  
Blackwellgate, High Row, Posthouse Wynd, Prospect Place and Northgate – no vehicles between 10:00 hours and 17:00 hours.  
Skinnergate and Duke Street – No access between 10:00 hours and 17:00 hours

## **b) Night Time Sites (Stationary)**

**There shall be a maximum of four town centre locations for night time trading as detailed below:**

<b>Site</b>	<b>Street</b>	<b>Position</b>
<b>A</b>	<b>Blackwellgate</b>	pavement between Houndgate/Blackwellgate
<b>B</b>	<b>Commercial Street</b>	Hammerhead (temporary until new development commences)
<b>C</b>	<b>East Row</b>	Outside Milletts outdoor clothing shop
<b>D</b>	<b>Skinnergate</b>	Post House Wynd entrance

- i) No motor vehicles shall be permitted in the designated areas<sup>5</sup> until 18:00 hours and shall be removed at the end of the trading period.
- ii) Consents are subject to suspension in the event of speciality markets etc. If a consent holder wishes to trade at that market, permission will be required from the Markets Office.
- iii) Due to its width and footfall, only small stalls or units will be permitted to trade on High Row and Skinnergate.
- iv) Trading may be further limited if the operation would give rise to disturbance to local residents from noise and/or food smells.

## **c) Mobile and/or Out of Town Consents**

**Any area of the borough other than the town centre and prohibited streets as detailed at Appendix 1**

## **d) Special Event Consent**

These are consents which may be granted in respect of the market square, when held in conjunction with specific community events such as fetes, carnivals or similar community based and events which are organised by the Council's Events Team.

The consent will be restricted to specified periods of a time-limited nature, such as Christmas lights switch-on events and non-commercial, community or charitable events where the profits are not used for private gain or are wholly passed to a charity or educational organisation and which take place within the town centre

Persons wishing to trade at such events should contact the Events Team – please see contact details on Page 12 of this Policy.

## **e) Limited Period Consents**

Limited period consents are available for traders wishing to trade for any period of time ranging from ½ day to 2 days in duration.

If buskers have permission to busk in the town centre and wish to also sell their own-recorded music or T Shirts etc. then a Limited Period Consent Street will be required.

Buskers will not be permitted to sell other goods or another person's music. If a person wishes to sell another artists recorded music, then the Town Centre daily fee will apply.

Buskers will need to submit an application to the Licensing Section before they wish to commence trading within the town.

A consent will only be issued where the trading will take place in a consent street.

<sup>5</sup> West Row and Pease Statue – no motor vehicles at any time  
Blackwellgate, High Row, Posthouse Wynd, Prospect Place and Northgate – no vehicles between 10:00 hours and 17:00 hours.  
Skinnergate and Duke Street – No access between 10:00 hours and 17:00 hours

## **13. CONSULTATION**

The Council will consult with relevant parties on the suitability of the applicants, any assistants to be employed, the suitability of the vehicle or unit to be used, the proposed site and restriction of access.

### **13.1 Grant of Licence**

Where the application is for the grant of a licence, the Council will undertake a full consultation which will include the Police and Fire Authority and various sections within the Council such as Planning, Highways, and Environmental Health. Where a consent is sought for the town centre, local traders, Darlington Association on Disability (DAD) and Distinct Darlington Limited will be consulted.

### **13.2 Renewal of Licence**

Where the application is to renew the licence, the Council will consult with the Police and Environmental Health only. A renewal will retain the same days, times round or site and operator as the current/previous consent. Any proposed changes or amendments to the current consent will be treated as a new application.

## **14. FEES**

- 14.1 The current fees payable for the grant and renewal of a street trading consent are available from the Licensing Office and the Councils website.<sup>6</sup>

### **Variations to Fee Structure**

- 14.2 The fee structure is reviewed annually as part of the budgetary process. Notice of the current scale of fees will be supplied to new applicants at the time of application.

### **Payments**

- 14.3 Where the holder of a Town Centre consent wishes to pay the annual fee on monthly or weekly basis, then the Council will incur additional costs for ensuring fee recovery and processing the fee. Therefore where such payment arrangements are made the Council will charge an additional fee to recover such costs.

### **Charities**

- 14.4 No fee will be charged to charities providing they are trading in accordance with a current Street Collection Permit issued by the Licensing Section under the provisions of the Police, Factories, etc. (Miscellaneous Provisions) Act 1916.
- 14.5 Charities which do not have a street collection permit will be required to obtain a street trading consent
- 14.6 No person may trade without paying the fee due, prior to trading.

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<sup>6</sup> If an application for the grant or renewal of a street trading consent is refused, the Council shall refund the whole of the fee to the applicant. Where a consent is surrendered or revoked, the Licensing Authority shall remit the whole or part of any fee paid for the consent.

## 15. CONTACTS

These contact details may prove to be useful:-

Subject	Details
Licensing Enquiries	 01325 388562  <a href="mailto:licensing@darlington.gov.uk">licensing@darlington.gov.uk</a>
Planning Enquiries	 01325 388082  <a href="mailto:planning.enquiries@darlington.gov.uk">planning.enquiries@darlington.gov.uk</a>
Highway Enquiries	 01325 406711  <a href="mailto:highways@darlington.gov.uk">highways@darlington.gov.uk</a>
Markets	 01325 388692  <a href="mailto:markets@darlington.gov.uk">markets@darlington.gov.uk</a>
Trading Standards	 01325 388799  <a href="mailto:tradingstandards@darlington.gov.uk">tradingstandards@darlington.gov.uk</a>
Food/Health & Safety Enquiries	 01325 388566  <a href="mailto:customerservices@darlington.gov.uk">customerservices@darlington.gov.uk</a>
Durham Police Enquiries	 101 Ext 742782  <a href="mailto:ahru@durham.pnn.police.uk">ahru@durham.pnn.police.uk</a>
Street Fixtures/Furniture	 01325 388777  <a href="mailto:streetscene@darlington.gov.uk">streetscene@darlington.gov.uk</a>
Cultural Services and Events	 01325 388151/388438  <a href="mailto:eventsteam@darlington.gov.uk">eventsteam@darlington.gov.uk</a>
Distinct Darlington Limited	 01325 463002  <a href="mailto:admin@distinctdarlington.co.uk">admin@distinctdarlington.co.uk</a>

## **16. Standard Conditions attached to Street Trading Permit**

- 16.1 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.
- 16.2 No articles of firearms, replica firearms, knives, or fireworks shall be sold, offered for sale or displayed on any part of the Stall/Van/Cart/Barrow or vehicle.
- 16.3 The trading name of the consent holder shall be displayed in such a position that it can be clearly seen by any customer.
- 16.4 The consent holder shall display his street trading consent in a prominent position on his unit
- 16.5 The consent holder shall remove their unit at the end of each day's trading.
- 16.6 The consent holder shall not place any additional stalls, freestanding signs or storage boxes upon the public highway.
- 16.7 The consent holder shall ensure his site is kept free from litter and other waste at all times and shall clear all waste or litter at the end of every trading period. Where appropriate, litter bins shall be provided by the consent holder for use by customers.

### **CONDUCT**

- 16.8 All consent holders and their assistants shall wear the Council consent badge at all times when street trading is taking place.
- 16.9 The consent holder shall immediately notify the Council of any change to his name or address and shall immediately notify the Council of any changes affecting the original consent.

### **ADVERTISEMENTS**

- 16.10 The consent holder shall not exhibit on the site any advertising signs, posters or such like except those approved in writing by an Authorised Officer.

### **APPEARANCE AND MAINTENANCE**

- 16.11 The consent holder shall maintain the unit, vehicle or structure as appropriate in a clean state and its fabric shall be kept in good repair and condition.
- 16.12 The unit or vehicle shall not be altered, adapted or replaced without the prior written consent of the Council.

### **NUISANCE**

- 16.13 The consent holder shall conduct his business in such a manner as to ensure that he does not:-
  - i. cause a nuisance to the occupiers of adjoining property; or to other users of the street;
  - ii. cause an obstruction to other vehicles or pedestrians or other users in the street;
  - iii. cause a danger to occupiers of adjoining property or to other users of the street
- 16.14 The use of loud speakers, horns, flashing lights or any other instruments used to attract customers' attention is forbidden in consent streets without the prior written consent of the Council. (NB: Except for ice cream vans which shall be subject to additional conditions)

## **SAFETY**

16.15A 2kg dry powder fire extinguisher shall be provided.

### **17. ADDITIONAL CONDITIONS WHICH MAY BE ATTACHED WHERE RELEVANT**

#### **17.1 Generators**

- i) Generators shall be positioned so as to reduce the length of cabling required to an absolute minimum and to minimise nuisance to local residents or businesses from noise or fumes. Where required, silenced generators or acoustically insulated generators should be sourced.
- ii) Where petrol generators are used, a specific risk assessment (detailing how relevant hazards, i.e. fire, explosion, refuelling, segregation, fumes etc. are controlled) should be provided by the applicant.
- iii) All generator exhausts and moving parts shall be suitably guarded to prevent injury to others
- iv) Fuel for generators shall be stored safely in a suitable container at least 12 metres away from electrical or other sources of ignition and away from potential interference by others.

#### **17.2 Town Centre Conditions**

- v) The consent holder or employee shall not bring a motor vehicle into the Town Centre other than to set up or taking down or their facility.
- vi) The consent holder shall not place any furniture or equipment in the immediate area of the premises other than as permitted by the Consent.
- vii) At the end of each street trading period, the unit/van/cart/barrow shall be removed from the street trading location within one hour of the end of street trading time shown on their Consent.

#### **17.3 Motor Vehicle Conditions**

- viii) 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.
- ix) These documents must be produced on request by the consent holder to any police officer or authorised officer of the Council.

#### **17.4 Food Related Conditions**

- x) The consent holder, and the unit/ stall and/or vehicle, must be registered as a food business and fully comply with all relevant Food Hygiene legislation.
- xi) Where gas cylinders are used, an annual gas safety certificate shall be required to ensure the safety of all gas cooking and heating equipment. A fire blanket and a foam fire extinguisher shall be provided in all vehicles selling hot food.
- xii) The consent holder shall ensure that any food, cooking oil, fat or grease is not discharged into the public sewer or drains.
- xiii) All hot food vans/trailers shall carry a basic first aid kit.

#### **17.5 Mobile Traders Conditions**

- xiv) Street trading is restricted to the location(s) indicated on the consent.
- xv) Any trailers used for the purposes of street trading shall be removed from the highway when the consent is not in operation.
- xvi) Any tow bar must be protected so as to prevent any injury to pedestrians
- xvii) Trailer doors etc. must be kept closed whilst the trailer is in use.

- xviii) Mobile street trading within consent streets is restricted to 15 minutes duration at any one trading position, after which the vehicle/unit must be moved a minimum distance of 200 metres before street trading again.
- xix) Return to the trading position is prohibited within 2 hours.
- xx) The consent holder shall not locate the vehicle/unit within 200 metres of another stationary vehicle that is selling similar goods and holds a consent from the Council.
- xxi) At the end of each street trading period vehicle/unit, shall be removed from the street trading location within one hour of the end of street trading time showed on their consent.
- xxii) All mobile food vendors including ice-cream vendors shall adhere to the Code of Practice approved under the Control of Noise (Code of Practice on Noise from Ice-Cream Van Chimes Etc.) (England) Order 2013 (SI 2013 No. 2036) made under section 71 of the Control of Pollution Act 1974 (as amended) by the Secretary of State for the Environment, Food and Rural Affairs. This code of practice came into operation on 1 October 2013 in England. A copy of the Code of Practice is attached at Appendix 2 of this policy.

## **17.6 Special Event Consent Conditions**

- xxiii) Street trading consents may be granted in the immediate vicinity of the Market Square in conjunction with specific community events taking place within the Town Centre that are organised by the Council's Events Team.
- xxiv) Any such consent would be restricted to particular times before, during and after an event held within the market square
- xxv) The maximum number of events and size of pitches shall be as follows:
  - There shall be no more than 12 events held on the market square in any one calendar year.
  - There shall be no more than 10 pitches/stalls or one large marquee at any one time
  - The maximum dimensions for each pitch shall not exceed 20' x 6' 6" with a maximum height of 8' 4" unless they are contained within a large marquee
  - No alcohol may be sold from any franchise except in accordance with the Licensing Act 2003.
  - The consent holder is responsible for all individual trading activities and must ensure that franchise trader complies with the Standard Conditions and any Additional Conditions

## **17.7 Marquee/Gazebo/Stall/Tent Conditions**

- xxvi) It is the organizers responsibility to check the following, the list is not exhaustive and any other manufacturer's advice, guidelines and recommendations should also be adhered to.
  - Marquees shall be erected by competent erecting company, who shall be able to provide proof of competency e.g. membership of MUTA or other relevant organisations.
  - The company shall have suitable Public Liability Insurance. i.e. £2 million
  - The company must provide copy of its erection check list before use
  - All marquees must be fire retardant and comply with BS 476:7 and BS 7157.
  - That there is a suitable risk assessment which covers the erection, dismantling, use and anchoring of the marquee/gazebo/stall/tent, which should be compiled, and be available to all members of the organisers team for reference.
  - That the marquee/gazebo/stall/tent is in a good condition and fit for purpose.
  - That the people erecting and dismantling the structures are competent to do so and have received adequate training.
  - That the structure is capable of withstanding the expected wind speed and that a suitable persons is appointed to check the wind speed at regular intervals.
  - That there is suitable means of checking the wind speed on site at all times while the structure is in use and erected on site. Should the weather change/deteriorate the

number of checks should be increased. If the maximum safe wind speed is exceeded the use of the marquee/gazebo/stall/tent should cease and dismantled if necessary and safe to do.

- That the number and type of anchor points is sufficient and in accordance with the manufacturers recommendations and that ropes are in good condition and fit for purpose.
- If ballast is to be used the amount required should be obtained from the manufacturer, positioned, and fixed in accordance with their instructions.
- That the marquee/gazebo/stall/tent is adequately restrained to ensure it cannot slide.
- If the marquee/gazebo/stall/tent is over 30m<sup>2</sup> in floor area or its use involves hazards such as hot cooking surfaces etc., an alternative means of escape will be required remote from the main entrance. Dependant on its size, number of occupants and use, more than one alternative emergency exit may be required. All emergency exits to be indicated using appropriate signage to BS 5499. Existing escape routes must not be obstructed by the marquee/gazebo/stall/tent or any other structure.

- xxvii) Advice regarding the position, number and width of routes and final exits etc. may be given by the Building Control Surveyor or the Fire Prevention Officer at the Fire Brigade. Advice will also be given on safe routes of travel, emergency lighting (required if the structure is to be used during the hours of darkness) signage etc.
- xxviii) The proposed use of the marquee/gazebo/stall/tent must be considered, its fire risk ascertained, and how this will affect crowd density and means of escape. This should be discussed with the Fire Authority and if necessary, appropriate fire extinguishers considered.
- xxix) If the marquee/gazebo/stall/tent is to be used during the hours of darkness, or if ambient light levels are low, suitable emergency lighting will be required to indicate exits and a safe route of travel inside the marquee/gazebo/stall/tent and externally to a safe place of refuge.
- xxx) Sufficient waste and litterbins should be provided and arrangements made for their frequent emptying and any accumulation of waste or litter removed; any bins frequently becoming full should be removed at a greater frequency. The area of the marquee/gazebo/stall/tent must be kept clear at all times with all full bin bags removed without delay.
- xxxi) The provision of heaters must take into account fire risks associated with all equipment, marquee/gazebo/stall/tent fabrics, combustible material, gas bottles and other types of fuel.
- xxxii) Gas bottles or other fuel for heating/cooking etc. must be sited outside the marquee/gazebo/stall/tent, and shall not to be placed near to proposed or existing escape routes and shall be protected against unauthorised access and tampering.

## **17.7 Limited Period Consents**

- xxxiii) The consent holder shall be restricted to the sale of personal merchandise such as music CD's etc. and T-shirts
- xxxiv) The consent holder shall not stand, sit, or cause any merchandise so as to cause an obstruction of the highway (footpath), entrances or exits to shops and other premises.
- xxxv) Amplifiers may only be used at very low or reasonable levels so as not to cause a nuisance.
- xxxvi) The sound level at 10 metres or more should not be dominant or above background level.

## PROHIBITED STREETS

<b>A</b>	Abbots Yard	Anns Terrace	Armstrong Court
	Aldborough Walk	Alliance Street	Archer Street
	Arden Street South	Arron Walk	
<b>B</b>	Bakehouse Hill	Balliol Court	Bank Top
	Barnard Street	Beaumont Street	Beaumont Street West
	Bells Place	Black Path	Blanchard Green
	Bondgate	Branksome Green	Bridge Road
	Bridge Terrace	Brinkburn Dene	Buckingham Court
	Bucktons Yard	Bull Wynd	
<b>C</b>	Carlton Court	Carrside	Cemetery Lane
	Chancery Lane	Chaytor Court	Clarks Yard
	Claytons Yard	Cockerton Green	College Court
	Coniscliffe Road (from its junction with Larchfield Street to its junction with Skinnergate)	Chelsea Court	Church Row
		Chichester Walk	Court Arcade
		Crown Street	Cypress Close
	Croft Road	Church Lane	
<b>D</b>	Dene Park Court	Dorchester Court	
<b>F</b>	Falstaff Court	Feethams	Feethams South
	Festing Court	Four Riggs	Freemans Place
	Friends School Yard		
<b>G</b>	Geneva Lane	Grange Road	Green Lane
	Guardian Court		
<b>H</b>	Harewood Grove	Haughton Green	Haughton Road
	Hebrides Walk	Houndgate	High Northgate (from its junction with Leadenhall Street to its junction with Railway Bridge)
	Hird Street	Hogarth Court	
	Holly Street	Honeypot Lane	
	Hopetown Lane	Horsemarket	
<b>I</b>	l'Anson Square		
<b>J</b>	Jacksons Yard	Jubilee Cottages	
<b>K</b>	Kelso Walk	King Street Part (from its junction with Commercial Street)	King Street Part (from its junction with Gladstone Street)
	Kendrew Street		
<b>L</b>	Langton Walk	Larchfield Street	Lingfield Close
	Lombard Court	Lorn Walk	

<b>M</b>	McMullen Road	Mechanics Yard	Mercia Court
	Mewburn Road	Mill Lane	Model Place
	Montagu Court	Mowden Hall Drive	
<b>N</b>	North Eastern Terrace	North Road	Northumberland Street
	Northgate (from its junction with Leadenall Street to its junction with St Augustine's Way)		
<b>O</b>	Otley Terrace	Oxclose Lane	
<b>P</b>	Parkgate	Park Place	Pleasant View
	Polam Lane	Portland Place	Post House Wynd
	Prebend Row	Priestgate	Princes Street
	Punch Bowl Yard		
<b>Q</b>	Quebec Street		
<b>R</b>	Raby Terrace	Rastrick Walk	Rockwell House
	Romaldkirk Walk	Rosemary Court	Royal Oak Yard
	Russells Yard	Rustland Drive	
<b>S</b>	Salt Yard	Scargill Court	School Street
	Shutts Court	Skye Walk	Snipe Lane
	Stone Bridge	Stratton Court	Sun Street
	St Augustines Way	St Cuthberts Place	St Cuthberts Way
	St Johns Place		
<b>T</b>	Talbot Yard	Tandridge Court	Taransay Walk
	Temperance Place	Tiree Gardens	Tom Raine Court
<b>U</b>	Union Street	Upper Archer Street	
<b>V</b>	Vicarage Road	Victoria Road	
<b>W</b>	Weavers yard	West Auckland Road (from its junction with Prior Street to its junction with Cockerton Green)	West Row
	Welbeck Cottages		Wellington Court Mews
			West Street
	Westcliffe Court	Winston Street	Woodland Road
<b>Y</b>	Yarm Road		

# Code of Practice on Noise from Ice-Cream Van Chimes Etc. in England 2013

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This code of practice was developed with the involvement of mobile food vendors, particularly the ice-cream vendor industry. Approval was given for this code by the Control of Noise (Code of Practice on Noise from Ice-Cream Van Chimes Etc.) (England) Order 2013 (SI 2013 No. 2036) made under section 71 of the Control of Pollution Act 1974 (as amended) by the Secretary of State for the Environment, Food and Rural Affairs. This code of practice came into operation on 1 October 2013 in England.

It is an offence under section 62 of the Control of Pollution Act 1974 (CoPA) to use a loudspeaker in the street. There is a specific exception for the operation of loudspeakers fixed to vehicles used to convey and sell perishable commodities for human consumption to the public, such as ice-cream, provided that they do not give reasonable cause for annoyance to persons in the vicinity. Under section 71 of CoPA the Secretary of State has the power to approve codes of practice that help to minimise noise. This code gives guidance on minimising noise from ice-cream van chimes. It should also be taken as applying equally to any other sounds made by a loudspeaker fixed to a vehicle from which perishable goods are sold to the public. Compliance with this code will help to show that that a vendor has complied with section 62 of CoPA.

Noise that is prejudicial to health or a nuisance that is emitted from or caused by a vehicle, machinery or equipment in the street is a statutory nuisance under section 79 of the Environmental Protection Act 1990 (EPA). Under Part 3 of the EPA, action can be taken by local authorities and private individuals to require a business that is responsible for a statutory nuisance to abate that nuisance. A business that applies the 'best practicable means' to prevent or counteract the effects of the nuisance will have a defence against such action.

Under section 79 of the EPA, a code of practice made under section 71 of CoPA must be taken into account when determining whether the best practicable means have been applied. Compliance with this code will help to show that a vendor has used best practicable means to prevent, or counteract, the effects of any nuisance resulting from the chiming.

## **INTRODUCTION**

- 1.1** This code of practice gives guidance on methods of minimising annoyance or disturbance caused by the operation of loudspeakers fixed to ice-cream vans used to convey and sell perishable commodities for human consumption to the public. Most loudspeakers used in this connection are fixed to ice-cream vans and play a chiming call signal; nevertheless this code of practice should be taken as applying equally to any other sounds made by a loudspeaker fixed to a vehicle from which perishable goods are sold to the public.
- 1.2** The code of practice does not in itself create offences or have the force of law, but local authorities and magistrates' courts must have regard to it in any consideration of 'best practicable means' under Part 3 of the Environmental Protection Act 1990 (EPA).

## **REGULATIONS REGARDING THE USE OF LOUDSPEAKERS IN STREETS**

- 2.1** Under section 62 of the Control of Pollution Act 1974 (CoPA) it is an offence to operate or permit the operation of any loudspeaker of the 'ice-cream van chimes' type in a street unless all the following conditions are complied with:
  - a) the loudspeaker is operated only between the hours of noon and 7 pm on the same day;
  - b) the loudspeaker is fixed to a vehicle which is being used for the conveyance of a perishable commodity for human consumption;
  - c) the loudspeaker is operated solely for informing members of the public (otherwise than by means of words) that the commodity is on sale from the vehicle
  - d) the loudspeaker is so operated as not to give reasonable cause for annoyance to persons in the vicinity.
- 2.2** Under section 79(1)(ga) of the Environmental Protection Act 1990 noise that is prejudicial to health or a nuisance that is emitted from or caused by a vehicle, machinery or equipment in the street is a statutory nuisance. Under Part 3 of the EPA, action can be taken by local authorities and private

individuals to require a business that is responsible for a statutory nuisance to abate that nuisance. A business that applies the 'best practicable means' to prevent or counteract the effects of the nuisance will have a defence against such action. Under section 79 of the EPA, a code of practice made under section 71 of CoPA – like this one – must be taken into account when determining whether the best practicable means have been applied.

## **OPERATING GUIDELINES**

### **General**

- 3.1** Annoyance to persons in the vicinity is most likely to be caused if the volume of chimes is excessive, if the chimes are played too frequently or for too long, if the chimes are sounded in areas where people are particularly sensitive to noise, or if the sound of the chimes is distorted. The methods by which such annoyance may be minimised are described in the following sections of this code of practice.
- 3.2** Owners should ensure that the main points of this code of practice are displayed in all vehicles fitted with a loudspeaker of the 'ice-cream van chimes' type, and that it is brought to the attention of all persons concerned with the operation of the chimes; the Annex to this code of practice contains a summary of the code of practice which could be used for display purposes.

### **Volume**

- 4.1** No chimes should be operated which produce a noise level in any direction of more than  $L_{Amax}$  80dB.<sup>7</sup> When operating in areas where houses are particularly close to the road, such as in narrow streets or when stationary, it may be necessary to reduce the volume of the chimes below  $L_{Amax}$  80dB to avoid disturbance.
- 4.2** Care should also be taken to avoid distortion of the chimes, which may occur if the volume is too high, or if the equipment is faulty or the component parts of the equipment are not correctly matched.
- 4.3** When, for the purposes of this code, the level of noise emitted by the chimes is being measured in accordance with the measurement method described in footnote 1, the restrictions on the use of the chimes recommended in paragraphs 5 and 6 below would not apply.

### **Playing time**

- 5.1** The passage of music played should not last more than 12 seconds. Where the mechanism contains a timed cut-out device which can automatically limit the playing time to 12 seconds or less, it should be used.

### **Frequency**

- 6.1** The chimes should be played once only on the approach to each stopping place (or 'selling point'), only once when the van is stationary, and never at intervals of less than 2 minutes.
- 6.2** The chimes should not be played more often than once every 2 hours in a particular length of street.<sup>8</sup>
- 6.3** The chimes should not be played when in sight of another van (whether moving or stationary) which might reasonably be taken to be in the street for trading purposes.
- 6.4** Subject to those considerations, the chimes should be played only as often as is necessary to let customers know that the commodity is on sale from the vehicle.

<sup>7</sup> At 7.5 metres over a 12-second period of continuous chiming. Noise measurements should be undertaken with a meter which conforms to BS EN 61672-1:2003 Electroacoustics. Sound level meters. Specifications (Class 1) set to the A-frequency weighting and the F-time weighting. The microphone should be held at a height of 1.2 metres above the ground, and at a distance of 7.5 metres from the loudspeaker. The microphone should be fitted with a windshield and the meter should be calibrated periodically and checked prior to (and after) measurement by a calibrator conforming to BS EN 60942:2003 Electroacoustics. Sound calibrators.

<sup>8</sup> A 'particular length of street' should normally be interpreted as being a length of street up to 500 metres long

## **Use of chimes in sensitive areas**

**7.1** The chimes should not be played in areas where people may be especially sensitive to their sound. In particular they should not be played:

- a) within 50 metres of any hospital or similar institution;
- b) within 50 metres of a school during school hours;
- c) within 50 metres of a place of worship on a Sunday or other recognised day of worship.

**Summary of the Code of Practice on Noise from Ice-Cream Van Chimes Etc. in England 2013**

It is an offence to sound your chimes before 12.00 noon or after 7.00 pm. It is also an offence to sound your chimes at any time in such a way as to give reasonable cause for annoyance. A code of practice approved by the Government gives guidance on methods of minimising annoyance caused by your chimes. The main points of the code of practice are:

**Do not sound chimes**

1. for longer than 12 seconds at a time;
2. more often than once every 2 minutes;
3. more than once when the vehicle is stationary at a selling point;
4. except on approach to or at a selling point;
5. when in sight of another vehicle which is trading;
6. when within 50 metres of schools (during school hours), hospitals, and places of worship (on Sundays and other recognised day of worship);
7. more often than once every 2 hours in the same length of street;
8. louder than  $L_{Amax}$  80dB at 7.5 metres; \*
9. loudly in areas of low background noise or narrow streets as elsewhere.

**REMEMBER: It is an offence to sound your chimes before 12.00 noon or after 7.00 pm.**

It is an offence to sound your chimes at any time in a way which gives reasonable cause for annoyance.

\* Measured in the way suggested in footnote 1.



