



**Draft**

# **Market Rights Policy**

**September 2021**

## Table of Contents

1.0	Background and Introduction.....	2
2.0	Managing Market Rights.....	2
3.0	Criteria to be Considered.....	3
4.0	Types of Market Rights Licences.....	5
5.0	Right of Appeal.....	7
6.0	Monitoring and Compliance Visits.....	8
7.0	Non-Compliance and Enforcement Action.....	9
8.0	Voiding of a Market Licence.....	9
9.0	Market Rights Licence Payments and Fees.....	10

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# WIRRAL BOROUGH COUNCIL'S MARKET RIGHTS POLICY

## 1.0 Background and Introduction

- 1.1 Wirral Borough Council ("The Council") is entitled to the sole and exclusive right to markets and fairs within the common law distance of  $6\frac{2}{3}$  miles from the boundary of Birkenhead Market ("Charter Area") on the basis of various statutes including The Birkenhead Improvement Act 1833 and The Birkenhead Corporation Act 1881 and the establishment of markets under public general legislation i.e. the Food and Drugs Act 1955 and the successor legislation contained in Part III of the Food Act 1984.
- 1.2 The Charter Area is shown in the plan in Appendix 1 of this Policy.
- 1.3 The Council currently owns and operates Birkenhead Market in addition to retaining the charter rights.
- 1.4 For the avoidance of doubt a Market Rights Licence from the Council is not required for a proposed market or fair within Wirral but outside the Charter Area. However, other Council consents may still be required such as licensing, planning.  
***Please note areas outside of the Charter Area may be subject to another market charter area not controlled by the Council.***
- 1.5 Any event deemed a market or fair (private or charity), that falls within  $6\frac{2}{3}$  miles of Birkenhead Market, falls within the confines of this Market Rights Policy.
- 1.6 The Market Right Policy is underpinned by the Wirral Markets Strategy (insert link).

## 2.0 Managing Market Rights

- 2.1 Market Rights are used by the Council to manage markets and fairs that take place within the Charter Area to ensure that the retailing environment is a safe and successful one which includes ensuring compliance with legal requirements. A strategic view is also necessary to avoid concentrating too many markets or fairs within a limited location which could lead to a lack of vitality and viability.

### What is a Market?

- 2.2 The legal definition of a market, being "a concourse of buyers and sellers" with five or more trading positions that is freely open to the public, shall apply when determining the nature of any event. This includes, but is not limited to:
  - Fairs

- Car boot sales
- Seasonal Markets such as Christmas or Summer Fairs
- Heritage markets
- Farmers' markets and Food Markets
- Jumble sales

2.3 For the purposes of this Policy markets operating exclusively online from an address within the Charter Area are not included.

### **Market Rights Licence**

2.4 A Markets Rights Licence grants permission to operate a market. It is required regardless of whether the market location is a public or private premises, indoors or outdoors, and in addition to any other permission that may be required. A Market Rights Licence is required before a market can take place.

2.5 Markets will only be licensed following a successful application and the payment of relevant fees. The licence details the responsibilities of the Market Rights Licence Holder (The Licence Holder) under the Market Rights Licence.

2.6 Licences may be granted for individual markets, including those trading over more than one consecutive day, or for several individual markets within a year. Where the market operates on a more regular or permanent basis, a bespoke licence agreement may need to be negotiated.

2.7 The Licence Holder is responsible for:

- All regulatory, legislative and operational aspects of the market operation, such as health and safety management, site management, and all relevant insurances.
- All other appropriate permissions which may be required in addition to a Market Rights Licence, such as a Temporary Event Notice, a Premises Licence or Planning consent.

2.8 Licensed markets will be monitored by council officers to ensure that all the conditions of the licence are being adhered to. Any licence breach or deviation may result in the removal of the market rights permission and the subsequent closure of the market.

### 3.0 Criteria to be Considered

3.1 It is the Council's intention that all Markets other than Birkenhead Market shall be subject to licensing. This includes other Markets operated or organised by the Council.

3.2 In considering whether to grant a licence, applications will be considered against a number of criteria. The criteria will reflect the need to support Wirral's town centres and High Streets, as well as the broad objectives of the Market Charter to protect Birkenhead Market. Applications will be evaluated against criteria before a decision is taken. The criteria include but is not limited to the following factors:

- The contribution the proposed market will make towards sustainable and local economic growth
- The location of the proposed market in relation to Birkenhead Market
- The similarity of the offer in relation to that of Birkenhead Market in terms of products on sale
- The opportunity for local businesses and organisations to participate in the market
- The impact on footfall to the High Street and town centre
- How the proposed market may complement the existing offer of local traders or businesses
- The current use of the land or premises where it is proposed that the market will take place
- The details of the applicant, for example whether it is a local community group, local charity or other local not for profit organisation
- Feedback from the local community and stakeholders
- The impact of the market on the health and well being of residents and visitors to Wirral
- The impact of the proposal on net zero carbon principles
- The type and nature of products to be sold at the market
- The accessibility of the location by public transport/active travel routes
- Does the proposal align with the Council's existing policies and strategies e.g. Local Plan, Economic Strategy, Event Safety Advisory Group.

3.3 Valid applications will also be assessed according to the following:

- The date, time and frequency of the market
- The number of individual trading spaces
- The premises or land proposed for the market, it's suitability and proximity to other markets
- The implications on the highway network
- Operational and safety management plans
- Operator experience, reputation and quality standards provided

## 4.0 Types of Market Rights Licences

4.1 Licences available for issue are dependent upon operational requirements of the applicant. The licences available are:

<b><i>Licence</i></b>	<b><i>Description</i></b>
<i>Simple Market Licence</i>	A single market or fair in a single location operating once for a period of not more than 14 continuous days.
<i>Complex Market Licence</i>	Two or more individual markets or fairs operating for not more than 28 days in one year or a single market operating for more than 14 continuous days but not more than 28 days.
<i>Permanent Market Licence</i>	Market(s) operating indefinitely or for more than 28 days in a single calendar year.

### **Simple or Complex Market Licence application procedure**

4.2 The following stakeholders shall be consulted on all applications and be given a consultation period of 10 working days:

- Local Planning Authority
- Environmental Health
- Asset Management
- Highways
- Ward Councillor (For the ward(s) of operation)
- The Officer Responsible for Birkenhead Market
- Commercial Team
- Culture Team
- Public Health

4.3 Details of the application will be published on the Council's website.

4.4 The Licensing Officer responsible for the case shall have absolute discretion to include any other stakeholders they believe necessary.

4.5 The applicant will be expected to engage with local businesses in the vicinity of where it is proposed for the market to take place.

- 4.6 On receipt of all comments from stakeholders if no objections are received and there are no material considerations then the Licensing Officer may issue a Market Rights Licence. The Licensing Officer shall have discretion to place such obligations and conditions on the licence as are reasonable in all the circumstances.
- 4.7 If objections are received or there are material considerations the officer shall prepare a report outlining the comments of stakeholders and any material considerations and the application will be referred to the Regulatory Panel. The decision shall be entirely at the discretion of the Regulatory Panel.
- 4.8 If the Regulatory Panel resolves to approve the application, the applicant shall be informed by a Decision Notice and be required to pay the Issue Payment. A licence shall be issued by a Licensing Officer within 7 days of the Issue Payment being paid.
- 4.9 If the Regulatory Panel resolves to refuse the application, the applicant shall be informed by a Decision Notice issued by a Licensing Officer within 7 days.

#### **Permanent Market Licence application procedure**

- 4.10 All permanent Market Rights Licences shall be considered by the Regulatory Panel.
- 4.11 The following stakeholders shall be contacted on all applications and be given a consultation period of 28 days:
- Local Planning Authority
  - Environmental Health
  - Asset Management
  - Highways
  - Ward Councillor (For the ward(s) of operation)
  - The Officer Responsible for Birkenhead Market
  - Commercial Team
  - Culture Team
  - Public Health
- 4.12 Details of the application will be published on the Council's website.
- 4.13 The Licensing Officer responsible for the case shall have discretion to include any other stakeholders they believe would reasonably be required to complete a holistic evaluation of the application..

- 4.14 After 28 days or after all stakeholders comments are received if earlier, the Licensing Officer shall prepare a report detailing the comments and any material considerations.
- 4.15 The applicant will be expected to engage with local businesses in the vicinity of where it is proposed for the market to take place.
- 4.16 The decision shall be entirely at the discretion of the Regulatory Panel.
- 4.17 A Permanent Market Rights Licence shall be issued subject to a renewal date of no longer than two years.
- 4.18 If the Regulatory Panel resolves to approve the application, the applicant shall be informed and be required to pay the Issue Payment. A licence shall be issued by a Licensing Officer within 7 days of the Issue Payment being paid. The Regulatory Panel shall have discretion to place such obligations and conditions on the licence as are reasonable in all the circumstances.
- 4.19 If the Regulatory Panel resolves to refuse the application, the applicant shall be informed by a Decision Notice issued by the Licensing Officer within 7 days.

## **5.0 Right of Appeal**

- 5.1 There is only a right of appeal for the applicant. Other parties cannot appeal a decision. Appeals must be received within 21 days of receipt of the decision notice. Appeals received after this deadline shall be void.
- 5.2 There is no right of appeal for a decision of the Regulatory Panel who are democratically elected members. An Officer decision shall remain valid unless overturned or varied by the Regulatory Panel.
- 5.3 The burden is upon an applicant to demonstrate that their grounds of appeal comply with this policy and require action by the Regulatory Panel.
- 5.4 Applicants can appeal:
- A condition and/or obligation of an Issued Market Rights Licence
  - A decision to void a Market Rights Licence
- 5.5 Appeals must be received by the Council within 14 days of the date on the decision notice.
- 5.6 The decision shall remain effective until the determination of the appeal by the Regulatory Panel.

5.7 The Appeal should be submitted in writing to [licensing@wirral.gov.uk](mailto:licensing@wirral.gov.uk). The subject line should clearly state APPEAL followed by your application number.

5.8 The written appeal must include:

- Your name, address and contact telephone number
- The comprehensive grounds for your appeal
- Any evidence you wish to be considered

5.9 This email must include all documentation you wish to be considered as if the appeal is decided by written representations there shall be no further opportunity to provide representations.

5.10 The Chair of the Regulatory Panel shall have absolute discretion as to whether to handle an appeal by written representations or attendance at a Regulatory Panel meeting.

5.11 In the case of an appeal dealt with by way of written representations a Licensing Officer shall have 14 days from the receipt of an appeal to submit a response, a copy of which shall be served on the applicant.

5.12 Where the Chair of the Regulatory Panel decides attendance at a meeting is necessary both the applicant and a Council Officer shall have opportunity to make representations before the Panel makes a decision. The Regulatory Panel may reserve their decision to be made in writing at a later date if further consideration of the evidence is necessary. The Regulatory Panel may at the Chair's discretion seek further clarification or advice from stakeholders on their relevant area of expertise if necessary.

5.13 A failure to provide evidence at the point of application cannot be remedied by an appeal. An appeal producing evidence which should have been submitted during the application process shall be considered on the knowledge and evidence available to the Officer at the point of decision.

5.14 There shall be no award of costs for an appeal and no cost for making an appeal.

## **6.0 Monitoring and Compliance Visits**

6.1 A Markets Rights Licence is an independent permission. Applicants should be aware they may need other permissions or licences in addition to obtaining a Markets Rights Licence for example:

- Planning permission
- Listed building consent
- A licence to serve alcohol
- A licence to serve hot food and drink beyond 11.00 pm
- Permission of the land owner
- Any other permission or licence required by law

6.2 The Council will require the Licence Holder to assume full responsibility for all operational aspects of the market or fair operation, including regulatory and legislative requirements including but not limited to: health and safety management, planning consent where appropriate, site management and the relevant insurance(s) required for the market or fair.

6.3 All licensed markets or fairs will be monitored by the Council from time to time and without notice to the market operator to ensure that all the operator's obligations and conditions are being adhered to.

6.4 An operator must comply with all lawful directions of a Licensing Officer. Access and right of inspection by Local Authority Officers should not be hindered or prevented without lawful reason.

## **7.0 Non-Compliance and Enforcement Action**

7.1 It is unlawful for a market or fair to take place within the Charter Area without a Market Rights Licence and the council may take enforcement action against any market operating without a licence.

7.2 The Council may take legal action against any individual or organisation in breach of the Council's Market Rights. In pursuing any enforcement action the Council shall seek to recover all costs.

7.3 The Council will consider the most appropriate remedy in pursuing enforcement action this may include the use of an injunction, a claim for damages (restitutionary and/or otherwise) or any other remedy available.

7.4 A failure to comply with the conditions of a licence shall be a material consideration in deciding future applications.

## **8.0 Voiding of a Market Licence**

8.1 A failure to comply with the obligations and conditions of a Market Rights Licence will make the Market Rights Licence immediately voidable. Should the Council void the Market Rights Licence following a breach of the Market Rights Licence the Council

may recover all costs in voiding the Market Rights Licence and taking enforcement action.

- 8.2 If the Council decide the best course of action is to void a licence during enforcement action a Licensing Officer shall serve a decision notice on the Licence Holder. The market shall be deemed unlawful from the date on the decision notice. This means all trading and market activity must cease immediately. On receipt of a decision notice voiding a Market Rights Licence the Licence Holder must return the licence to be stamped void.
- 8.3 If a licence is issued not in accordance with this policy a Licensing Officer may void the licence and reconsider the application correctly. In instances where voiding is considered for an error made by the Council steps should be taken to minimise the impact on the applicant if trading has commenced.
- 8.4 A void licence will be returned to the Licence Holder clearly displaying the word VOID.

## **9.0 Market Rights Licence Payments and Fees**

- 9.1 Market rights licenses are subject to the payment of a fee, which relates to processing and issuing documents, as well as the monitoring, regulation and enforcement of the market rights policy and licence.

### *Application Fee*

- 9.2 An application fee must be submitted with the application. Applications which are not submitted with the relevant cleared funds in respect of the application fee are void and shall not be considered.

### *Issue Payment*

- 9.3 If an application is successful the issue of a Market Rights Licence may be conditional on the payment of an issue payment. A Market Rights Licence shall not be issued until cleared funds are received in respect of the Issue Payment.
- 9.4 There shall be no refunds of any fees or payments.

**Date Adopted:**

**Date for Review:**

# Appendix 1 – The Charter Area



Birkenhead Market Charter

Scale:  
1:30,000

Date:  
12.02.2019