

MARKETS POLICY

1. Introduction

East Herts District Council ('the Council') recognises the importance of markets to the local economy and the character of the area. They remain an important Council service and contribute in a number of ways to the local communities they serve.

The Council's markets are described in more detail in Section 2 of this Markets Policy ('the Policy') and they represent an important investment by the Council in delivering economic growth and regeneration by creating jobs, promoting local produce, attracting tourists and enhancing town centre vitality.

The Council is keen to maintain the balance of markets within the district and ensure that there is consistency in the way that markets are organised. In this context, the Council has decided to implement a policy which sets out the basis upon which markets are held and the process by which applications for new markets will be considered.

The Council recognises that there are many different types of market activities and the policy adopted by the Council is intended to cater for each type of market. In particular, the Policy distinguishes between commercial markets and those that are largely community-based with a strong charitable element. Section 5 of this Policy deals with the different types of market and the Council's approach in considering applications in respect of such markets.

During the process of developing this Policy, the Council has taken the opportunity of consulting with organisations including but not limited to:

- National Association of British Market Authorities (NABMA)
- National Market Traders Federation (NMTF)
- Town Councils
- Parish Councils
- Business Improvement Districts (BID)
- Hertfordshire County Council
- Relevant internal and external stakeholders and
- Existing market traders.

The Policy applies to markets looking to operate within East Herts and markets and traders operated and licensed by East Herts Council. It will be reviewed at a minimum of five yearly intervals.

2. What is a Market Event?

The Policy is intended to cover all market events held within East Herts but will apply differently to markets established prior to implementation of the Policy. In order that potential market operators are fully aware of the Council's definition of a market, the following guidelines are provided:

- a) the legal definition of a market is a "concourse of buyers and sellers" (this means that the public are entitled to attend market events to buy and sell)

- b) a market will consist of not less than five stalls, stands, vehicles, whether moveable or not, or pitches from which articles are sold
- c) there will be an operator of the market who will be responsible for the organisation and delivery of the event
- d) the term “market event” includes car boot sales, antiques and craft markets, general markets, farmers' markets, continental-style markets and charity markets and the like.
- e) a market may sometimes be held as an integral part of a special event/festival and where this arises, the market element will fall within the Policy.

This Policy does not cover street trading activities. Where this is the case, the Council's Licensing Team should be consulted.

3. Markets

East Herts has a rich history in relation to markets and there have been several Royal charters, often confirming each other, and giving authority to hold markets. Henry VI, in 1441, granted a charter to Hertford which meant that no other markets could be held within seven miles of the existing markets and if goods were exposed for sale they could be forfeited to the Bailiff of Hertford. Mary Tudor granted Hertford another charter in 1554, in which customs established and granted by previous charters, were for the first time collected under the Royal Seal. In 1588 Queen Elizabeth I confirmed the previous charters giving the power not only to hold markets but to make relevant byelaws.

The Council has statutory powers to establish and operate new markets under its Royal Charter and in accordance with the provisions of Part III of the Food Act 1984.

The Council operated markets currently consist of the following days and locations within East Herts:

Ware (Commercial) Market	08:00 – 18:00 Tuesday
Hertford (Farmers) Market	8:30am - 1pm (second Saturday of the month)
Hertford (Commercial) Market	8am - 6pm Friday 8am - 6pm Saturday 8am - 6pm Christmas Eve ¹

4. Market Rights

The towns of Hertford and Ware are legally entitled, by virtue of historic Royal Charter, to operate weekly markets. In more recent times, powers have been vested in local authorities under, what is now, Part III of the Food Act 1984, to hold markets and have the right to licence and control the frequency of markets within their district.

¹ Where Christmas Eve falls on a Friday or a Saturday the additional ‘Christmas Eve’ market shall take place on the 23rd December for those traders authorised to trade on the 24th December.

Part III of the Food Act 1984 allows either Parish or District Councils to be the Market Authority and there can be more than one authority using these powers within the district. Several town councils within East Herts have used these powers and their own historic charters to run Markets.

In addition to the regular East Herts Council markets listed above, the Council, where it is the Market Authority, may also operate occasional market events, such as plant and craft fairs, Christmas and summer markets, festivals, and other themed markets across the district. Accordingly, the above list is subject to change and shall be updated as part of a periodic review of the Council's Markets Policy.

The Council, by virtue of its statutory powers, enjoys market rights throughout its area and is in a position to consider applications for market events. Section 5 of this Policy sets out the basis on which applications will be dealt with by the Council.

Under its market powers, the Council is entitled to give approval to the holding of other markets within a 6 & $\frac{2}{3}$ miles radius of the Council's own markets held in East Herts District.

This right has been exercisable for many years and the Council has considered relevant UK and European legislation in drawing up this Policy.

All markets held within Hertford and Ware are licenced and operated under the Royal Charter (or in accordance with the provisions of Part III of the Food Act 1984. In July 2024, the council amended its approach to the licensing and regulation of markets to utilise its powers under the Food Act 1984, from this date all new markets are licensed under Part III of the Food Act 1984.

The statutory powers afforded to the Council under the provisions of Part III of the Food Act 1984 are as follows:

- a) implement a markets policy within its area
- b) operate markets within East Herts District
- c) consider applications for other markets
- d) determine whether such markets can be held by way of consent.

The Council is aware of the existence of a number of other markets falling within the 6 & $\frac{2}{3}$ miles radius but this Policy is only intended to apply to new commercial markets which might be established following the implementation of this Policy.

5. Licensing of Markets under the Council's Markets Policy

The Council's consent to a market event, by the grant of a markets licence, must be given prior to the market event taking place. Any market that takes place without such a licence is in breach of the Policy and may be subject to enforcement action as described in Section 10 of this Policy. Markets will only be licenced once an application for a markets licence has been approved by the Council. Markets licences are issued to the operator identified in the application and are non-transferable.

The Policy differentiates between markets of a commercial nature and community-based markets which principally have a charitable and/or non-commercial aim.

The Council will consider applications in respect of the following categories of market events:

- i. commercial markets
- ii. community-based markets with a charitable element.

The criteria set out in Section 5 of this Policy will be relevant in respect of both categories of market event. Special considerations relating to each type of market are discussed below. If a prospective market operator is unclear if a licence is needed, they should contact the licensing team at the earliest opportunity to seek guidance.

Commercial Markets

A commercial market is one which is predominantly operated for profit and where the traders are engaged in a business activity involving selling goods for their own profit rather than for a beneficiary which is a charity, voluntary group or other similar not-profit organisation. The authority may request supporting information where it is claimed that a market is not a commercial market.

The Council will consider applications in respect of commercial markets having regard to the following requirements:

- a) no new market will be authorised within a 6 & $\frac{2}{3}$ miles radius of an existing market unless it can be demonstrated that the new market will not undermine the existing market
- b) in respect of any consent, the Operator must have adequate insurances, comply with trading standards guidelines, health and safety requirements and any other statutory provisions laid down by the Council
- c) a fee will be paid at the time of application. The fee will be based on a several factors including the purpose of the market, the type/size of the market, the number of traders and the frequency of the market (refer to Section 6 of this Policy)
- d) the types of goods to be sold on the market will be approved by the Council
- e) a licensing agreement will be entered into between the Operator and the Council and such licensing agreement must be granted before the market takes place
- f) the Council will insist on such other requirements as are deemed appropriate to ensure consumer and public safety standards
- g) the Council reserves the right to refuse an application where the proposed date of the market conflicts with any other street festivals, parades, or commemorative activities or the like within East Herts.

Community-Based Markets with a predominantly Charitable Element

Community-based markets are organised by local communities or organisations with the intention of raising funds for a specific charity or celebrating a special event. They may have a degree of commercial activity, but this should clearly be secondary to the principal aim of the market.

The Council will consider applications in respect of community-based markets having regard to the following requirements:

- a) the markets must be operated on a non-profit making basis to assist a charity or community event and the Operator shall supply relevant information to the Council evidencing the same if requested. While it is acknowledged that some traders will be selling goods for their own profit, the Council will look for the event to have a predominantly charitable or non-commercial aim as evidenced by the way the event is designed, organised, publicised and operated.
- b) in respect of any consent, the Operator must have adequate insurances, comply with trading standards guidelines, health and safety requirements and any other statutory provisions laid down by the Council.
- c) A licensing agreement will be entered into between the Operator and the Council and such licensing agreement must be granted before the market takes place.
- d) The Council will insist on such other requirements as are deemed appropriate to ensure consumer and public safety standards.
- e) The Operator must hold adequate proof that the charity they represent is registered with the Charity Commission for England and Wales and provide written permission from the charity organisation to raise funds on their behalf; or
- f) The Operator must be a constituted local community group formally organised with a written constitution or agreement that outlines its aims, rules and how it will operate and provide these and written confirmation that funds are to be raised on their behalf.

Applications in respect of both commercial markets and community-based markets to be held within East Herts should be made online at www.eastherts.gov.uk.

No market events or activities promoting a particular religion or political party are to take place within East Herts.

The Council will aim to deal with applications for a markets licence within a period of twenty-eight days. The Operator is therefore urged to apply as early as possible to ensure that the Council has adequate time to consider the relevant matters in an appropriate way. In considering the application, the Council will require sufficient information to deal with all the issues set out in the criteria listed above and covered on the application form. Failure to provide such information is likely to lead to a delay in the Council coming to a decision.

If the Council decides to refuse an application, it will set out the reasons for its decision and will advise the procedure for submitting an appeal in respect of the refusal. Any appeal must be submitted within fourteen days of the Council's written decision.

6. Fees

In respect of commercial markets, a licence fee is payable at the time an application for a markets licence is made to the Council. The licence fee will be based on the type/size of the market being held, the number of traders and the frequency of the market.

All fees are payable to East Herts District Council and can be paid online at www.eastherts.gov.uk.

In respect of community-based markets, a small administrative fee will be charged to cover the Council's costs of considering the application.

The fees for individual traders to trade in East Herts Council markets will be published on the market page of the East Herts website.

7. Other Approvals

It is important to emphasise that any approval given by the Council in respect of this Policy does not remove the requirement for any other relevant approvals, consents or licences to be obtained by the Operator.

In particular:

- where the market is being held on private land, the Operator must ensure that the prior approval of the relevant landowner is obtained. The Council will require evidence of such approval
- the Operator will be responsible for any temporary road closures and associated traffic management arrangements that may be required to facilitate the operation of the market
- planning permission might be required; the Operator should consult the Council's Planning Team to ascertain whether any planning considerations are relevant.

Attention is also drawn to the provisions of the Licensing Act 2003 in respect of any entertainment provided at the market or where a Temporary Event Notice might be required in respect of the sale of alcohol and/or the serving of hot food/drinks.

8. Parish and Town Councils

The Council recognises the important role played by Parish and Town Councils in serving their local communities and acknowledges the contribution made by Parish and Town Councils to a wide range of community events which include, on occasions, a market element.

The Council will consider the application of this Policy to markets organised by Parish and Town Councils on a case-by-case basis.

9. Section 37 of the Local Government (Miscellaneous Provisions) Act 1982

The Council has adopted Section 37 of Part XII of the Local Government (Miscellaneous Provisions) Act 1982 ('the Act').

Section 37 of the Act deals with temporary markets and any operator of a temporary market, together with the occupier of land on which the market is to be held, are required to give to the Council not less than one month's notice of the holding of the market.

No notice is required if the proceeds of sale of the temporary market are to be applied solely or principally for charitable, social, sporting, or political purposes. The Council reserves the right, in appropriate circumstances, to require evidence in respect of such matters.

A proforma notice of the holding of a temporary market is available at: www.eastherts.gov.uk and any notice given by the Operator and the occupier of the land shall state:

- i. the full name and address of the person intending to hold the market
- ii. the day or days on which it is proposed that the market will be held and its proposed opening and closing times
- iii. the site on which it is proposed that the market will be held
- iv. the full name and address of the occupier of the land if they are not the person intending to hold the market.

It is important to emphasise that the requirements of Section 37 of the Act are quite separate to the licensing of market events set out in Section 5 of this Policy. The Operator and the occupier of the land should ensure that a notice is given to the Council under the requirements of Section 37 of the Act as soon as proposals for a temporary market are under consideration. This will enable the Council to consider the proposal and indicate whether an application for a markets licence would be required.

Failure to give a notice under Section 37 of the Act is a criminal offence and liable to a summary conviction in the Magistrate's Court.

10. Enforcement

The Council will monitor the application of this Policy and any market event which is established will be subject to the Council's requirements.

Any market which is not approved by the Council under Section 5 of this Policy, or by another body acting as a market authority, will be instructed to close immediately and may be subject to legal action. In such circumstances, the Council will seek an appropriate remedy in the courts to prevent the market being held and/or damages as appropriate.

Any Operator acting in contravention of any markets licence granted by the Council will run the risk of the licence being terminated by the Council with immediate effect on such terms as the Council determines and, in such circumstances, the Council

reserves the right to refuse any future applications for markets licences submitted by the Operator concerned or any person or organisation associated with the Operator.

Any costs of, or associated with, enforcement action deemed necessary because of the Operator's failure to comply with the Policy will be recovered from the Operator.

11. Market Rules and Conditions

Goods to be sold:

- The Market Operator shall not permit the sale, exchange or giving away of live animals, birds, fish, reptiles or other livestock on the marketplace.
- No firearms (real or imitation), air weapons, sheath knives, cut-throat razors, hunting/fighting knives, bows or crossbows may be available for sale (domestic cutlery is permitted).
- The sale of any item that may be deemed to be of a harmful, objectionable, or offensive nature, or that is prohibited by current Acts of Parliament, is not permitted.
- No goods may be displayed or sold which in the opinion of the council are inappropriate, or likely to cause offence to other traders or members of the public.
- Traders shall not bring onto the market any inflammable liquids, gases, fireworks, or similar articles which may cause fire or explosion. The exception being a gas supply for cooking food upon such conditions as the council may direct.
- No goods may be displayed or sold that are counterfeit or in breach of copyright or patent.
- On East Herts operated markets, no mains-powered electrical goods may be sold except for new items still in their original packaging. Second-hand or used electrical goods may not be sold, even if PAT-tested

Noise nuisance

- Loudspeakers, instruments or other noise generating appliances are not to be used or shall be so moderated as not to cause any nuisance, annoyance or disturbance.

Minimum clearance on the highway

- Clear routes of access along the highway must be maintained, considering the needs of disabled people, older people, and those with mobility needs. A width of 2m should be maintained but where this is not possible, 1.5m will be the minimum width allowed. Market stalls must be located to ensure that queues do not impede access routes.

Vehicles and parking

- Vehicles used to unload and load the market are not exempt from existing parking restrictions/taxi bays/disabled parking bays, therefore it is important to consider where they can park safely without having an impact on any other highway user.

- Where the market is held on the public highway, market vehicle parking should be considered as most locations cannot accommodate all day parking.
- Where the market is held on private land, the Market Operator must ensure that there is adequate parking on the market site for both sellers and buyers.
- Where applicable, the Market Operator must ensure that there are sufficient stewards on duty to control traffic entering and leaving the market site and to control parking on the site in a safe manner. The council may indicate that it thinks this appropriate on a case-by-case basis.

Market Stalls

- Traders/the Market Operator must supply their own stalls, including any tables and awnings. Awnings and stalls used must be stable in all weather conditions and not present a danger or trip hazard to other market/highway users.
- Market stalls should be allocated positions that ensure any queues do not block the footways.
- Stalls should not have goods spread across the footway in front of them.

Rubbish and waste disposal

- The Market Operator must provide suitable receptacles for the disposal of litter and ensure that all rubbish is removed from the vicinity of the market at the end of the day's trading.
- Traders must have appropriate provisions in place for the disposal of any commercial waste generated whilst trading.

All operators

- The Market Operator must ensure that all traders familiarise themselves with the conditions of the licence issued by the Council.
- All incidents, accidents and "near misses" involving traders, their staff or members of the public must be recorded and reported as soon as possible to the Council.

This list is not exhaustive, additional conditions may be added or removed to the licence dependant on the type and size of the event.