

Title of Report:	Lammas Fair Street Trading Applications
Committee Report Submitted To:	Environmental Services Committee
Date of Meeting:	14th March 2023
For Decision or For Information	For Decision

Linkage to Council Strategy (2021-25)	
Strategic Theme	Local Economy
Outcome	Implementation of statutory requirements
Lead Officer	Head of Health & Built Environment

Budgetary Considerations	
Cost of Proposal	N/A
Included in Current Year Estimates	N/A
Capital/Revenue	N/A
Code	N/A
Staffing Costs	N/A

Screening Requirements	Required for new or revised Policies, Plans, Strategies or Service Delivery Proposals		
Section 75 Screening	Screening Completed:	Yes/No N/A	Date:
	EQIA Required and Completed:	Yes/No N/A	Date:
Rural Needs Assessment (RNA)	Screening Completed	Yes/No N/A	Date:
	RNA Required and Completed:	Yes/No N/A	Date:
Data Protection Impact Assessment (DPIA)	Screening Completed:	Yes/No N/A	Date:
	DPIA Required and Completed:	Yes/No N/A	Date:

1.0 Purpose of Paper

The purpose of this paper is to seek approval to amend the street trading application process for Lammas Fair 2023.

2.0 Background

- 2.1 Further to ES211109 and CM211207 Council decided that the Licensing Team should continue to require the production of Access NI Criminal record checks as a requirement of the application process for Street Trading Licences, Lammas Fair Trading applications and Causeway Market trading including permanent and non-permanent trading.
- 2.2 The Street Trading (NI) Act 2001 regulates the activity of street trading through the granting or renewal of street trading licences. Section 6 of the Act requires Local Authorities to grant a street trading licence unless it has a mandatory or discretionary reason not to do so.
- 2.2 The mandatory reasons for not granting a licence include the applicant not being a named individual; applicant is underage; trading proposed in an area contrary to other legislation or not designated for street trading or the goods proposed for sale are prohibited by a resolution of the Council.
- 2.3 Section 9 of the Street Trading Act (NI) 2001 provides a number of **discretionary** grounds under which a district council may refuse to grant an application for a street trading licence including:
- “that the applicant is on account of misconduct or some other reason relating to trading activities, unsuitable to hold a street trading licence”*
- 2.4 It is important to note that the misconduct or other reason must be related to trading activities thus preventing a Council from refusing an application because of conviction for non-street trading offences, for example, driving offences, parking misdemeanours, etc.
- 2.5 This means that an applicant can be refused a licence if Council has sufficient evidence to demonstrate they have committed offences relating to street trading activities (such as street trading without a licence, trading in breach of existing licence conditions etc).
- 2.6 An applicant has a right of appeal to any refusal to grant a street trading on based on discretionary grounds.
- 2.7 There is no specific direction in the legislation or guidance published by the Department of Communities in relation to considering misconduct prior to refusing a street trading licence. Council’s current Street Trading Policy does not provide any direction on this issue either.
- 2.8 Criminal access checks do not include any information on Local Authority prosecutions for breaches of the Street Trading Act (Northern Ireland) 2001, therefore their value in respect of decision making is limited.

- 2.9 In accordance with current policy the information provided in criminal record checks is presented to Council along with any other relevant street trading prosecutions when consideration is being given to granting street trading applications.
- 2.10 During discussion at ES220913 members considered it would be prudent to have some form of policy guidance on relevant misconduct and convictions to assist the decision-making process for street trading applications.
- 2.11 Council's Street Trading Policy is currently under review and will be brought before Council for approval in the coming months. It is intended that the draft policy will provide guidance on misconduct and relevant offences as well as a review of the requirement for AccessNI checks.

3.0 Lammas Fair Trading Applications

- 3.1 The Licensing Team will shortly commence preparations for Lammas Fair 2023.
- 3.2 The policy of requiring criminal access checks caused considerable delays and difficulties when processing street trading applications for the Lammas Fair 2022.
- 3.3 Considerable administration and officer time was taken up in the lead up to the Fair in obtaining such checks from applicants.
- 3.4 No applicants were recommended for refusal based on information contained in the criminal record checks for the Lammas Fair 2022.
- 3.5 Traditionally, while most licences for the Lammas Fair are issued prior to the event, there has in the past been a long-standing facility to issue licences during the Fair to traders who turn up on the day wishing to trade.
- 3.6 During Lammas Fair 2022, although criminal record checks were sought, the majority of traders who arrived on the day were unable to provide this document. An operational decision was taken to issue 'on the day' licences to said traders with a view to taking the matter back before Council for consideration.
- 3.7 The basis for this operational decision was as follows:
- Despite all traders being encouraged to make an application in advance of the event, due to the longstanding tradition, traders continue to arrive seeking a trading pitch on the day of the Fair.
 - Criminal record checks do not provide details of misconduct or prosecutions relating to trading activities which would provide discretionary grounds to refuse a licence.
 - To refuse such traders a licence on the day of the Fair because they did not have a criminal record check would have caused considerable aggravation and potential for conflict.

- Not all of Council Street trading pitches are sold in advance of the Fair and some traders may also be unable to take up their pitch due to unforeseen circumstances e.g. illness. To refuse licences to traders arriving on the day without a criminal record check would have been detrimental to the event due to less stalls being occupied and a considerable loss of street trading revenue for Council.

3.8 Notwithstanding the above to continue this practice is inconsistent and traders are being treated differently

4.0 Proposal

4.1 In view of preparations for Lammas Fair 2023 commencing imminently approval is sought for the criminal record check requirement to be suspended for Lammas Fair 2023 pending a final decision on such checks as part of the Street Trading Policy review.

5.0 Recommendation

5.1 It is recommended that Environmental Services Committee recommends to Council to suspend the Access NI Criminal Record Check as a requirement for Lammas Fair 2023 street trading applications.