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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.