



Agenda

Licensing/Appeals Sub-Committee

Tuesday, 8 December 2015 at 10.00 am
Council Chamber - Town Hall

Membership (Quorum – 10)

Cllrs Murphy, Newberry and Pound

Agenda Item	Item	Wards(s) Affected	Page No
1.	Appointment of Chair		
2.	Administrative Function Members are respectfully reminded that, in determining the matters listed below, they are exercising an administrative function with the civil burden of proof, i.e. 'on the balance of probabilities'. The matter will be determined on the facts before the Sub-Committee and the rules of natural justice will apply.		
3.	Consideration of matters under the Street Trading and Market Policy	Brentwood North	5 - 26

P. L. Russell

Head of Paid Service

Town Hall
Brentwood, Essex
30.11.2015

Information for Members

Substitutes

The names of substitutes shall be announced at the start of the meeting by the Chair and the substitution shall cease at the end of the meeting.

Where substitution is permitted, substitutes for quasi judicial/regulatory committees must be drawn from Members who have received training in quasi- judicial/regulatory decision making. If a casual vacancy occurs on a quasi judicial/regulatory committee it will not be filled until the nominated member has been trained.

Rights to Attend and Speak

Any Members may attend any Committee to which these procedure rules apply.

A Member who is not a member of the Committee may speak at the meeting. The Member may speak at the Chair's discretion, it being the expectation that a Member will be allowed to speak on a ward matter.

Members requiring further information, or with specific questions, are asked to raise these with the appropriate officer at least two working days before the meeting.

Point of Order/ Personal explanation/ Point of Information

Point of Order

A member may raise a point of order at any time. The Chair will hear them immediately. A point of order may only relate to an alleged breach of these Procedure Rules or the law. The Member must indicate the rule or law and the way in which they consider it has been broken. The ruling of the Chair on the point of order will be final.

Personal Explanation

A member may make a personal explanation at any time. A personal explanation must relate to some material part of an earlier speech by the member which may appear to have been misunderstood in the present debate, or outside of the meeting. The ruling of the Chair on the admissibility of a personal explanation will be final.

Point of Information or clarification

A point of information or clarification must relate to the matter being debated. If a Member wishes to raise a point of information, he/she must first seek the permission of the Chair. The Member must specify the nature of the information he/she wishes to provide and its importance to the current debate. If the Chair gives his/her permission, the Member will give the additional information succinctly. Points of Information or clarification should be used in exceptional circumstances and should not be used to interrupt other speakers or to make a further speech when he/she has already spoken during the debate. The ruling of the Chair on the admissibility of a point of information or clarification will be final.

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The Chair of the meeting may terminate or suspend filming, photography, recording and use of social media if any of these activities, in their opinion, are disrupting proceedings at the meeting.

Private Session

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8 December 2015

Planning and Licensing Sub-Committee

Local Government (Miscellaneous Provisions) Act 1982

Report of: *Ashley Culverwell – Head of Borough Health, Safety and Localism*

Wards Affected: *All*

This report is : *Public*

1. Executive Summary

- 1.1** This report seeks clarification by Members of the Sub-Committee on a matter pertaining to the Council's Street Trading and Market Policy. In the first instance seeking clarification on a matter of policy pertaining to one particular product type. In the second instance to identify whether clothing may be sold by a trader and if so, whether this should be restricted or conditioned in any way.

2. Recommendation

2.1 That Members

- a) Provide an interpretation of the meaning of paragraph 5.2 of the Street Trading and Market Policy (2012) with particular regard to the sale of clothing, by;**
 - i) resolution that clothing is not permitted to be sold under provision of paragraph 5.2 at all; or**
 - ii) resolving that whilst clothing may be sold, this cannot be of a nature that is the same or distinctly similar to that sold by other traders, including shops in the vicinity; or**
 - iii) To determine that clothing does not fall under paragraph 5.2 and therefore that clothing of any nature may be sold by Street Traders; and**
- b) If resolved in the case of either 2.1 a) i) or ii), to further determine whether there are specific grounds for diversion from the policy in the individual circumstances relating to Jacky's Boutique to permit clothing to be sold;**
 - i) Without duplication of the stocks of local shop traders; or**
 - ii) Regardless of whether the items sold by Jacky's Boutique are a duplication of other local traders**
- c) Any other decision that Members consider appropriate.**

3. Introduction and Background

- 3.1 Street trading (including markets and market stalls) is governed under provision of the Local government (Miscellaneous Provisions) Act 1982 (the Act).
- 3.2 Section 2 of the Act provides that a district council may by resolution designate a Street (or Streets) in their district as either prohibited Streets, consent streets or licence streets. Designation as either a 'licence' or 'consent' street is necessary in order for the council to undertake the process of licensing stalls for trading purposes.
- 3.3 Consent of any relevant corporation that owns the land and of the Highways authority is required before a resolution is passed to adopt an area for the purpose of street trading. Such a process was followed in and prior to August 2011, when Brentwood High street was adopted as a 'licence' street.
- 3.4 Since being adopted as a 'licence' street and having received the relevant planning consent, the High street in Brentwood has been the site of a successful Saturday Market, which, more recently in October 2014, expanded to operate on Fridays in addition to Saturday.
- 3.5 In 2012, when the Market commenced trading, the Council published a Street Trading and Market policy (the policy), which outlines how the Council will carry out its functions with regard to street trading and further, sets out its expectations with regard to running a vibrant and successful market. The Street Trading and Market Policy is attached at **Appendix A**.
- 3.6 Essex Farmers Markets (EFM) has been contracted to run the Friday and Saturday Market under contract with the Council. EFM are responsible for the setting up and dismantling of the stalls before and after each trading day, provision of the stalls and ensuring compliance with the requirements of the policy and any conditions of licence.
- 3.7 Full responsibility for who may and may not trade at the Market falls to EFM, where this is lawful and where it is within the terms and conditions as laid down by the Council. In matters where there is dispute over a condition or policy requirement/disqualification it is for the Council in its role as the licensing authority to assess the facts and make judgement on the question at hand.
- 3.8 Whilst the policy covers many aspects relating to the licensing of street trading, sections 3.5, 5.2. and 5.4 identify matters that would not normally be considered for a licence to trade.

Section 5.2 of the policy states that the Council may refuse an application on the following grounds:

That there are already enough traders trading in the street from shops or otherwise in the goods in which the applicant wishes to trade.

Section 5.4 of the policy states:

The Act allows the Council to attach such further conditions as appear to be reasonable. Each application will be considered in its own right and on its own individual merits. In this respect the Council has produced some guidance on the types of products which may be refused in order to be in keeping with the character of the Council and of the town centre and which as part of the Council's policy may also form part of the licence conditions. These are:

- a) To allow one type of product to be sold by one trader.*
- b) To ordinarily refuse products not in keeping with the character of the High Street or the objectives of providing specialist and niche products which could include for example:*

- *Products of a sexual content*
- *Trailer vehicles*
- *Cooked food of burgers, hotdogs, chips, pizza and fast food*
- *Cleaning products*
- *Products promoting the use of drugs or tobacco related products*
- *Branded products found in local supermarkets and shops, including household items, make-up and health products*
- *Funfair type products; donuts and candyfloss*
- *Knives and other weaponry*
- *Canned or branded drinks, chocolate, sweets and crisps*
- *Mobile phone accessories*

3.8 It should be noted that section 5.2 is a repeat of a portion of Schedule 4 of the Act itself and is therefore a matter of law and not restricted purely to policy. However, it is an aspect of the Act which allows discretion in stating that the Council **may** refuse, rather than **must** or **shall** refuse.

3.9 Section 5.3 of the policy states:

Healthy competition is good for the town, however, the objective of the market is to compliment and enhance the offering provided by the shop traders in the town.

4. Issues Options and Analysis of Options

- 4.1** Jacky's Boutique is a longstanding trader on the Market, having operated on a Saturday for some approximately three years and on a Friday, since Friday trading commenced approximately one year ago.
- 4.2** Jacky's Boutique sell Ladies and Children's clothing and has been permitted to do so by adopting a broad interpretation of Schedule 4 of the Act the Council's policy. This is because it has been the belief of Officers that a literal interpretation of these provisions would disallow clothing of any nature to be sold on the basis that there are already many outlets in and around the vicinity that stock and sell clothes. Instead, a purposive view has been taken to permit clothing provided that it is not the same or distinctly similar to clothing sold elsewhere.
- 4.3** It should be noted that whilst Jacky's Boutique has been told that they cannot duplicate stock, this has not to date been put in writing and only verbal guidance has been given to date.
- 4.4** Complaints have been received from a number of traders representing approximately 5 or 6 local shops. These traders complain that their stock is being duplicated and that particularly since Friday trading commenced, this is affecting their trade. The shop traders are concerned that their overheads are higher and that with the market selling the same (or very similar) items, they are unable to compete on a level footing.
- 4.5** A complaint was received approximately 12 months ago, which was dealt with by way of an inspection of the stall, with a request to remove one item that duplicated the stock of one of the shop traders. Nothing else was received by way of complaints until recently where it appears that items are being sold that duplicates ranges that are sold in a number of local shops.
- 4.6** On 17 November 2015, a meeting was held at the Council offices, which was facilitated by licensing staff. In attendance, were Gary O'Shea and Keith Alexander from the licensing team, the Market operator from EFM, two representatives from Jacky's Boutique and various representatives from Virgo, Dolly's, Queenies and Influence. These all being fashion shops in and around the Brentwood high Street area. In addition there are other traders that could not be present whom have been invited to this hearing and whom it is alleged have similar concerns over stock duplication.
- 4.7** The matter as to whether there is an actual duplication of stock between the goods sold by the stall and those of the shops was not specifically addressed.

- 4.8** This matter is not a question of whether there is duplication, rather than seeking a decision on the substantive question as to whether duplication is permitted at all, or indeed whether the policy permits any form of clothing to be sold on the market.

5. Reason for Recommendations

- 5.1** A policy is in place to identify the parameters under which the council will carry out its function under the licensing regime and to identify what would normally be expected from applicants and licence holders. Whilst there should be good reason if ever the Council were to divert from policy, it should be something that the Council is prepared to do if the specific individual circumstances so merit. In other words the Council must not use the wording of any policy to fetter its discretion in any given individual case.

- 5.2** The recommendations in this report are broad as in effect there is a twofold question being asked as follows:

In the first instance, 2.1 (a) seeks clarification on the general interpretation of the Council's policy in order to establish whether clothing is permitted to be sold on the Market and if so whether there should be any restriction on this.

However, paragraph 2.1 (b) has been included to be considered only if it is determined that the policy either does not permit clothing to be sold or if the stock of clothing is restricted by the policy in any way i.e. if members resolve either 2.1 (a) (i) or 2.1 (a) (ii). In this event Members are requested to further resolve whether the specific facts of this case merit a diversion from policy.

- 5.3** It was evident at the meeting on 17 November that there was a difference of opinion between the shops and the Market trader, which was unlikely to be resolved by discussion. It was therefore decided that the only means to address the question in full was to seek clarification from this Sub-Committee after consideration of all relevant facts.
- 5.4** The Council should not become involved in debate over pricing or facts surrounding competition law. The matter at hand is purely a policy issue and potentially whether or not the policy should be fully applied here.

6. References to Corporate Plan

- 6.1 The proposals contained within this report link directly to the following priorities of the corporate plan:

A prosperous Borough – “Safeguarding public safety through a risk based regulation and licensing service.”

Street Scene and Environment –

“Develop effective partnership arrangements so all issues affecting neighbourhoods are delivered in a timely and efficient way”

7. Consultation

- 7.1 Full consultation took place prior to adoption of the high Street as a ‘licence’ street. There is no further consultation required in relation to individual applications, nor would any form of consultation assist with determination relating to a matter of policy.
- 7.2 Notwithstanding the above, relevant local shops have been contacted following the complaints received and given opportunity to attend the hearing. The Market trader has also been advised that representative(s) may also attend the hearing to assist with their case.

8. Legal Implications

- 8.1 There is a right of appeal to Magistrate’s court in respect of any applicant or licence holder aggrieved by the refusal to grant or renew a licence or by the revocation of a licence. This means that, having traded for some three years, if Members determined that no clothing could be sold, this would effectively amount to a refusal or revocation of licence and could be appealed.
- 8.2 Should members determine for any reason that clothing can be sold whether this is restricted by type or not this would amount to a policy decision for which there is no right of appeal in law. This means that the only recourse for any party if aggrieved by the decision would be judicial review.
- 8.3 In either case clear reasons should be given and recorded in order to support the decision(s) made.

9. Appendix A – Street Trading and Market policy

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Street & Market Trading Policy in Brentwood High Street

September 2012



Brentwood Borough Council has introduced Street Trading which creates a vibrant atmosphere in the town centre for residents, local businesses, visitors and shoppers. Street Trading will provide residents and shoppers with alternative products including specialist and niche items.

Objectives

- To support the local economy, businesses and retailers by increasing footfall to the High Street.
- To attract new visitors, residents and shoppers to the High Street.
- To create a welcoming atmosphere for visitors, residents and shoppers.
- To provide an opportunity to trade for local businesses.
- To complement existing retailers and businesses on the High Street.
- To provide a diverse and alternative offer of products to residents, visitors and shoppers.

Street Trading Designations

Brentwood Borough Council has adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 to designate the following roads, including all forecourts, roads, footways or other areas adjacent to the roads listed for a distance of 10 metres to which the public have access without payment, be designated as License Streets for the purposes of Street Trading.

- The High Street, Brentwood, between Wilson's Corner and the junction with Kings Road/Weald Road.

The designation of the High Street allows street trading to be controlled so as to limit disturbance and obstruction that might otherwise be caused to local shoppers and

traders. Street Trading Licenses are issued with conditions which specify the date, time, location and type of stall.

Street trading in a designated License Street without the necessary Street Trading License is an offence which can result in a fine of up to £1000.

Further information about Street Trading Licenses can be obtained from the Licensing Section. Please call 01277 312508. Alternatively, email licensing@brentwood.gov.uk

Location

The markets will take place only on the street trading pitch locations indicated on the plan included as Appendix 1 of this policy and typically outside properties 39 – 51 High Street.

Planning Permission has been granted for markets to take place where stalls are situated at a minimum distance of 2.5metres from all shop fronts and a minimum of 2 metres from the carriageway.

On every occasion license holders must ensure that a sufficient gap is left between stalls/pitches and between stalls/pitches and street furniture to enable unrestricted and unfettered wheelchair, pushchair or pedestrian movement.

All individual pitches are for a maximum size of 3m x 3m and no double pitches will be allowed where street furniture or wheelchair, pushchair or pedestrian movement are impeded by the placement of a stall.

Should such an occasion arise the licence holder/stallholder will be required to reduce the size of their stall. Any failure to do so after having first been warned will result in the stallholder being required to leave the site or be liable for prosecution for having breached their licence conditions.

If the market should be located near to a turning circle, disabled bays and overrun areas, a minimum of 0.5 metres should be provided between these areas and the stalls.

Planning permission has not been granted for the turning circle on the High Street.

Street Trading Categories:

- 1. Brentwood Markets**
- 2. Street Trading**

1. Brentwood Markets

- 1.1 Planning Permission has been granted for markets to take place on designated areas of Brentwood High Street for 7 days per week. Markets are typically held on Fridays and Saturdays on sections of Brentwood High Street

and more specifically the large paved area from 39 - 51 High Street. The Council has the right to operate markets 7 days per week; however the Council will only issue street trading licenses to traders on designated market days and on one-off special occasions and events only.

- 1.2 Markets are operated by third party market operators instructed by Brentwood Borough Council. On designated market days, the Council will only grant street trading licenses to traders who are being managed via the third party market operator. Street Trading Licenses will be issued on a direct basis with the Council at the discretion of the Council.
- 1.3 Traders at Markets operated by third party market operators will need to meet the criteria of the market operator which can be obtained by the market operator. Traders will also require a Street Trading License issued by Brentwood Borough Council. Conditions of the License are described in the criteria set out below.
- 1.4 All applicants will be expected to provide name and address contact details and also land line and mobile telephone numbers and an e-mail contact address if this is held by the applicant. For further details about the application process see Section 3 of this policy document shown below.

Fees:

An application for a Street Trading License where a third party market operator has been instructed by Brentwood Borough Council to operate a market must be accompanied by the follow fees:

- £20 per day License Fee paid to Brentwood Borough Council.
- A service charge paid directly to the Market operator. Details of the service charges are provided by the third party market operator.

2. Individual Street Trading Stalls

- 2.1 From time to time Brentwood Borough Council may issue Licenses to individual traders at one-off special events throughout the year, but will consider applications in their own right and on their own merits at other times of the year.

Fees:

An application for a Street Trading License must be accompanied by the appropriate fee:

- Small food stalls (up to 1.5m x 2.15m) - £75.00 per day or part thereof.
- Large food stalls (over 1.5m x 2.15m) - charged at multiples of the small stall rate based on frontage.
- Additional support vehicles - charged at multiples of the small stall rate.
- Other small stalls (up to 1.5m x 2.15m) - £40.00 per day or part thereof.

- Other large stalls (over 1.5m x 2.15m) - charged at multiples of the small stall rate based on frontage.
- Additional support vehicles - charged at multiples of the small stall rate.
- 'Occasional' street trader £20.00 per day.

The above fees do not apply at the Lighting Up Brentwood Event. The Council reserves the right to host the Lighting Up Brentwood Event on any day of the week. Fees for this event will be subject to a separate fee structure. For further information contact the Council's Community Safety Team by e-mail at lightingup@brentwood.gov.uk

Payments

The Stall holder shall pay the full amount stipulated on the booking form in advance of the specified trading day/s. Unpaid sums will be recoverable by way of a common debt and subject to the Council's Debt Recovery policy. Failure to pay may lead to court action where stall holders could be asked to pay the Council's costs.

Exemption

The fruit stall which has been trading outside the location of 71-73 High Street Brentwood for a number of years. The stall holder currently has an existing agreement with Brentwood Borough Council in terms of location and fee agreed prior to the introduction of this policy; however these may be subject to change in the future.

Lighting Up Brentwood

There will be no market on the day of the Lighting Up Brentwood event. The Council reserves the right to host the Lighting Up Brentwood event on any day of the week. If possible the Council may offer an alternative day for the market. Individual stall holders may apply for a Street Trading License directly with Brentwood Borough Council for the Lighting Up Brentwood event and fees will be issued at the time of application and expression of interest.

Criteria for a Street Trading Licence

3. General Terms

- 3.1 An application for a Street Trading License or the renewal of such a License shall be made in writing to Brentwood Borough Council for individual Street Trading or to a market operator that has been instructed by Brentwood Borough Council to operate the markets in Brentwood.
- 3.2 The applicant shall state:
 - (a) His/her full name and address;
 - (b) The street in which, days on which and times between which the trader desires to trade;

- (c) The full description of articles in which the trader desires to trade and the description of any stall or container which the trader desires to use in connection with the trade in those articles;
 - (d) The applicant shall submit two photographs of themselves with their application.
- 3.3 A Street Trading License shall not be granted:
- (a) To a person under the age of 17 years; or
 - (b) For any trading in a highway in relation to which a control order under section 7 of the Local Government (Miscellaneous Provisions) Act 1976 (road-side sales) is in force, other than trading to which the control order does not apply.
- 3.4 Subject to sub-paragraph (3.3) above, it shall be the duty of the Council to grant an application for a Street Trading License or the renewal of such a License unless they consider that the application ought to be refused on one or more of the grounds specified in sub-paragraph (3.5) below.
- 3.5 The Council may refuse an application on any of the following grounds:
- (a) That there is not enough space in the street for the applicant to engage in the trading in which he/she desires to engage without causing undue interference or inconvenience to persons using the street;
 - (b) That there are already enough traders trading in the street from shops or otherwise in the goods in which the applicant desires to trade;
 - (c) That the applicant is unsuitable to hold the License by reason of having been convicted of an offence or for any other reason;
 - (d) That the applicant has at any time been granted a Street Trading License by the Council and has persistently refused or neglected to pay fees due to them for it or charges due to them for services rendered by them to him/her in his/her capacity as License-holder;
 - (e) That the applicant has at any time been granted a Street trading License or Consent by the Council and has persistently refused or neglected to pay fees due to them for it;
 - (f) Where the street trading may damage the structure or surface of the street;
 - (g) Where the appearance of the trading equipment or structure is in use is not compatible with the character of the area in which it is proposed to be situated.

- (h) Where the quality of stall and the impact of its activities may be detrimental to the character and appearance of the area in which it is proposed to trade.
 - (i) That the applicant has without reasonable excuse failed to avail him or herself to a reasonable extent of a previous Street Trading License.
 - (j) Where the applicant has at any time been granted a Street Trading Consent or License and has persistently contravened conditions of the policy.
- 3.6 A Street Trading License shall specify:
- (a) The street in which, days on which and times between which the License-holder is permitted to trade; and
 - (b) The description of articles in which he is permitted to trade.
- 3.7 If the Council determines that a License-holder is to confine his trading to a particular place in the street, his/her Street Trading License shall specify that place.
- 3.8 Matters that fall to be specified in a Street Trading License by virtue of sub-paragraph (3.6) or (3.7) above are referred to in this Schedule as the "principal terms" of the License.
- 3.9 When granting or renewing a Street Trading License, the Council may attach such further conditions (in this Schedule referred to as the "subsidiary terms" of the License) as appear to them to be reasonable.
- 3.10 Without prejudice to the generality of sub-paragraph (3.9) above, the subsidiary terms of a License may include conditions:
- (a) Specifying the size and type of any stall or container which the License-holder may use for trading.
 - (b) The items for sale could offend members of the public or businesses.
 - (c) The items for sale are not in keeping with the Council's policy and objectives for street trading, in providing quality specialist markets including the sale of alternative and niche products.
- 3.11 The Street Trading License requires:
- (a) That any stall or container so used shall carry the name of the License-holder or the number of his License or both; and
 - (b) Prohibiting the leaving of refuse by the License-holder.

- 3.12 A Street Trading License shall, unless previously revoked or surrendered, remain valid for a period of 12 months from the date on which it is granted or, if a shorter period is specified in the License, for that period.
- 3.13 If the Council resolve that the whole or part of a License Street shall be designated a Prohibited Street, then, on the designation taking effect, any Street Trading License issued for trading in that street shall cease to be valid so far as it relates to the prohibited street.
- 3.14 The Council may at any time revoke a Street Trading License if they consider:
- (a) That, owing to circumstances which have arisen since the grant or renewal of the License, there is not enough space in the street for the License-holder to engage in the trading permitted by the License without causing undue interference or inconvenience to persons using the street;
 - (b) That the License-holder is unsuitable to hold the License by reason of having been convicted of an offence or for any other reason;
 - (c) That, since the grant or renewal of the License, the License-holder has persistently refused or neglected to pay fees due to the Council for it or charges due to them for services rendered by them to him/her in his/her capacity as License-holder; or
 - (d) That, since the grant or renewal of the License, the License-holder has without reasonable excuse failed to avail him or herself of the License to a reasonable extent.
- 3.15 If the council consider that they have ground for revoking a License by virtue of sub-paragraph (3.14)(a) or (d) above, they may, instead of revoking it, vary its principal terms:
- (a) By reducing the number of days or the period in any one day during which the License-holder is permitted to trade; or
 - (b) By restricting the descriptions of goods in which he is permitted to trade.
- 3.16 A License-holder may at any time surrender his License to the council and it shall then cease to be valid.
- 3.17 The Council may charge such fees as they consider reasonable for the grant or renewal of a Street Trading License.
- 3.18 The Council may determine different fees for different types of License, in particular, but without prejudice to the generality of this sub-paragraph, may determine fees differing according:
- (a) By reducing the number of days or the period in any one day during which the License-holder is permitted to trade; or

- (b) By restricting the descriptions of goods in which he is permitted to trade.
 - (c) To the duration of the License.
 - (d) To the street in which it authorises trading; and
 - (e) To the descriptions of articles in which the holder is authorised to trade.
- 3.19 The Council may require that applications for the grant or renewal of Licenses shall be accompanied by so much of the fee as the Council may require, by way of a deposit to be repaid by the Council to the applicant if the application is refused.
- 3.20 The Council may recover from a License-holder such reasonable charges as they may determine for the collection of refuse, the cleansing of streets and other services rendered by them to him in his capacity as License-holder.
- 3.21 The Council reserves the right to use the License fees to advertise and promote the market as a reasonable cost incurred in providing the service for market stallholders.
- 3.22 The stall shall be kept in the space allocated by the Council from time to time and the stallholder must keep the avenues adjoining the stall clear and free from refuse and litter.
- 3.23 Traders will need to supply their own stall and will be given a pitch approximately 3m x 3m. Stalls must be of high quality and safety is paramount. Stalls must be robust and withstand winds and therefore stalls will require weights. The size and positioning of the stall must be such that it does not contravene the restrictions specified in these conditions. In respect of markets, all stalls need to be compatible in size, style and colour and the appearance of the market must be attractive and consistent in nature. The arbiter of this standard will be the Council at all times.

4. Stall Requirements

4.1 All stalls need to be:-

Provided in full compliance with the legal standards laid down by the Health and Safety at Work etc Act 1974 and all regulations made thereunder. Without prejudice to the generality of the foregoing, the following controls must be in place:

- a) Only placed on firm level ground.
- b) Erected by competent persons with experience of such, pitched and secured firmly in order to prevent any possibility of overturn.

- c) Where connected in any way to a generator, that generator to be sited externally along with any fuel supply and pipe work to it and to fully comply with all relevant provisions of electrical safety acts and regulations.
- d) Electrical cables and wires must be placed so as to prevent tripping hazards. In the first instance these should always be placed away from any pedestrian areas. It is not permissible to cover cables and wires even with a bespoke rubber mat or duck tape as these may also present a tripping hazard. Cables and wires may however be suspended and at a height of no less than 198 centimeters above the ground below so that pedestrians may walk safely beneath. Additional support via a 'catenary wire' must be provided where electrical cables are suspended so as to prevent electrical short circuit.
- e) All electrical circuitry must be weather resistant, and so placed and maintained to prevent electrical short circuit and danger from electrical shock.
- f) Where supported by guy ropes, those ropes and ground pegs to be positioned in such a way that they cannot be inadvertently tripped over and do not extend into any designated public walk-ways or traffic routes.
- g) Where used to contain any cooking apparatus that the apparatus is placed in such a way within the confines of the stall such that it will not catch fire nor produce a fire hazard as a consequence of any naked flame or heat producing surface.
- h) Where used to contain any heating apparatus that the apparatus is placed in such a way within the confines of the tent/marquee such that it will not catch fire nor produce a fire hazard as a consequence of any naked flame or heat producing surface.
- i) Provided where necessary with suitable apparatus to extinguish fire.
- j) To be pitched in such a way that the public may exit quickly through unimpeded and clear signed exits.
- k) Where containing any gas cylinders, that those cylinders are either laid down or tethered to a rigid supporting structure to prevent falling/overturn.
- l) Flame and fire retardant material must be used in the construction of the individual stalls. Stall holders are reminded that their stall will come under the requirements of the Regulatory Reform (Fire Safety) Order 2005 and the person/company/business responsible for the stall will be required under this order to undertake a fire risk assessment. The significant findings of that assessment are to be recorded. The completed assessment must be maintained available for inspection by the Fire & Rescue Service/Event Organiser or Council Officers at all times. The assessment will take into consideration amongst other issues most of those identified under Section 4.1 of the Policy for Market Stall and Street Trading activities.

- m) Residual Current Devices and Residual Current Circuit Breakers (RCD's/RCCB's) to be placed as appropriate within all mains electrical provision to prevent all exposed metal components from becoming electrically energised.
 - n) Where any gas system is provided that it complies with the Gas Safety (Installation and Use) Regulations 1998 Section 35 and has been certificated by an appropriately qualified Gas Safe Engineer.
 - o) No fire hydrant indicator plate or fire hydrant pavement cover shall be obstructed, or access to it restricted at anytime by the activities of the stall holder(s)
- 4.2 The Stall shall only be used for the sale of goods specified.
- 4.3 The Stall shall only be used by the Stallholder and his employees. The Stallholder shall not do or allow anything to be done which may cause or be a nuisance or annoyance to any member of the public or which may be detrimental to the efficient operation of the Market.
- 4.4 Traders must not set up before 7am Monday to Friday or before 8am on Saturday and Sunday. Traders must remove vehicles from the market site by 8am on Monday and Friday and by 9am on Saturday and Sunday. Traders must continue trading until 5pm on all market days and will not be able to begin loading before 5pm on market days.
- 4.5 Stallholders will be expected to treat their colleagues and all visitors and residents with respect.
- 4.6 No traders' vehicles will be placed on the Market site, other than for loading and unloading at the times permitted under paragraph 4.4 of this policy.
- 4.7 It is the Council's intention to ensure that the market is well presented and adequately stocked to be attractive to potential customers and in support of the town centre. A high quality standard is required of all traders' presentations and merchandising and in pursuit of this the Council will set quality standards. Poor presentation could lead to termination of the right to trade.
- 4.8 This Street Trading Licence does not convey any other approvals that may be necessary under the Food Hygiene regulations, Planning legislation or other appropriate legislation.
- 4.9 All food traders need:

Where the stall is used for the sale or offering of food, that it complies in full with all relevant provisions of the Food Safety Act, and EC Regulation 852/2004.

Without prejudice to the generality of the foregoing, the following controls must be in place:

- a) To have registered the business under food law with the local authority in which they reside overnight or trade.
 - b) A copy of the food registration certificate to be available for inspection.
 - c) The food business to be 'broadly compliant with food hygiene law relative to its last inspection (i.e. a score of no more than 10 with regard to any of the three compliance areas, namely: -hygiene, structure and management).
 - d) Food handlers to have received commensurate food hygiene training relative to their role within the business and this to be demonstrable in the form of certificates or records.
 - e) To have evidence of a demonstrable food safety management system on site. This may take the form of an SFBB manual or similar to show adequate records of opening and closing checks.
 - f) Traders selling hot and cold food will need to supply proof of the relevant food hygiene training certificate before you can apply for a License to sell food.
- 4.10 If you don't have a certificate you need to make your own arrangements to attend food hygiene training. You can find out more about training from Brentwood Environmental Health on 01277 312504. You'll also need to register your business with Environmental Health with you own local Council.
- 4.11 The Stall shall be kept in an orderly manner, clean and free from litter. No heating or lighting apparatus shall be installed without the permission of the Markets Manager.
- 4.12 No electrical connections must be made by stall holders to any public or utility equipment. Only generators or gas cylinder equipment that are compliant with paragraph 4.1 c), j), i) and m) are permissible.
- 4.13 Stalls, produce or products will only be allowed to be left out or stored overnight in the High Street town centre pavement area for markets lasting more than one day such as a continental or themed markets for example at the discretion of the Council and on the strict proviso that they are securely guarded all night and that they will not be left out in adverse or inappropriate conditions such as high winds etc. Ordinarily all stalls, produce or products must be removed and cleared away at the end of each trading day.
- 4.14 The Stallholder shall:
- (i) Indemnify the Council against all costs, demands, claims proceedings and actions incurred by the Council relating to or arising out of the use of the space allocated by the Council.

- (ii) Obtain and maintain Public Liability Insurance with a minimum indemnity limit of £5,000,000 (five million pounds) and shall produce to the Council evidence of such insurance with the application to trade.

5. Guidance on products

5.1 The Council operates a fair system and welcomes all applications.

5.2 Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 states that Council's **may** refuse an application on the following grounds:

- That there are already enough traders trading in the street from shops or otherwise in the goods in which the applicant desires to trade;

5.3 Healthy competition is good for the town, however, the objective of the market is to compliment and enhance the offering provided by the shop traders in the town.

5.4 The Act allows the Council to attach such further conditions as appear to be reasonable. Each application will be considered in its own right and on its own individual merits. In this respect the Council has produced some guidance on the types of products which may be refused in order to be in keeping with the character of the Council and of the town centre and which as part of the Council's policy may also form part of the licence conditions. These are:

- a) To allow one type of product to be sold by one trader.
- b) To ordinarily refuse products not in keeping with the character of the High Street or the objectives of providing specialist and niche products which could include for example:

- Products of a sexual content
- Trailer vehicles
- Cooked food of burgers, hotdogs, chips, pizza and fast food
- Cleaning products
- Products promoting the use of drugs or tobacco related products
- Branded products found in local supermarkets and shops, including household items, make-up and health products
- Funfair type products; donuts and candyfloss
- Knives and other weaponry
- Canned or branded drinks, chocolate, sweets and crisps
- Mobile phone accessories

5.5 There are a sufficient amount of shop traders already selling cut flowers, plants, fruit and vegetables, hot drinks such as tea and coffee, therefore the

Council is likely to refuse such items in the current climate, as legitimised by the Local Government (Miscellaneous Provisions) Act 1982.

- 5.6 Each application will however be considered in its own right and on its own merits.

Car Parking Information for Traders

The height restriction for all car parks in Brentwood are as follows:

6M Length
2.1M High
2.3M Width

Blue badge holders may only park free of charge in Brentwood Borough Council surface car parks that are pay and display and do not have barrier access.

Season ticket holder only car parks are not to be used for casual parking and no vehicles are allowed to remain overnight in any of the car parks.

The nearest overnight camping ground is situated at Warren Lane Doddinghurst, Kelvedon Hatch, Brentwood CM15 OJG. The telephone number is 01277 372773. The site is open March to November and there are 90 pitches available. It is dog friendly and has electric hook –ups, hard standing, gas refills, disabled facilities, showers and toilet block, washing up facilities, laundry room, chemical disposal and internet access. This site is approximately two miles from Brentwood so it is convenient for traders.

Please note that this information is provided without prejudice to assist traders and is not intended to be an endorsement of the site or its services by Brentwood Borough Council and is only accurate to the time the information was included in the policy in August 2012. Brentwood Borough Council accepts no responsibility for any of the above information that might not be accurate in the future.

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Members Interests

Members of the Council must declare any pecuniary or non-pecuniary interests and the nature of the interest at the beginning of an agenda item and that, on declaring a pecuniary interest, they are required to leave the Chamber.

- **What are pecuniary interests?**

A person's pecuniary interests are their business interests (for example their employment trade, profession, contracts, or any company with which they are associated) and wider financial interests they might have (for example trust funds, investments, and asset including land and property).

- **Do I have any disclosable pecuniary interests?**

You have a disclosable pecuniary interest if you, your spouse or civil partner, or a person you are living with as a spouse or civil partner have a disclosable pecuniary interest set out in the Council's Members' Code of Conduct.

- **What does having a disclosable pecuniary interest stop me doing?**

If you are present at a meeting of your council or authority, of its executive or any committee of the executive, or any committee, sub-committee, joint committee, or joint sub-committee of your authority, and you have a disclosable pecuniary interest relating to any business that is or will be considered at the meeting, you must not :

- participate in any discussion of the business at the meeting, of if you become aware of your disclosable pecuniary interest during the meeting participate further in any discussion of the business or,
- participate in any vote or further vote taken on the matter at the meeting.

These prohibitions apply to any form of participation, including speaking as a member of the public.

- **Other Pecuniary Interests**

Other Pecuniary Interests are also set out in the Members' Code of Conduct and apply only to you as a Member.

If you have an Other Pecuniary Interest in an item of business on the agenda then you must disclose that interest and withdraw from the room while that business is being considered

- **Non-Pecuniary Interests**

Non –pecuniary interests are set out in the Council's Code of Conduct and apply to you as a Member and also to relevant persons where the decision might reasonably be regarded as affecting their wellbeing.

A 'relevant person' is your spouse or civil partner, or a person you are living with as a spouse or civil partner

If you have a non-pecuniary interest in any business of the Authority and you are present at a meeting of the Authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest whether or not such interest is registered on your Register of Interests or for which you have made a pending notification.

Licensing Sub-Committees

To hear and determine applications that do not sit within the scope of delegation to officers, usually where representations have been received either by a third party against grant of a license, or from the applicant against intended refusal or revocation of a license/registration.

The Planning and Licensing Committee has delegated all functions other than relevant policies and fees setting to officers, with the exception of those other matters as indicated below, which are heard by licensing sub-committee unless otherwise indicated:

Licensing Act 2003 and Gambling Act 2005

- (a) Determination of any application type where a representation has been received in accordance with the legislation.
- (b) Determination of applications for review or expedited review.

Hackney Carriage vehicles and drivers (including enforcement of ranks) and Private Hire vehicles, drivers and operators, with the exception of:

- (a) Suspension or revocation of drivers' licenses (save for initial suspension under provision of Local Government (Miscellaneous Provisions) Act 1976 S61 (2B) if it appears that the interests of public safety require the suspension to have immediate effect).
- (b) Where representation has been submitted by the applicant/license holder against refusal of any application.
- (c) Where representation has been received from an applicant to vary a licensing or pre-licensing condition.

Scrap Metal Dealing

- (a) Determination of applications where representations have been received against refusal in accordance with legislative requirements; and
- (b) Consideration of revocation of a license where representations have been received in accordance with legislative requirements.

Street Collections and House to House Collections

- (a) Appeals against refusal to grant or renew a license

Licensing of sex establishments

- (a) Determination of all applications, revocations and appeals.

Street Trading

- (a) Determination of applications where representation(s) has been received.
- (b) Determination of applications that fall outside of current policy.
- (c) Determination of matters relating to revocation of a license.

Acupuncture, Tattooing, Skin and Ear Piercing and Electrolysis

- (a) Appeals against refusal to grant or renew a registration.
- (b) Revocation of a registration.

Animal Welfare and Security, except for the following:

- (a) Appeals against refusal to grant or renew a license.
- (b) Revocation of a license.

Exercise of Powers under Caravan Sites and Control of Development Act 1960, except for:

- (a) Refusal and revocation of licenses, (other than urgent refusals which are delegated to officers).

Mobile Homes

- (a) Appeals against revocation of a license and/or conditions attached to the grant of a license.