

BMBC - MARKETS LICENSING POLICY

Barnsley MBC has the sole and exclusive right to hold markets/car boot sales/market events within an area of 6 2/3 miles from the nearest BMBC operated or licensed market/car boot sale under the 1249 Market Charter. In order to protect these rights, the Council will take all necessary steps, including legal action, against organisers (and site owners) attempting to hold markets/car boot sales without the Council's approval.

Introduction

The Council recognises the importance of markets in the local economy and the character of the area. They remain an important Council service and contribute to a number of ways to the local communities they serve.

The Council is keen to maintain the balance of markets throughout its area and also ensure that there is consistency in the way that markets are organised. In this context the Council has decided to implement a markets 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 Council's policy distinguishes between commercial markets and those that are largely community-based with a strong charitable element. The markets policy deals with the different types of market and the Council's approach in considering applications in respect of such markets.

What is a market event?

The Council's markets policy is intended to cover all market events held within the Council's area. In order that potential market operators are fully aware of the Council's definition of a market the following guidelines are provided:

- 1, The term **"market event"** includes car boot sales, bring & buy sales, jumble-sale, second-hand markets, antique & craft markets, general markets, fayres, table tops, farmers markets, community and charity markets. This includes both indoor and outdoor events.
- 2, 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).
- 3, There will be an operator of the market who will be responsible for the organisation and delivery of the event.
- 4, A market may sometimes be held as an integral part of a special event and where this arises the market element will fall within the Council's markets policy.
- 5, The term 'market event' also applies where goods are sold by individuals who pay to the market operator a charge for the use of a pitch, stall, table, etc. where the operator obtains commercial benefit from the event.
- 6, The term "commercially operated" means to run a market event in a way that focuses on making a profit, rather than a public service through the buying and selling of goods.
- 7, The term "charity market event" is where all profits from both the organisers and stall holders go to charity.
- 8, The term "community market" means an organisation or group of people who come together for the benefit of the local community and people of a shared common interest.
- 9, The term "specialist commercial market" means a market event that focuses on specific product categories, brands, audiences.

Excluded from "Market Events"

Market events that fall outside of the need to apply for a licence are -

- A fayre in a school or church hall, where the majority of stalls are manned by volunteers and 100% of the income is going to charity, school funds, political, social or sporting funds.
- A non-commercial market event with 5 or less stalls, stands, vehicles, whether moveable or not or pitches from which articles are sold.

The Council's markets policy differentiates between markets of a commercial nature and community-based markets which have a strong charitable element.

This markets policy does not cover street trading activities. Where this is the case the Council's licensing section should be consulted.

Conditions for Consent

A license to hold a Market event will only be granted subject to the following conditions being observed:

1. A minimum of one month's notice of intent must be given to the BMBC Market Manager of all such events. The holding of a market without having given the requisite notice may render both the organiser and owner of the land liable to a maximum fine of £2,500 (Section 37, Local Government Miscellaneous Provisions Act 1982).
2. No market event will be authorised within 6 2/3 miles of an existing market unless it can be demonstrated that the new market will not undermine the existing market and not prejudice the overall market offer or could be deemed unnecessary or undesirable for any reason.
3. Any applications from charitable, sporting or community-based organisations will only be considered subject to guarantees that the proceeds of sale of the market event are to be applied solely or principally to the organisation who are given consent. Only reasonable direct expenses incurred in holding the sale may be deducted.
4. The site of the sale and all roads must be left in a clean and tidy condition and free from litter immediately after the close of the sale; BMBC will enforce fixed penalties for any infringement.
5. In relation to car boots, jumble sales, bring & buys, antique & collectors markets etc, each approved market event will be limited to a maximum number of stalls, pitches or spaces etc, and each and every trader shall sell or display only articles surplus to their own domestic requirements, usually described as jumble or bric-a-brac, including books, records, small second-hand domestic furniture, and equipment, no new goods are to be sold; any breach of this clause will result in the license being revoked. Each trading position should be of a standard size with a maximum size of 8 x 6 feet (2.5 x 1.5 metres). The number of pitches or spaces at the sale must not exceed the number determined by the BMBC Market Manager of the council in the form of consent.
6. The minimum fee for each community market event / car boot sale is £50.00 (irrespective of the number of traders attending).
7. The minimum fee for each charitable market event / car boot sale is £30.00 (irrespective of the number of traders attending).
8. There is a limit to the number of events p.a. Consideration may be given to limiting the number of events an organisation can hold in a year, e.g. "Permission shall only be granted to an organisation or individual during the course of any 12 month period, to hold a maximum of 6 licenses".
9. In the case of commercial car boot sales / market events, annual licenses may be granted. A scale of charges reflecting the potential commercial advantage applies to such commercial operations. A minimum charge of £2,500 p.a. and a minimum licence period of 1 year will apply to such operations. The frequency of events permitted under license and details relating to their conduct and regulation will be subject to negotiation prior to the granting of each license.
10. Pitches or spaces must not be given to commercial traders, and no vans exceeding 10 cwt carrying capacity or commercial vehicles are permitted.
11. The organiser of the sale must ensure that all vehicles of visitors to the sale are parked in the parking area within the site. Each parking space must be clearly marked, and adequate provisions made for the entry and exit of vehicles.
12. The organiser shall not cause or permit any noise or nuisance to the residents in the neighbourhood of the sale.
13. The organiser must hold public liability insurance to the sum of £5,000,000 against all claims are in place (please attach a copy of the public liability certificate).
14. The organiser shall not cause or permit notices or posters advertising the car boot sale to be displayed on lamp-posts, building etc., without the permission of the owners of these premises or in contravention of the Planning Legislation.
15. The organiser must have written permission for the use of the site and a copy of this permission must be forwarded with the application. Failure to do so will result in the application being refused.
16. All approved advertising relating to the market event should include "Barnsley Metropolitan Borough Council Approved".

Consent will not be granted for future sales for a minimum of 12 months to any person or organisation that breaches any of these conditions.

In addition, the organisers should:

1. Ensure they have permission of the landowner to run the event.

2. Applicants must comply with all statutory and other legal requirements, both civil and criminal and in particular those relating to consumer goods and services, food safety, health and safety, traffic control, fire safety, planning consents and Sunday trading.
3. Ensure all UK Health and Safety Legislation is complied with including access to facilities such as toilets.
4. Ensure electronic equipment/gas equipment to be used during the event is compliant with UK Legislation
5. Consider traffic problems including access for emergency vehicles and notify the police where appropriate. The organisation will be responsible for any additional policing costs incurred.
6. The licence issued to operate a market in no way gives Barnsley Metropolitan Borough Council (or its agents) endorsement to the suitability of the intended site or the ability of the organisation to operate an event.
7. Be aware that any environmental damage caused, which the Authority rectifies, will be charged to the organisation.

Other Approvals:

It is important to emphasise that any approval given by the Council in respect of its market policy does not remove the requirement for other relevant approvals to be obtained.

In particular the operator of a market should ensure that where the market is being held on private land, the approval of the landowner is obtained. The Council may wish to receive evidence of such approval.

Planning permission might also be required, and any market operator should consult with the Council's Planning Department 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 event or where a Temporary Events Notice might be required in respect of the sale of hot food or alcohol.

Fees, Charges and Event Structure:

Type of Event	Fee	Comments
A fayre in a school or church hall or a non-commercial market event with 5 or less stalls.	N/A	Market event falls outside the need to apply for a licence
Charity markets (run by volunteers, where all profits go to charity)	First 2 events a year free then £30+VAT per event day for all other events	Consent must be granted in consultation with Barnsley Market.
Community group market event up to 50 vendors (indoor/outdoor)	£50+VAT per event day	Max 12 per annum. Consent must be granted in consultation with Barnsley Market.
Commercially operated market event up to 50 vendors (indoor/outdoor)	£100+VAT per day, regardless of number actually attending	Max 12 per annum. Consent must be granted in consultation with Barnsley Market and Local Councillor.
Commercially operated market event 51-100 vendors (indoor/outdoor)	£200+VAT per day, regardless of number actually attending	Max 4 per annum. Consent must be granted in consultation with Barnsley Market and Local Councillors.
Specialist commercial markets (indoor/outdoor)	£2,500 per annum	Max 12 per annum (unless planning consent is granted) Consent must be granted in consultation with Barnsley Market and Local Councillors

Application:

Application must be made in writing to markets@barnsley.gov.uk or

Market Manager
Barnsley Market
The Glassworks
May Day Green
Barnsley
S70 1GW

The Council will endeavour to deal with applications for a markets licence within a period of twenty-eight days. An operator of a market event 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 conditions for consent listed above. 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. Normally any appeal must be submitted within fourteen days of the Council's written decision.

Enforcement:

Barnsley Council, as Markets Authority, is the owner of Market Rights to operate, licence or if necessary, prevent through injunctive relief all markets within a 6 2/3-mile radius of any market it currently operates.

These rights give the Authority the sole right to hold markets within specified areas of the Borough. The Rights also entitle the Authority to protection from anyone seeking to establish a rival market. Such protection is gained through the High Court and rival market operators can find themselves paying significant legal costs.

Council policy is to take such action against rival market operators. This is because the Council's own markets provide essential services in the community, including employment for traders and their staff. The Council's markets also need to be supported and their viability ensured as this also ensures the vitality of the town centres.

The Council will monitor the application of its markets policy and any market event which is established after the date of the implementation of this markets policy will be subject to the Council's requirements.

Any market which is not approved by the Council of its markets policy will be subject to legal action and the Council will seek an appropriate remedy in the courts to prevent the market being held and/or damages as appropriate.

In addition, any market operator acting in contravention of any market licence granted by the Council will run the risk of the licence being terminated by the Council on such terms as the Council determines and, in such circumstances, the Council reserves the right to refuse any future applications for market licences submitted by the operator concerned or any person or organisation associated with the operator.

Enforcement Powers:

1. By virtue of S37 of the Local Government (Miscellaneous Provisions) Act 1982, anyone who permits or holds a temporary market on their land and fails to give the Council at least a month's written notice, is guilty of a criminal offence which may be prosecuted in the magistrates' court with a maximum penalty of £2,500 fine.
2. Anyone holding an unauthorised market within the Council's 'protected area' (i.e. within the 6 and 2/3 mile radius of any market the Council operates) is subject to the Council enforcing its rights under the Markets Rights by the Council applying to the civil courts for an injunction; under such circumstances, the Council will seek to recover its costs in full of bringing such legal action from the offending party.
3. The use of land for the holding of temporary markets requires planning permission unless it falls within the provision of The Town & Country Planning (General Permitted Development) Order 1995, Part 4, which deals with 'Temporary Buildings & Uses'. In short, planning permission is not required for temporary markets as long as they are not held within a building, within the curtilage of a building or on land in an area designated as a Site of Special Scientific Interest and are held for not more than 14 days in any calendar year. Failure to comply with the limitations on temporary uses of land set out within the Town & Country Planning (General Permitted Development) Order 1995 may also be subject to the Council instigating enforcement proceedings under the Town & County Planning Acts and related legislation and guidance.

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

The Council, at a meeting on 14th November 2001, approved the adoption of Section 37 of the Local Government (Miscellaneous Provisions) Act 1982.

This Section 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.

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 closing times. proposed opening and
- 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 he is not the person intending to hold the
market.

It is important to emphasise that the requirements of Section 37 are quite separate to the licensing of events under the

Council's Markets 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 as soon as proposals for a temporary market are under consideration. This will enable the Council to give preliminary consideration to a proposal and indicate its likely view on a subsequent application for a markets licence.

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