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Monday, 7 October 2019

Notice of meeting

Licensing and Regulatory Committee

Tuesday, 15th October, 2019 at 10.00 am,
Council Chamber, County Hall, Usk

AGENDA

Item No	Item	Pages
1.	Apologies for absence	
2.	Declarations of interest	
3.	Street Trading in Abergavenny	1 - 24
4.	Discussion further to an application received for the licensing of a Tuk Tuk as a Private Hire vehicle. This requires amendments to the Taxi and Private Hire Policy and Conditions to include Tuk Tuk and Rickshaw Licensing	25 - 34
5.	To confirm and sign the minutes of the previous meeting	35 - 36
6.	To note the date and time of the next meeting as 10am on Tuesday 26th November 2019	

Paul Matthews

Chief Executive

MONMOUTHSHIRE COUNTY COUNCIL
CYNGOR SIR FYNWY

THE CONSTITUTION OF THE COMMITTEE IS AS FOLLOWS:

County Councillors:

B. Strong
J. Higginson
S. Howarth
A. Easson
S.B. Jones
M.Lane
R.Roden
J.Treharne
R. Edwards
D. Evans
L. Guppy
A. Webb

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Aims and Values of Monmouthshire County Council

Our purpose

Building Sustainable and Resilient Communities

Objectives we are working towards

- Giving people the best possible start in life
- A thriving and connected county
- Maximise the Potential of the natural and built environment
- Lifelong well-being
- A future focused council

Our Values

Openness. We are open and honest. People have the chance to get involved in decisions that affect them, tell us what matters and do things for themselves/their communities. If we cannot do something to help, we'll say so; if it will take a while to get the answer we'll explain why; if we can't answer immediately we'll try to connect you to the people who can help – building trust and engagement is a key foundation.

Fairness. We provide fair chances, to help people and communities thrive. If something does not seem fair, we will listen and help explain why. We will always try to treat everyone fairly and consistently. We cannot always make everyone happy, but will commit to listening and explaining why we did what we did.

Flexibility. We will continue to change and be flexible to enable delivery of the most effective and efficient services. This means a genuine commitment to working with everyone to embrace new ways of working.

Teamwork. We will work with you and our partners to support and inspire everyone to get involved so we can achieve great things together. We don't see ourselves as the 'fixers' or problem-solvers, but we will make the best of the ideas, assets and resources available to make sure we do the things that most positively impact our people and places.

MONMOUTHSHIRE COUNTY COUNCIL REPORT

SUBJECT: Street Trading in Abergavenny

DIRECTORATE: Social Care, Safeguarding and Health

MEETING: Licensing and Regulatory Committee

Date to be considered: 15th October 2019

DIVISION/WARDS AFFECTED: All Wards

1. PURPOSE:

- 1.1 To consider existing street trading arrangements in Abergavenny, noting recent concerns raised by Elected Members from the area.

2. RECOMMENDATION(S):

- 2.1 To provide information to Members on existing arrangements on how street trading is managed in Abergavenny town, determine adequacy and consider any areas for improvement.
- 2.2 Licensing Officers have further discussions with Estates colleagues on implications of restricting the scope of their existing Block Street Trading consent. Members to be advised of any additional cost implications to major events, such as Abergavenny Food Festival, noting their interest in attracting tourism and vibrant town centres.

3. KEY ISSUES

- 3.1 Further to the 'Topping Out' ceremony in Abergavenny on Bank Holiday Saturday, 24th August 2019, some local Councillors raised concerns about some mobile vehicles situated on St John's Square on the same day. Specifically –
- County Councillor Sheila Woodhouse emailed the Council's Chief Executive on 29th August. Main concern was how a large burger van could be permitted to trade, taking trade off local businesses that pay high business rates.
 - Councillor Maureen Powell formally asked a question at Full Council on 19th September raising the same concerns, directed to Councillor Sara Jones as Cabinet Member with responsibility for Licensing.
 - Bryn y Cwm Area Committee raised this issue at their meeting on 25th September. Agreed it would be discussed at the next Licensing & Regulatory Committee.
- 3.2 The Head of Public Protection responded to the questions raised by Councillors Woodhouse and Powell, the key points being –
- The Authority's Street Trading policy – last updated on 9th February 2016, copy attached – refers to street traders not being allowed to trade within 100 metres of fixed premises selling similar goods. **See attached policy – section 7, 'Guidelines for an application', third bullet point.** Exemptions can be made, most notably for the Abergavenny Food Festival held in September annually. It is recognised such events attract large crowds to Abergavenny and benefits local businesses considerably.

- The Block Trading Consent for Abergavenny centre was previously agreed by L&R Committee, and issued to MCC's Estates section to implement. Block Street Trading Consents are covered in section 5 of this Authority's Street Trading Policy – as attached. On 24th August, the Estates section issued a consent applied for by the Trading Post. A consent was issued to allow six traders to operate from St John's Square on this Bank Holiday Saturday. Licensing understand that Estates did approach traders on Nevill Street, advising they are able to request consents, if deemed beneficial to visitors and traders.
- One of the traders on 24th August was a local ice-cream vendor. This, however, was a one-off occasion. The trader's applications to operate from St John's Square, to trade there on a few occasions every week, have consistently been refused. This is as per our Street Trading Policy, noting other permanent premises selling ice-cream in the vicinity.
- Block Street Trading consents are useful in making it easier for organisers to implement an event, with the added benefit of being less onerous for our small Licensing team. Such consents operate successfully in Chepstow and Usk – both administered by the Town Councils – together with Monmouth (Estates) and Caldicot Country Park (Mon Lives).
- The Licensing Authority continues to be supportive of local businesses. In relation to St John's Square, as an example, the Kings Arms were permitted 5 Temporary Event Notices in 2018, with a further 4 so far in 2019. This allows them to extend their trading, eg. barbeques, onto the (MCC) paved area opposite the public house.
- Licensing Officers met with colleagues from the Markets team (Estates), Highways and Events Management on 9th September to discuss what happened on 24th August and processes followed. Agreed that improvements to how existing traders are consulted could be improved, and Monmouthshire's Event Safety Advisory Group can seek to ensure there are no clashes between events.

3.3 On 18th September MCC's Estates section wrote to advise Licensing of their intention to change the areas covered by their Block Street Trading Consent, when their existing consent finishes in February 2020. Estates seek to amend the consent to only cover Cross Street, Market Street, High Street and Lower Brewery Yard, ie. areas in the vicinity of the Market Hall. Clearly this would have implications, as outlined below –

Changes	Estate holding a block consent	Each applicant applying for consent
Time	Licence already in place whereby Estates could agree/authorise traders on the same day	Each individual or event organiser will apply for a day or block ST consent, (consultation 60 days)
Consultees	Estates team, who hold the licence, would consult local traders	Local Member, Town Council, Highways, Police, Environmental Health, (SWTRA if applicable)
Cost	Estates able to set fee and make a profit for MCC	ST fees are set so that MCC are unable to make a profit and assessed each year. If the town consent is removed, more applications to be processed by Licensing
If refused permission/consent	Estates hold the consent and are able to assess and refuse any traders they deem not suitable	If an objection is received, the L&R committee will receive a report from Licensing and consider the objection. Applicants will need to allow time for this process
Flexibility	This year the Tuesday before the Food Festival Highways placed extra planters on Frogmore Street, in locations where Food Festival Stalls or Emergency Vehicle Access was planned. At short notice Estates and Food Festival were able to quickly alter the plans and relocate stalls as most of the town is licensed	Any last minute alterations would need suitable processing. Applicants, potentially, would need to cancel the event and re-apply through the consultation period. So the process is more prescribed.
Workload for Licensing	Licensing currently intervene when we receive complaints, or are issuing the Block Trading renewal to the Estates team	Licensing staff will need to assist/advise/process all ST needs. This relates to any non-ticketed event whereby items are sold - from assessing location, trading items, suitability of applicant, etc. As a small team this can be very time consuming especially for large events and Licensing officers are likely to struggle.

- 3.4 Noting the issues summarised above, a further Officer meeting will be needed to discuss the implications of the proposed changes for next year. One issue worth noting is that some events operate with fine profit margins, so the Council would not wish to see significant cost increases to organisers. If organisers withdraw, for example if costs prohibitive, this could be detrimental to our town centres. The workload to Licensing is also a factor, noting Abergavenny Food Festival would need day block consents covering two days, various non-ticketed events in Bailey Park, and other trading held in streets not listed in 3.3 above.

4. REASONS

- 4.1 County Councillors raised concerns on existing street trading arrangements in Abergavenny, so this report serves to outline the processes followed on 24th August and outlines future working arrangements.
- 4.2 Members will want to seek reassurances that any changes to the existing arrangements do not have a detrimental impact on existing, and highly popular, events in the county.

5. RESOURCE IMPLICATIONS

- 5.1 None as a consequence of this report. There will be more revenue from an increase in Street Trading licences processed by the Licensing team, albeit on a cost recovery basis.

6. WELLBEING AND FUTURE GENERATIONS IMPLICATIONS

- 6.1 This report is primarily advising Members of existing arrangements and what is likely to change in 2020. No evaluation is required as no policy change is recommended at this time.

7. CONSULTEES:

Licensing team

Further consultation to take place between Licensing and Estates sections

8. BACKGROUND PAPERS:

Street Trading Policy & Conditions, revised 9th February 2016

9. AUTHOR:

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monmouthshire
sir fynwy

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

MONMOUTHSHIRE COUNTY COUNCIL

STREET TRADING POLICY AND CONDITIONS
Revision : 9th February 2016

STREET TRADING POLICY

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Introduction

This Authority's Street Trading Policy was originally adopted in June 2014. It was amended in February 2016 to include necessary updates.

The aim of the Policy is to control street trading and sets out the Council's standards for determining applications and enforcement of street trading activities, in Monmouthshire.

Under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, Monmouthshire County Council has resolved to control street trading within its boundaries.

Monmouthshire County Council has designated all streets as consent streets, i.e. consent is required prior to trading taking place.

Any person convicted of trading on a consent street without consent will be guilty of an offence and liable upon conviction to a fine of up to £1,000.

Monmouthshire County Council will apply this Policy to street trading activities in its area to ensure consistency of decision-making. However each application or contravention will be considered on its own merits so that individual circumstances, where appropriate, are taken into consideration.

This revised Policy takes effect on 9th February 2016.

1. Definitions

The Council. Means Monmouthshire County Council

The applicant. The trader who has submitted an application for Street Trading Consent.

Consent holder. An individual that holds a Street Trading Consent.

Street trading. Means the selling or exposing or offering for sale of any article (including a living thing) in any street.

Street. Includes any roadway, footway, pavement, precinct, other area to which the public have access without payment, e.g. lay-by or car park, whether on private land or not.

Consent street. A street in which street trading is prohibited without the consent of the council.

Street Trading Consent. A permission to trade, which is granted by a Council subject to conditions and the payment of a fee.

Block Street Trading Consent. One Street Trading Consent issued to an individual to cover the organised street trading of two or more traders in line with block street

trading conditions. The holder of a Block Street Trading Consent is responsible for ensuring that individual traders comply with the Council's consent conditions.

Static Street Trader. Means trader granted permission by Monmouthshire County Council to trade from a specified position.

Mobile Trader. Means a trader who moves from street to street.

A roundsman. An individual who visits a 'round' of customers and delivers the orders of those customers, for example a milkman. Ice-cream vans are not classed as rounds men.

A pedlar. To operate legally as a pedlar you must (i) keep moving, stopping only to serve customers at their request; (ii) move from place to place and not circulate within the same area; (iii) carry all goods for sale; (iv) hold a valid pedlar's certificate, issued by a Chief Constable of Police.

Authorised Officer. Means an Officer employed by Monmouthshire County Council and authorised by the Council to act in accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1982.

2. Purpose

Monmouthshire Council's street trading policy aims to:

- Create a trading environment that compliments premises based trading.
- Promote fairness and consistency across the county
- Improve the local environment
- Be sensitive to the needs and concerns of residents
- Involve local communities in street trading decisions
- Control street trading through a fair and proportionate enforcement procedure

3. Objectives

The Council will carry out its functions in respect of controlling street trading activities in its area, to protect the public, by promoting the following licensing objectives, each of which is of equal importance;

- Public order
- Prevention of public nuisance
- Public safety
- Prevention of crime and disorder

4. Exemptions

The following street trading activities are legally exempt from the requirement to obtain a prior consent from the Council:

- (a) Trading by a person acting as a pedlar, i.e. going on foot from house to house selling goods directly, under the authority of a pedlar's certificate granted under the Pedlars Act 1871.
- (b) Anything undertaken in a market or fair, the right to hold which was acquired by virtue of a grant (including presumed grant) or acquired or established by an 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, selling newspapers or periodicals.
- (e) Trading which is:
 - (i) Carried on at a premises used as a petrol filling station; or
 - (ii) Carried on at a premises used as a shop or in a street premises so used and as part of the business or shop.
- (f) Selling things, or offering or exposing them for sale, as a roundsman.
- (g) The use for trading under Part VIIA of the Highways Act 1980 of an object or structure placed on, or in or over a highway.
- (h) The operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980.
- (i) The doing of anything authorised by regulations made under section 5 of the Police, Factories, etc (Miscellaneous Provisions) Act 1916.

5. Block Street Trading Consents

A Block Street Trading Consent will permit two or more traders to trade at an organised event or market, subject to the terms and conditions of the consent.

The event organiser in receipt of a Block Street Trading Consent is responsible for all individual trading activities, and must ensure that street traders at their event comply with the standard consent conditions together with any additional conditions attached to the licence. For example, if a Town Council holds the Block Consent, they will ensure compliance with their conditions.

Block Street Trading Consents will normally only be issued to the following:-

- A market approved by the Council.
- A Town or Community Council
- Charitable, local authority organised and community type events (where an admission charge is not made for entry)

Commercial vendors will not normally be permitted to obtain a Block Street Trading Consent, however each application will be assessed on its own merit.

6. Day Street Trading Consents

A Day Street Trading Consent will permit a person to trade on one specified date at a specified location.

7. Guidelines for an application

In order to deal with applications quickly and to allow an applicant to know at an early stage whether the application is likely to be supported, the council has adopted the following guidelines:-

- The trader shall provide a service which is of a benefit to the public
- The use shall not be in direct competition, in terms of goods primarily sold, with that provided by a nearby retail shop, restaurant or hot food take-away, those holding a street trading consent and market place (which includes block consents)
- The use shall not be located within 100 metres of an existing shop, restaurant, hot food take-away, those holding a street trading consent and market (which includes block consents) which primarily sells the same goods. – This may be relaxed for one-off or short-term applications.
- The use shall not be located within 250 metres of the boundary of any hospital, nursing or residential care home. Unless otherwise agreed in writing by Monmouthshire County Council.
- The use shall not be permitted within 500 metres of the boundary of any school or college, whilst pupils attend the school or college. Unless otherwise agreed in writing by Monmouthshire County Council.
- The use shall not be permitted within 30 metres of any roundabout, road junction or pedestrian crossing, the permitted meters are subject to change if it is proven it will not affect road safety.
- The use shall not be permitted on any Council owned pay and display car parks.
- The number of traders in any one street shall be limited so as not to cause undue concentration. However, each application will be treated on its own merit.
- The siting and operation of any trader shall be such that it does not cause any problems of highway safety, obstruction to users of the highway, or conflict with the requirement of emergency vehicles.
- The use and siting of the trader shall not contravene Traffic Regulation Orders, Highway Law or cause an immediate danger or obstruction to the highway and highway users.
- Uses involving the sale of food and noise emissions shall meet the requirements of Environmental Health and these should be identified before a consent is considered.
- The appearance and use of associated equipment or structures shall be of good quality and the precise appearance of the facility shall be identified before a consent is granted.
- The use shall be compatible with the character of the area in which it is proposed to be situated.
- The safety and suitability of goods may require a further report from Trading Standards before a consent is considered.

- The use shall not be likely to cause problems of noise, smell, litter or late night disturbance, especially in residential streets.
- Consent is dependent on the landowner's permission to allow trading. Should the landowner withdraw their permission, the Licensing Authority would also withdraw the street trading consent.

8. Prohibited Goods

A Street Trading Consent will **not** normally be granted for the sale of the following items:-

- Firearms and replica firearms
- Knives
- Offensive weapons and replica weapons
- Tobacco products
- Fireworks
- Articles that would typically be sold in sex shops
- Animals
- Legal Highs

The above list is not exhaustive and the Authority has the right to refuse any item for sale it deems necessary.

9. Application Process

Applicants must submit the following to the Licensing Section, Monmouthshire County Council, Abergavenny Community Education Centre, Old Hereford Road, Abergavenny, NP7 6EL:-

- Application Form
- 10% of the consent fee, which is non-refundable. Upon grant of the consent, before it is issued, the balance of the fee must be paid, or an invoice will be arranged to enable direct debit payments.
- A fee will not be required for fetes, carnivals and similar charitable and non-commercial events in certain exceptional circumstances, and at the approval of the Licensing and Regulatory Committee. In such circumstances, each application will be treated on its own merit.
- Copy of Ordnance survey map of at least 1:1250 scale, clearly showing the proposed site position by marking the site boundary with a red line.
- Written permission from the land owner (if applicable)
- Proof of Food Registration (if applicable)
- Licence under the Licensing Act 2003 (if applicable)

- One passport type photograph of the applicant and each assistant.
- Copy of the certificate of insurance covering the street trading activity for third party and public liability risks up to £5million
- Copies of gas, electrical safety certificates for each equipment and recent records of periodic inspection reports (if applicable)

A Street Trading Consent is not transferrable. Any proposed change to the type of vehicle or stall to be used, the goods to be sold, the times and days of operation, or the exact location of the trading site, requires an application for variation of the street consent. No person under the age of 17 years can apply for a Street Trading Consent.

For a block street trading consent, the applicant will be required to identify the arrangements that they will put in place to ensure that the Council's conditions are met by all traders attending all events covered by the consent.

An applicant can apply on-line at www.monmouthshire.gov.uk

10. Consultation on applications

Officers will carry out a consultation process with relevant interested persons and groups before a street trading application is considered.

This may include:

- Planning and Economic Development for Monmouthshire County Council
- Highways Department for Monmouthshire County Council
- Environmental Health for Monmouthshire County Council
- Town/Community Councils for the County of Monmouthshire
- One Stop Shops for Monmouthshire County Council
- Heddlu Gwent Police
- Welsh Assembly Government
- Gwent Consultancy

11. Inspection of the Street Trading Unit

The vehicle, van, trailer, stall or other device to be used for the proposed street trading activity will be inspected by an Authorised Officer of the Council, prior to the issue of any Street Trading Consent and shall comply in all respects to the relevant legislation and conditions.

12. Determination of applications

The Authorised Officer will assess applications for Street Trading Consents against the following criteria:

- **Site safety.** The location should not present a substantial risk to the public in terms of road safety, obstruction or fire hazard. Observations from Council Officers will be taken into consideration.

- **Public order.** The street trading activity should not present a risk to public order in the locality in which it is situated. Observations from Heddlu Gwent Police and Council Officers will be taken into consideration.
- **Avoidance of nuisance.** The street trading activity should not present a substantial risk of nuisance from noise, smells, fumes, litter or the discharge of fluids to households or businesses in the vicinity of the proposed street trading site. Observations from Council Officers, residents and businesses will be taken into consideration.
- **Consultees' observations.** Consideration will be given to written observations and recommendations will be assessed by the Authorised Officer for reasonableness and appropriateness before they are taken into consideration.
- **Permitted trading hours.** The Council will consider each application on its merits before agreeing permitted trading times. The Council retains the right to specify permitted trading hours that are less than that applied for. Any trading involving hot food and drink between 11p.m. and 5a.m. will also require a separate application under the Licensing Act 2003.
- **Suitability of the applicant.** The council may take any relevant unspent convictions, complaints received about the applicant's previous street trading activity and any previous revocation or surrender of a Street Trading Consent into account.
- **Proximity to schools and college.** No Street Trading Consents will be granted for trading at locations within 500 metres of its boundary, whilst pupils attend the school or college, unless otherwise agreed in writing by Monmouthshire County Council.
- **Proximity to existing consent holders.** Consideration will be given to the number of existing consent holders in the area.

13. Objections

An Authorised Officer will approve the application if it:-

- Meets the criteria and
- There are no reasonable and appropriate objections.

If the application:

- Does not meet the criteria, or
- There are reasonable and appropriate objections.

The Authorised Officer may contact the applicant and objectors to attempt to resolve the potential reasons for refusal. The Officer, applicant and objectors may discuss (i) changes that could be made to the proposed locations, goods or trading hours and (ii) additional conditions that could be introduced. If the objections and failure to meet scheme criteria can be resolved by changing the application and/or introducing additional conditions the Authorised Officer will approve the application.

If the applicant refuses a meeting with an authorised officer following objections, fails to meet the criteria or if matters cannot be resolved, the application will be deferred to the Licensing and Regulatory Committee to be determined. Except where objections are received for safety reasons the Head of Regulatory Services can determine the application or defer the matter to the Licensing and Regulatory Committee.

14. Approval of applications.

The applicant will be advised by letter that their application has been successful and they need to accept the offer of a Street Trading Consent and make full payment within 21 days or request to be invoiced (once invoiced arrangements can be made to set up direct debit payments with Monmouthshire County Councils Finance Department).

If after 21 days the applicant has not made any payment provisions, a letter will be sent reminding them of the need to make a full payment or request an invoice as above. If the fee is still not received within five working days, following this letter, the offer will lapse and the applicant will need to make a new application to the council and pay another ten percent of the consent fee and the application process will start again.

A street trading consent will not be issued until the street trading fee has either been paid in full or invoicing arrangements has been made.

Applications may be approved subject to additional conditions. These additional conditions form part of the Street Trading Consent and must be complied with at all times.

15. Refusal of applications

Where the council refuses an application the applicant will be informed in writing of the reasons for not granting the application.

There is no right of appeal to the Magistrates Court.

A person aggrieved by a decision of the Licensing and Regulatory Committee may make an application to the High Court for judicial review of the decision. For further information on potential grounds for judicial review applicants should seek advice from an independent solicitor as soon as they receive notice of the decision.

16. Issue of Street Trading Consents

Where approved, before the Street Trading Consent is issued the applicant will need to provide.

- An original copy of a certificate of insurance covering the street trading activity for third party and public liability risks up to £5 million.
- Copies of Gas, Electrical Safety Certificates and recent records Periodic Inspections Reports.

The Street Trading Consent will specify the location, times and days for which it is valid and the type of goods to be sold. Consent holders must follow the terms of their Street Trading Consent. Failure to comply with the Street Trading Consent and its conditions may result in the consent being revoked or refusal to renew, or may be

subject to legal proceedings. As such, Consent holders are requested to familiarise themselves and their employees with the conditions attached to their Street Trading Consent.

All Street Trading Consents are issued subject to a set of standard conditions. The Council may attach additional conditions to the standard conditions.

The granting of a Street Trading Consent does not in any circumstance exempt the Consent holder from the need to obtain any other licence or permission that may be required or from obligation to comply with all other general or local legislation. There may be additional costs involved in obtaining these additional licences or complying with other legal requirements.

It is the obligation of the Consent holder to familiarise themselves and their employees with this legislation. The Council may revoke a Street Trading Consent for any failure to comply with any other general or local legislation.

A Consent holder shall not assign, underlet or part with this interest or possession of a Street Trading Consent, but it may be surrendered to the Council at any time.

The Council reserves the right to revoke the Street Trading Consent at any time without compensation.

17. Renewals

All Street Trading Consents will be renewed automatically if no objections are received from Heddlu Gwent Police and Highways Department for Monmouthshire County Council following consultation. This automatic renewal will be made unless:

- There have been any complaints from members of the public, or
- Concerns raised by consultees or Council Officers, or
- Consent conditions have been breached.

In these circumstances a full or revised application process may be used at the discretion of the Authorised Officer.

18. Reimbursement of Fees

Fees will be reimbursed to Consent Holders where they cease to trade and surrender their Consent to the Council. Any fee reimbursement will be strictly on the basis:-

- From the date the Consent is surrendered to Monmouthshire County Council, or
- From the date that the Consent is revoked by Monmouthshire County Council.

Refunds will be based on the number of complete days remaining.

19. Enforcement

The Council may revoke a Street Trading Consent at any time and shall not be liable to pay compensation to the Consent Holder.

The following principles will be applied to all enforcement action:

- **Openness and transparency.** Council officers will discuss all problems, including failure to comply with conditions, clearly and in plain language. The council will be open about how it enforces street trading legislation and will inform interested parties of what they can expect from the enforcement procedure.
- **Consistency.** Council officers will seek to take a similar approach in similar circumstances and will carry out their duties in a fair and equitable manner.
- **Proportionality.** The Council will ensure that the action taken is proportionate to the risks involved or the seriousness of the breach of conditions.
- **Helpfulness.** The Council will provide advice on the relevant legislation and assist with compliance. Council Officers will provide a courteous and efficient service.

The Local Government (Miscellaneous Provisions) Act 1982 offences are as follows:-

‘A person who engages in street trading in a consent street without being authorised to do so, or being authorised by a consent, trades in that street.

- (i) From a van, cart, barrow or other vehicle, or
- (ii) From a portable stall,

Without first having been granted permission to do so contravenes a condition imposed shall be guilty of an offence.

It shall be a defence for a person charged with such an offence to prove that he took all reasonable precautions and exercised due diligence to avoid commission of the offence.

Any person who in connection with an application for a consent makes a false statement which he knows to be false in any material respect, or which he does not have reason to believe to be true, shall be guilty of an offence.

A person guilty of an offence shall be liable on summary conviction to a fine. The maximum fine is level 3 on the standard scale, currently £1,000.’

20. Standard Conditions for all Consent Holders

General Conditions

1. The holder of this Consent (hereinafter referred to as ‘the holder’, which expression where appropriate, includes joint holders of this Consent) and any person employed by him to assist him in his trading shall produce it or a photocopy of it on demand when so required by a Police Officer or a duly

authorised officer of Monmouthshire County Council (hereinafter referred to as 'the Council')

2. A Street Trading Consent does not relieve the Consent Holder, or any person employed to work on the stall, of any obligation to comply with all other general or local legislation and conditions.
3. A consent holder shall not assign, underlet or part with his interest or possession of a Street Trading Consent.
4. In accordance with Monmouthshire County Council's byelaws adopted on 11th February 1999 for the employment of children made under Sections 18(2) and 20(2) of the Children and Young Persons Act 1933
 - No child under the age of 14 may engage in street trading and a child aged 14 or over may not engage in street trading unless (i) he is employed to do so by his parents, in connection with their retail business and under their direct supervision; and (ii) he has been granted a licence to do so ('a street trader's consent') by the authority and is acting in compliance with the terms of that licence.
 - The Authority shall not grant a street trader's licence to any child if it has reason to believe that the employment of the child in street trading would be prejudicial to his health, welfare or ability to take full advantage of his education or the child's street trader's licence has been revoked.
 - A street trader's consent granted to a child shall prohibit the holder from engaging in street trading on a Sunday and shall (i) be valid for not more than 12 months and shall expire on 31 December, (ii) prohibit the holder from touting or importuning to the annoyance or obstruction of any member of the public in any street or public place, and (iii) require that the child notify the authority within one week of any change of address.
 - The Authority may suspend or revoke a street trader's consent granted to a child if it has reason to believe that the holder's continued employment in street trading would be prejudicial to his health, welfare, or ability to take full advantage of his education, or if the holder is (i) found guilty of an offence connected with street trading, (ii) commits any breach of these Byelaws or the terms of his street trader's consent, (iii) uses the consent as a means for begging, immorality or any other improper purpose; or (iv) fails to notify the authority within one week of any change of address.
5. Trading may only take place on the days and during the times specified on the Street Trading Consent, unless special authorisation has been given by Monmouthshire County Council.
6. Consent Holders shall not trade outside the designated trading area.
7. The Consent Holder shall pay the street trading fee.

8. The Consent Holder shall at all times maintain a valid insurance policy covering the street trading activity for third party and public liability risks up to £5 million. The Consent Holder must produce a valid certificate for this insurance at any time on the request of an authorised council officer.
9. The Consent Holder shall have written permission from the owner of the land to trade on private land which is not part of the highway.
10. The sale of the following goods are not permitted firearms and replica firearms, knives, offensive weapons and replica weapons, tobacco products, fireworks, articles that would typically be sold in sex shops, animals and legal highs. This list is not exhaustive and the Council has the right to refuse the sale of any goods.
11. The holder shall not cause any obstruction of the street or nuisance or danger to persons using it and shall not permit persons to gather around him or any vehicle, stall or other mode used in connection with the trading so as to cause a nuisance, or danger to any persons lawfully using the street.
12. The holder shall not do or suffer anything to be done in or on the street which in the opinion of the Council may be or become a danger, nuisance or annoyance to or cause damage or inconvenience to the Council or to the owners or occupiers of any adjacent or neighbouring premises or to members of the public.
13. The holder shall indemnify and save harmless the Council, Welsh Ministers and their agents, servants, contractors and workmen from and against all proceedings, damages, claims or expenses in respect of an injury to a third party or damage to property which may be sustained by the Council or any person or persons body or company whatever arising out of or in any way connected with his trading and the provision of facilities under this consent.
14. The holder shall not make any excavations or indentations of any description whatsoever in the surface of the street or places or fix any equipment of any description in the said surface.
15. The holder shall not place on the street any advertisement, furniture or equipment other than as permitted by this Consent and he must maintain the same in a clean and tidy condition and not place them so as to obstruct the entrance to or exit from any premises.
16. If a stationery vehicle is used in connection with the street trading, any exhaust fumes therefrom shall be discharged vertically into the atmosphere, and oil drip trays shall be placed thereunder so as to protect the surface of the street.
17. Other than street trading primarily involving the sale of ice cream, no electronic amplifying equipment shall be used.

18. The holder of a consent for trading in hot foods shall at all times carry on the vehicle a 4.5 kilo Dry Powder Fire Extinguisher.
19. Where the holder trades from a stationery vehicle, that vehicle shall in all respects, comply with the Motor Vehicle Construction and Use Regulations. Motor vehicles shall be capable of their own propulsion and shall not be towed into trading positions.
20. The Consent Holder will vacate the pitch upon request, and for as long as necessary to enable highways inspections, repairs to street works and highway improvements to be undertaken, or if the pitch is required to facilitate temporary traffic and/or pedestrian management arrangements. No compensation will be paid to the Consent Holder for lost trading days as a result of the above or for any loss of business as a result of unforeseen occurrences on the highway network.
21. The siting of the street trading vehicle or stall shall not impede the access of emergency vehicles. The street trading activity shall not obstruct any street furniture, signs or lighting.
22. Where the mode of trading is from a stall, the construction and size thereof shall be subject to the approval of the Council.
23. The holder shall keep his vehicle or stall or other mode used for trading, and trading location and the immediate area in a clean and tidy condition during the permitted hours and also leave the same in a clean and tidy condition and unobstructed at the end of each period of trading each day of such trading.
24. The holder shall provide at his own cost and expense, litter bins or similar receptacles for the deposit of litter resulting from his street trading activities and remove them and their contents at the end of each period of trading on each day of such trading.
25. The holder shall retain with his vehicle or stall or other mode used for trading, any water used or waste produced until the end of each period of trading on each day of such trading and then remove it or dispose of it lawfully elsewhere, and in particular shall not deposit any such waste near or into the street, drain or channel.
26. The Consent holder shall comply with all requirements of the Council in respect of street trading.
27. No street trading shall be undertaken in breach of food hygiene, health and safety, public health or planning legislation and the requirements of Monmouthshire County Council shall be complied with in respect of such matters.
28. The use of generators is not permitted, unless permission has been specifically granted by an Authorised Officer.

29. The holder shall not assign, underlet or part with his interest or possession under this Consent or any part thereof, but he may surrender it to the Council at any time.
30. This Consent may be revoked by the Council at any time and the Council shall not in any circumstances whatsoever be liable to pay compensation to the holder in respect of such revocation.
31. The Council may vary, amend or add to the conditions of this Consent at any time.
32. Where however, planning permission is required in respect of the trading activities covered by this Consent, and such permission has not been obtained, this Consent shall not entitle the Consent holder to carry out such trading activities during any period required to be covered by such planning permission (to carry out such trading activities in such circumstances will be a criminal offence).
33. The Consent holder must obtain planning permission, where it is required, in respect of the trading activities covered by this Consent. Failure to do so will result in the Consent being revoked.
34. Consent Holders and their employees should have access to suitable and sufficient sanitary accommodation at all trading times.
35. Consent Holders and their employees shall not trade under the influence of any illegal or intoxicating substance.

Mobile Traders

36. The consent holder must comply with Section 62 of the Control of Pollution Act 1974 which relates to noise in streets and the Code of Practice on Noise from Ice-Cream Van Chimes 1982. Attention is drawn particularly to the requirement that no loud speaker is to be used to advertise the sale of any perishable goods for human consumption before 12 noon or after 7.00pm, on any day.
37. In addition to the above statutory requirements, it is a condition of this consent that no audible form of advertising (including hand bells) is to be used by the consent holder before 9am or after 9pm, on any day.
38. Any form of advertising device, whether a loudspeaker or otherwise, must not be used at any time so as to cause nuisance to persons in the vicinity.
39. Mobile vehicle consent holders are permitted to trade in any one place for a continuous period of no more than 30 minutes and the consent holder must not then again trade at that location within a period of 5 hours.

40. No street trading may be carried on at any location on any bus route for any continuous period of more than 10 minutes.
41. Mobile Street trading consent holders must not obstruct a driveway so as to prevent access.

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MONMOUTHSHIRE COUNTY COUNCIL REPORT

SUBJECT: Discussion further to an application received for the licensing of a Tuk Tuk as a Private Hire vehicle. This requires amendments to the Taxi and Private Hire Policy and Conditions to include Tuk Tuk and Rickshaw Licensing

DIRECTORATE: Social Care, Safeguarding and Health

MEETING: Licensing and Regulatory Committee

Date to be considered: 15th October 2019

DIVISION/WARDS AFFECTED: All Wards

1. PURPOSE:

- 1.1 For Members to discuss a proposal for Taxi and Private Hire Policy and Conditions be amended to include the Licensing of Rickshaw and vehicles.

2. RECOMMENDATION(S):

- 2.1 Members consider amending the Taxi and Private Hire Policy and Conditions, to remove points 32 and 33 in appendix J of the current Policy and amend Appendix M of the current policy to include an additional section. The additional section would include, should the policy be amended, the licensing of Tuk Tuks, Electric and Cycle Rickshaws (pedicabs). A draft version is attached to this report as Appendix A.
- 2.2 A further report be submitted when outstanding information is received, to enable Members to make an informed decision on whether to amend the Taxi and Private Hire Policy and Conditions.

3. KEY ISSUES

- 3.1 A request has been made to the Licensing Team to licence a Tuk Tuk. This is the first request received by Licensing. The current policy briefly referred to Tuk Tuks in appendix J of the policy, stating the vehicles are considered to be hackney carriages and are therefore required to be licensed as hackney carriages and in accordance with this Policy. It was recognised these vehicles did not comply with the standard criteria set within this Policy.

- 3.2 Section 80 of the Local Government (Miscellaneous Provisions) Act 1976, 'private hire vehicle' is defined as

'... a motor vehicle constructed or adapted to seat fewer than nine passengers, other than a hackney carriage or public service vehicle or a London cab or tramcar, which is provided for the hire with the services of a driver for the purpose of carrying passengers ...'

As such Tuk Tuks can be considered for private hire licensing. Given the nature of the unique type of vehicle, it would be better suited towards private hire licensing due to Hackney Carriages being able to pick up off ranks, requiring roof lights and tariffs installed. It is further proposed this type of vehicle shall only be used for special occasions and executive business contracts. Vehicles licensed

within this category shall not be used for everyday private hire use. As such it is recommended that points 32 and 33 of Appendix J of the current policy be removed.

- 3.3 Tuk Tuks could be ideal for promoting tourism and sightseeing within Monmouthshire. There are currently none operating in the Gwent area, with the nearest being licensed in Cardiff. There are also other forms of vehicles of a similar nature and these should also be considered. As such this has been included as part 4.3 of the proposed policy as follows;

Tuk Tuks or Rickshaws can be pedalled, electrically motorised or powered by a traditional two-stroke engine. The design has the driver/rider to the front and the passengers seated to the rear. Tuk Tuk's are the same design as Electric and Cycle Rickshaws (pedicabs). However, Rickshaws are smaller and can only carry 2 passengers in the rear of the vehicle. These vehicles if used for hire and reward falls into the remit of licensing and would be best suited to private hire licensing due to the nature of the vehicle.

To assist Members as to the design of the proposed vehicles, attached as Appendix B is a photograph of a Tuk Tuk provided by the applicant who has requested a licence.

- 3.4 One of the main aims of the Taxi and Private Hire Policy is to ensure that licensed vehicles are safe for use by the public, the driver and do not pose any risk to other road users.
- 3.5 This particular Tuk Tuk is fully road legal and holds a valid MOT and has also passed a taxi vehicle test at an approved Monmouthshire garage. This vehicle travels at lower speeds compared to standard motor vehicles and has a top speed of 37 mph.
- 3.6 The Local Authority need to satisfy themselves regarding vehicle suitability, noting safety is paramount. Most licensed vehicles have a range of safety features as standard such as seat belts, driver and passenger airbags, crumple zones, anti-lock braking systems (ABS), and traction control. As technology improves, newer cars are being manufactured with more advanced safety features such as autonomous emergency braking, pedestrian detection, adaptive cruise control, visibility aids, speed limiting devices, attention monitoring systems, tyre pressure monitoring systems etc. These features aim to minimize the likelihood of collisions and aim to reduce injuries to the driver and passengers in the event of an accident.
- 3.7 Tuk Tuks and Rickshaws have far fewer safety features than standard cars. They can be fitted with seat belts and strengthened overhead and side-impact protection, but they offer lower protection to the driver/passenger(s) in the event of a collision compared to a standard road vehicle. They also do not have windows, and the open compartment design poses a greater risk of objects entering the Rickshaw and potentially causing injury, or passengers being thrown from the vehicle or injuring limbs etc during a collision.
- 3.8 Extra conditions are proposed which are pertinent to Tuk Tuks / Rickshaws, with all other elements of the policy to be complied with. These extra conditions in Appendix M aim to address some of the concerns raised in 3.6 above. Due to the nature of the vehicle it is impossible to address all safety elements raised.

3.9 The Licensing Section has sent a request for information and advice from the Driver and Vehicle Standards Agency (DVSA). We will look to include any information provided in any report for a decision on this matter.

4. REASONS

4.1 To consider and discuss a revised policy incorporating changes to include a licensing regime for Tuk Tuks, Electric and Cycle Rickshaws (pedicabs) as requested by a licensed driver, prior to any future decision.

5. RESOURCE IMPLICATIONS

5.1 All Licensing fees and charges are recovered on a cost recovery basis.

6. WELLBEING AND FUTURE GENERATIONS IMPLICATIONS

6.1 The 'Future Generations' template has not been finalised at this time and will form part of the report for the future Licensing and Regulatory Committee.

7. CONSULTEES:

- Monmouthshire County Council Highways Section.
- Awaiting a reply from DVSA
- Head of Public Protection

8. BACKGROUND PAPERS:

Town Police Clauses Act 1847
Local Government (Miscellaneous Provisions) Act 1976.

9. AUTHOR:

Linda O’Gorman
Principal Licensing Officer

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Appendix A

Tuk Tuk, Electric and Cycle Rickshaws (pedicabs)

1. With regard to Tuk Tuk, Electric and Cycle Rickshaws (pedicabs), these vehicles do not fall within the set criteria for this Policy, as a result the following conditions apply.

Limitations of Use

2. The vehicle shall only be used for special occasions and executive business contracts. Vehicles licensed within this category shall not be used for everyday private hire use. The vehicle would be licensed as a Private Hire Vehicle only.
3. All other criteria set down within this Policy shall be complied with.

Vehicle Design

4. Tuk Tuks or Rickshaws can be pedalled, electrically motorised or powered by a traditional two-stroke engine. The design has the driver/rider to the front and the passengers seated to the rear. Tuk Tuk are the same design as Electric and Cycle Rickshaws (pedicabs). However, Rickshaws are smaller and can only carry 2 passengers in the rear of the vehicle.
5. For the purpose of calculating the seating capacity of a vehicle the minimum width of passenger seat is 400mm.

Transport of Passengers

6. The number of passengers to be carried shall not exceed the number for which it is licensed as specified on the licence and the vehicle plate.
7. No person shall be permitted to travel sitting on the lap of any of the passengers. Passengers are to remain seated throughout the journey and be restrained by a seatbelt or lapbelt at all times.
8. Children under 16 years of age are not permitted to travel in the vehicle unless accompanied by an appropriate adult.
9. The driver shall not convey any animal unless it is in the custody of the hirer and in any case shall ensure that the animal is securely restrained.

Additional Documents Required.

10. Cycle-rickshaws must comply, where applicable, with:
 - a. The Pedal Cycle (Construction and Use) Regulations 1983 and The Pedal Cycle (Construction and Use)(Amendment) Regulations 2015.
 - b. The Pedal Bicycle (Safety) Regulations 2010.
 - c. The Electrically Assisted Pedal Cycle Regulation 1983 and The Electrically assisted Pedal Cycle (Amendment) Regulations 2015.

And in addition, have two rear position lamps and two rear reflectors; where appropriate.

The Tuk Tuk and/or Rickshaws must also be produced for examination and inspection at an approved garage.

Appearance and Mechanical Considerations

11. The vehicle licence plate, issued by the Council, must be affixed to the outside of the rear of the vehicle.
12. Licensed Tuk Tuks and Rickshaws must be fitted with seatbelts or lap belts which will be adequate to retain the passenger in the vehicle. The seatbelts shall be readily accessible for use by all passengers and must be maintained in a safe condition at all times.
13. No fittings, except those approved by the Council shall be attached to the inside or outside of the vehicle.
14. The body-work of the vehicle is in good condition and the paintwork is clean and well maintained.
15. Licensed Tuk Tuks, Rickshaws must be kept in good order, the inside and outside clean and braking machinery efficient, with all fixtures and fittings well maintained at all times to prevent injury to any passengers or damage or soil clothing or luggage. The vehicle must also be provided with an audible warning device such as a bell or horn.
16. Licensed Tuk Tuks, Rickshaws must have a watertight roof covering. The vehicles must be fitted with rain coverings that cover both sides and rear of the vehicle and are secured to ensure the vehicle remains watertight.
17. The seats of the vehicle must be properly cushioned or covered; fittings and furniture must be kept clean and adequate for the convenience of persons conveyed therein.
18. The floor of the vehicle must be covered in carpet, mat or other suitable, non slip floor covering which is sound and clean.

19. Wheels in the vicinity of the passenger compartment must be covered for the protection of the passengers and their clothing.
20. The tyres must be suitable for the proposed load being carried and must have a clearly visible tread pattern over the entire circumference and over the full breadth of the tyre with no exposed cord. A suitable spare wheel and tyre is provided and readily available for use or an alternative temporary repair system is provided, together with the tools and equipment required to carry out any emergency replacement or repairs required to the vehicle.
21. The condition, fixing and routing or positioning of electric cable and fitting, if any, are such that there is no risk of electrical fire or other incident.

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Appendix B



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Public Document Pack **Agenda Item 5**

MONMOUTHSHIRE COUNTY COUNCIL

**Minutes of the meeting of Licensing and Regulatory Committee held
at The Council Chamber, County Hall, Rhadyr, Usk, NP15 1GA on Tuesday, 16th July,
2019 at 10.00 am**

PRESENT: County Councillor B. Strong (Chairman)
County Councillor J. Higginson (Vice Chairman)

County Councillors: S. Howarth, A. Easson, M. Lane, R. Roden, J. Treharne, R. Edwards, D. Evans, L. Guppy and A. Webb

OFFICERS IN ATTENDANCE:

Linda O'Gorman	Principal Licensing Officer
Leigh Beach	Licensing Officer
Ben Davies	Solicitor
Richard Williams	Democratic Services Officer

APOLOGIES:

None.

1. Election of Chair

We elected County Councillor B. Strong as Chair.

2. Appointment of Vice-Chair

We appointed County Councillor R.J. Higginson as Vice-Chair.

3. Declarations of interest

None.

4. Confirmation of Minutes

The minutes of the Licensing and Regulatory Committee meeting dated 19th February 2019 were confirmed and signed by the Chair.

5. Exclusion of the Press and Public

We resolved to exclude the press and public from the meeting during consideration of the following item of business in accordance with section 100A of the Local Government Act, as amended, on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 12 of part 4 of Schedule 12A to the Act.

6. To consider whether the driver is "Fit and Proper" to hold a Hackney Carriage / Private Hire Drivers Licence

The Chairman welcomed the driver to the meeting and introduced Members of the Committee and the attending Officers and explained the protocol for the meeting.

MONMOUTHSHIRE COUNTY COUNCIL

Minutes of the meeting of Licensing and Regulatory Committee held at The Council Chamber, County Hall, Rhadyr, Usk, NP15 1GA on Tuesday, 16th July, 2019 at 10.00 am

The driver confirmed their name and address to the Committee. The driver confirmed receipt of the report.

The key issues and details were read out to the Committee.

The driver was then given the opportunity to address the Committee, to put forward any relevant explanations. Following this, Members of the Committee put forward questions to the driver and discussion ensued. The driver was then given the opportunity to sum up.

Following questioning, officers and the driver left the meeting to allow the Committee the opportunity to deliberate and discuss the findings.

Upon re-commencement, the Chair advised that the Committee had considered the issues and had come to the view that the applicant should be granted a Hackney Carriage / Private Hire drivers licence for the full three years.

7. Next meeting

Tuesday 10th September 2019 at 10.00am.

The meeting ended at 10.25 am.