

# Street Trading Policy

**Policy Version Number: 1.1**  
**Policy Author: Licensing Team**  
**Authorisation: Senior Leadership Team**  
**Date of Next Review: July 2026**

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### **Appendices**

**Appendix 1: Roads Where Street Trading is Prohibited**

## 1.0 Introduction

Oadby and Wigston Borough Council have adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982. The adoption of this Act enables the Borough Council to control Street Trading within its district.

**It is a criminal offence under the above Act to carry out any form of street trading within the Borough of Oadby and Wigston without the consent of Oadby and Wigston Borough Council.**

The government, in passing the above legislation, and the Council in adopting this policy, recognises that without regulation traders who operate in public without the use of formal premises can pose significant risks to members of the public.

Oadby and Wigston Borough Council aim to protect residents and visitors to the Borough by regulating street trading activities.

## 2.0 Objectives of this Policy

Oadby and Wigston Borough Council will carry out its duties under this policy with regard to the following objectives:

1. Public Safety – to protect public health, the health and safety and welfare of members of the public and to improve food safety standards.
2. Road Safety – to prevent street trading impacting on the safety of public roads and reducing risks to pedestrians and vehicles.
3. Crime – to prevent street trading being a source of crime or anti-social behaviour and ensure traders comply with the law and act fairly in their dealings with the public and promote a positive image of the Borough.
4. Nuisance – to prevent nuisance, inconvenience or disturbance to members of the public and reduce the effect of street trading on the amenity of the Borough.

## 3.0 Explanation of Street Trading

Street Trading is defined under the Local Government (Miscellaneous Provisions) Act 1982 as:

**The selling or exposing or offering for sale of any article (including a living thing) in any street.**

The term “street” defined under the Act has been interpreted widely by the Courts. For the purpose of this policy, Oadby and Wigston Borough Council consider a street to be defined as the following:

**Any road, footway or other area to which the public have access without payment; or**

**Any part of a street, road, footway or other areas open as a matter of fact to the public without payment; or**

**Any area that is 30 metres from the centre of any (or part of any) road, footway or other area to which the public have access without payment.**

## 4.0 Exceptions

The following are not classed as street trading under the Act:

1. Trading by a person acting as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871;
2. Anything done in a market or fair the right to hold which was acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of an enactment or order;
3. Trading in a trunk road picnic area provided by the Secretary of State under section 112 of the Highways Act 1980;
4. Trading as a news vendor;
5. Trading which –
  - a. Is carried on at premises used as a petrol filling station, or
  - b. Is carried on at premises used as a shop or in a street adjoining premises so used and as part of the business of the shop;
6. Selling things, or offering or exposing them for sale, as a roundsman;
7. The use for trading under Part VIIA of the Highways Act 1980 of an object or structure placed on, in or over a highway;
8. The operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980;
9. The doing of anything authorised by regulations made under section 5 of the Police, Factories, etc. (Miscellaneous Provisions) Act 1916.

The reference to trading as a news vendor is a reference to trading where –

1. The only articles sold or exposed or offered for sale are newspapers or periodicals; and
2. They are sold or exposed or offered for sale without a stall or receptacle for them or with a stall or receptacle for them which does not –
  - a. Exceed one metre in length or width or two metres in height;
  - b. Occupy a ground area exceeding 0.25 square metres; or
  - c. Stand on the carriageway of a street.

## 5.0 Prohibited Streets

Oadby and Wigston Borough Council have designated certain roads as “prohibited.” This means that no form of street trading can be carried out from them at all and applications for consent will not be granted for these streets. A full list is available in Appendix 1.

## 6.0 Consent Streets

Oadby and Wigston Borough Council have designated all streets not otherwise designated as prohibited as “consent streets,” from which it is an offence to trade without the Council's consent.

## 7.0 Consent to Trade

An individual intending to carry out a street trading activity from a consent street must first apply and be granted the consent of Oadby and Wigston Borough Council. The application process is detailed below.

## 8.0 Application Process

An application for a street trading consent must be made to the Council in writing on the council's application form. Application forms are available to download from the Council's website or from the Licensing section.

In addition to a completed application form, the applicant must also submit:

1. A plan or map of the area from which the applicant intends to trade.
2. This should be at least 1:1250 in scale and clearly identify the position of the proposed trading site.
3. Three colour photographs of the stall, van, barrow, cart or similar means, which will be used for the purpose of the street trading activity.
4. Two passport photographs of the individual trader and any assistant he wishes to be named on the consent.
5. An original certificate of insurance that covers the street trading activity and the consent holder for third party and public liability risks.
6. If a vehicle is to be used, a valid MOT certificate for that vehicle.
7. If a food business, a copy of a relevant food hygiene qualification received within the last three years.
8. The application fee

The Council will aim to determine all applications within 56 days (8 weeks) of receipt

Each consent is for a maximum 12 month period only.

## 9.0 Consultation

Upon receipt of an application, the Council may consult as it deems necessary depending on the type of application. If it does consult the consultation period will be 28 days.

. The following are amongst those who may be consulted:

- Leicestershire County Council Highways – area office.
- Leicestershire Constabulary.
- Leicestershire Fire & Rescue Service.
- Ward Councillors.
- Oadby and Wigston Borough Council's Environmental Health Department.
- Oadby and Wigston Borough Council's Planning Department.
- All properties within 100 metres of the proposed site.

One or more public notices will be displayed in a prominent position near to the proposed site.

Following receipt of an application, an officer of the Council may visit the applicant to inspect the vehicle, barrow, cart, van, portable stall or other vehicle or other means from which the applicant intends to trade.

A full consultation with those listed above will be considered for all new application for fixed locations.

Consultation(s) on renewal or mobile trading applications may be carried out with a selection of the above consultees depending on the merits of the individual circumstances. Where issues or concerns have been raised about an existing consent, the Council may decide to carry out a full consultation at the renewal stage.

## 10.0 Grounds of Consideration

Following the consultation on a new application, a report will be made to the Head of Law and Governance who will determine the grant of the application. Any objections or observations received during the consultation period will be considered at this time.

The Head of Law and Governance will have due regard to the objectives outlined at the start of this policy when considering whether to grant or refuse a street trading consent.

When considering the objectives, the Head of Law and Governance will consider whether:

1. Public Safety
  - a. There are concerns over the ability of the applicant to maintain appropriate food hygiene standards.
  - b. There are concerns that the proposed vehicle, stall, van, barrow, cart or other means that the trader intends to use may pose a risk to the public, the trader or their staff.
  - c. There is inadequate provision for the disposal of rubbish and other waste, which may impact on hygiene standards or has the potential for the harbourage of vermin or odours.
  - d. The site allows the consent holder, staff and customers to park in a safe manner.
  - e. The street trading activity is carried out after dusk and has adequate lighting to allow the safe access and egress from the site for customers and staff.
  - f. There is another significant reason to consider that the trading activity and the means by which it is provided could be potentially harmful to human health.
2. Transport
  - a. A significant effect on road safety would likely result from the siting of the activity at the proposed location or from customers visiting or leaving the site.
  - b. The pitch interferes with sight lines for any road user at road junctions or pedestrian crossings or similar.
  - c. The trading unit obstructs the safe passage of users on the footway or carriageway.
  - d. The siting of the activity is likely to impact on traffic flows.
  - e. There is a conflict with Traffic Orders, such as waiting restrictions, in force at the proposed location.
  - f. The Leicestershire County Council Highways Authority has raised substantial reasons why a street trading consent should not be given.

### 3. Crime

- a. Concerns have been raised about the applicant suggesting he will either not comply with the law, or the conditions of the consent, or poses a risk to members of the public.
- b. The proposed activity is likely to encourage crime or anti-social behaviour.
- c. It is likely that the activity proposed may involve an element of illegality.
- d. Some other substantial reason exists that suggests the proposed activity or trader may be a source of crime or anti-social behaviour.

### 4. Nuisance

- a. The siting of the activity or the means by which it is conducted will obstruct or cause inconvenience to pedestrians, vehicles and other road users.
- b. There would be a significant loss of amenity caused by traffic, noise, rubbish, odour, fumes or potential for the harbourage of vermin.
- c. The proposed activity would cause nuisance, inconvenience and disturbance to members of the public.
- d. The number, nature and type of traders already trading within the area, when taken with the proposed location, could create a cumulative effect resulting in an exacerbation of any of the above grounds.
- e. There is another substantial reason to believe that the proposed activity would cause a nuisance.

These same grounds will be considered again upon the application for renewal, variation or amendment of a consent or where the Council believes that the consent should be revoked.

Each application will be considered on its own merits.

## 11.0 Determination of an Application

The application will either be:

1. Granted and a trading consent issued subject to attached conditions; or
2. Refused and a proportion of the fee refunded to the applicant.

When granting or renewing a trading consent, the Authority may attach such conditions as considered necessary to the individual application. The Council retains the right to vary the conditions of a street trading consent at any time. The conditions may specify the exact location from which trading may take place as well as the times of trading.

In instances where the Council feels that it can grant a substantially modified version of the application (i.e. for less hours than those applied for), it will notify the applicant of its decision and permit the applicant a short period of time to choose whether to accept the grant of the consent on those modified terms.

## 12.0 Renewal of Trading Consents

An application to renew a trading consent must be received by the Council at least 56 days (8 weeks) before the expiry of the existing consent and be accompanied by the appropriate fee and relevant documentation as explained above.

If a renewal is not made within the requisite time, the consent holder must cease trading once his consent expires and not begin again until such a time as the consent is renewed.

**It is the responsibility of the consent holder to renew their application in good time.**

## 13.0 Amendments or Variations to Trading Consents

The Council may add, alter or amend conditions on a street trading consent at any time after it is granted. This may occur where the trading activity has been reconsidered under the objectives of this policy following a substantiated complaint or where facts are now evident to the Council that were not present at the time consent was granted.

Where the Council proposes to add, alter or amend conditions, it will notify the consent holder of its intention and allow the consent holder the opportunity to make representations.

The authorised officer will present a report to the Head of Law and Governance who will take into consideration any representations made.

A consent holder may also submit an application in writing to amend or vary a consent or the conditions attached to a consent, upon payment of the appropriate fee.

## 14.0 Transfer of Consents

A consent holder may transfer a consent to another individual upon the payment of the appropriate transfer fee. A consultation may be carried out in relation to the individual.

## 15.0 Revocation of a Trading Consent

The Council may revoke a Street Trading Consent where:

1. In its opinion, the holder of the trading consent has contravened the conditions attached to the consent.
2. One or more of the objectives of this policy are being compromised by the licence holder or the activity.

A report will be made to the Head of Law and Governance to consider the revocation of the consent. The consent holder will be given the opportunity to make representations against the revocation of this consent.

## 16.0 Conditions

All street trading consents granted by the Council will have specific conditions attached which are designed to reduce the effect of that trading activity on the objectives outlined in this policy. Where the Council feels that an objective will be undermined by the grant of a consent it will, in the first instance, consider if there is a condition that could be imposed on the consent to resolve this issue.

## 17.0 Assistants

Trading consents are granted to an individual. This person (the consent holder) is required to be present at the trading site with the vehicle, barrow, cart, van, portable stall or other means from which he or she trades at all times during trading hours.

The consent holder may however, within the application form, nominate an assistant to be present in his or her absence. This assistant will be named on the licence and then can only be altered at a later date by an application to amend the consent.

## 18.0 Compliance

Visits may be made to the trading location of a consent holder during their consent period to assess their compliance with the conditions of their trading consent or to undertake any other duty that the authority may have, such as in relation to food hygiene inspections.

## 19.0 Right of Appeal

There is no right of appeal against the grant or refusal of an application for a new, renewal or variation of a street trading consent or the imposition of conditions onto a consent. The reasons for the decision will be communicated to the applicant.

## 20.0 Offences

Under the Local Government (Miscellaneous Provisions) Act 1982, an offence will be committed by any person who:

1. Engages in street trading in a prohibited street;
2. Engages in street trading in a consent street without being authorised to do so;
3. Whilst being authorised by a street trading consent to trade in a consent street, trades in that street –
  - a. From a stationary van, cart, barrow, or other vehicle; or
  - b. From a portable stall,

Without first having been granted permission to use that van, cart, barrow or other vehicle or portable stall; or

4. Contravenes a condition imposed on the consent relating to the location of the trading site and the hours of trading.

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

Any person who makes a statement which he knows to be false or which he does not believe to be in true connection with an application for a street trading consent shall be guilty of an offence.

A person found guilty of an offence shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **21.0 Fees**

The relevant fees are contained in the Council's scale of charges and shown on the relevant application form. It is possible for the Council to charge different fees for consents that are for different durations or locations such as a pro rata rate for occasional consents or concessionary consents in certain circumstances.

## **22.0 Individual Provisions**

Oadby and Wigston Borough Council cannot anticipate the full range of potential circumstances for which a street trading consent will be necessary. As a guide, the following types of common activity require a consent and the council would like to make clear what it expects from those traders.

### **MOBILE FOOD TRADERS**

The Council will normally grant an application to operate within the Borough as a mobile trader. The most common type is that of an Ice Cream Van. Conditions will require such a trader to only remain stationary for five minutes to attract customers and then only for as long as it takes to serve those customers before moving on to another location. If a trader intends to remain in a fixed location for longer than five minutes without custom, he must have a consent for that precise location. Conditions will also regulate the use of music to attract customers to prevent it from being a nuisance.

The Council will expect such traders to park safely at all spots and not inconvenience any other road user or pedestrian. The trader must have appropriate insurance, a valid MOT and where necessary a food hygiene certificate.

### **STATIONARY FOOD TRADERS**

The smell and noise from traders that cook and sell hot food can cause a nuisance to members of the public, particularly if situated in residential areas. The means by which a vehicle, trailer or wagon is powered can also be a source of noise or a potential danger to health and safety.

It is unlikely that the Council will consider such applications suitable to be located near to residential areas. If LPG Gas is being used, the Council will also wish to see a copy of the gas certificate.

## **STATIONARY NON-FOOD TRADERS**

Whilst most fixed street traders provide food, a street trading activity can also include the sale of other items. Any other item that is proposed to be sold should not be age-restricted or offensive to members of the public. The trader must have the legal right to sell the goods and must not be in breach of any copyright laws.

## **CARS FOR SALE ON THE HIGHWAY**

The definition of a street trading activity also covers vehicles that are sold or offered for sale or exposed for sale from a street. Anyone who sells or offers for sale or exposes for sale a vehicle from a street will need to apply for and be granted a street trading consent.

The Council will exempt “one-off” domestic sales from the need for a paid consent, provided that the car being advertised for sale is parked outside the owner’s normal place of residence and that they notify the Council in writing.

## Appendix 1: Roads Where Street Trading is Prohibited

The following “A” and “B” class roads within the Borough of Oadby and Wigston are prohibited:

- A6 Leicester Road, Harborough Road and Glen Road, Oadby
- A5199 Leicester Road, Bull Head Street and Welford Road, Wigston (excluding the layby at grid reference 6103 9775)
- B582 St Thomas Road, Blaby Road (between its junction with Canal Street and its junction with Station Road), Station Road, Bushloe End and Moat Street, Oadby Road, Wigston and Wigston Road and London Road, Oadby
- A563 Palmerston Way, Oadby
- B667 New Street, Stoughton Road and Gartree Road, Oadby
- B5418 Aylestone Lane and Paddock Street and Wakes Road, Wigston
- B5366 Saffron Road, Wigston
- All those roads where a speed restriction of 40mph and above applies.
- All those roads contained within the Oadby Hill Top and Meadowcourt Conservation Area.