

TITLE OF REPORT: PROPOSED STREET TRADING POLICY 2012-17

REPORT OF THE HEAD OF HOUSING AND PUBLIC PROTECTION

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to summarise the responses to the public consultation exercise undertaken in respect of the Council's proposed Street Trading Policy.
- 1.2 The Licensing and Appeals Committee, having considered this report, can make a recommendation to Cabinet in respect of a policy on the licensing of this activity.

2. FORWARD PLAN

- 2.1 This report contains a recommendation on a key decision that was first notified in the Forward Plan on 1st September 2011.

3. BACKGROUND

- 3.1 The Local Government (Miscellaneous Provisions) Act 1982 (Section 3 and Schedule 4) provides the legal framework for the control of street trading in England and Wales. The legislative framework, however, is not an automatic entitlement and Council's must formally adopt the legislation if it wishes to regulate street trading in its area.

3.2 Adoption of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982

- 3.2.1 On 26th April 2005, the Council resolved to make all streets within the conurbations of Baldock, Hitchin, Letchworth Garden City and Royston consent streets, with the exception of any streets designated as prohibited streets.

- 3.2.2 The streets designated by Council as prohibited streets were:

- (i) **Baldock**
High Street, Simpson Drive, Whitehorse Street, The Twitchell, Mansfield Road, Old slip road off South Road at roundabout with London Road
- (ii) **Hitchin**
No prohibited streets
- (iii) **Letchworth Garden City**
Arena Parade, Gernon Road, Station Road, A6141 Letchworth Gate (from the junction with A1 to A505), Norton Way South (from Gernon Road to Station Road)

- (iv) **Royston**
Fish Hill, George Lane, King Street, Melbourn Street, Priory Lane,
John Street, Kneesworth Street, Lower King Street, Baldock Street,
Princes Mews

3.2.3 The Council further resolved to make the following arterial roads within the District of North Hertfordshire consent streets but with trading limited to lay-bys only:

A10, A505, A507, A602, A600, A6141

3.2.4 The resolution also stated that no street within the District shall be a licence street.

3.3 Street trading is defined as *“the selling or exposing or offering for sale of any article, including a living thing, in a street.”*

3.4 Streets are further defined as *“any road, footway, beach, or other area to which the public have access without payment or any service area as defined by section 329 of the Highways Act 1990.”* It is important to note that there is no reference to land ownership and so street trading legislation would also apply to privately-owned areas such as supermarket car parks, business parks, etc.

3.5 From the above definitions, it is clear that the definition of street trading is wide-ranging and can encompass activities not necessarily thought of as street trading such as cake stalls, second hand stalls, car boot sales in public or private car parks, and selling of vehicles on the highway.

3.6 The main purpose of this legislation is to establish an appropriate licensing regime which prevents undue nuisance, interference or inconvenience to the public brought about by street trading. This legislation provides local authorities with the power, but no duty, to designate specific areas within their administrative boundaries as either:

- (i) **Prohibited Streets**
those which are not open to street traders;

- (i) **Consent Streets**
where street trading is prohibited without local authority consent;

- (iii) **Licence Streets**
where trading is prohibited without a local authority licence

3.7 Local authorities can place conditions on any consent or licence. The conditions can be a generic set of conditions, application specific conditions, or a combination of the two.

3.8 There is no right of appeal through the courts against the refusal to grant, or the imposition of conditions on, a consent. There is, however, a right of appeal to the magistrates against the refusal to grant, or the imposition of conditions on, a licence. That said, any decision must be reasonable as any decision would be subject to a complaint to the Local Government Ombudsman or challenge through a judicial review.

- 3.9 The Act creates offences associated with trading in consent or licence streets without the necessary authority. The person guilty of such an offence may be liable, on summary conviction, to a fine of up to £1000.
- 3.10 There are a number of exemptions provided in the Act that are not to be considered street trading:
- (i) trading as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871;
 - (ii) a market trader operating at a Charter or licensed market venue;
 - (iii) trading at a Charter Fair;
 - (iv) trading as a news vendor selling only newspapers and /or periodicals;
 - (v) trading at a petrol filling station;
 - (vi) trading carried on in a street linked to an adjoining shop where the street trading is an extension of the shop's ordinary business;
 - (vii) trading as a roundsman;
 - (viii) where permission has been granted from the Highway Authority pursuant to Section 115 of the Highways Act 1980 to trade from an object or structure placed in, on, or over the highway;
 - (ix) charitable street collections authorised by the Police, Factories, etc (Miscellaneous Provisions) Act 1916.

3.11 **Pedlars**

- 3.11.1 A pedlar is a person who "*...without any horse or other beast drawing burden, travels and trades on foot and goes from town to town or to other men's houses...*". The provisions of the Pedlars Act of 1871 mean that certified pedlars are permitted to sell door-to-door and in the street any where in the United Kingdom, as long as they do not sell from a stall or other fixed location. It is a further requirement that the pedlar travels to the customer not vice versa, therefore, a pedlar cannot remain in the same location for any period of time. Provided that they are complying with the requirements of their certificate, a pedlar is exempt from local authority street trading legislation. The Police are responsible for the issue of Pedlar Certificates which are valid nationally.
- 3.11.2 The Department for Business Skills and Innovation (BIS) is currently undertaking a consultation on the repeal of the Pedlars Act 1871. The consultation raises the option of repealing the certification of pedlars but retaining their exemption from street trading legislation providing they continue to meet current, or similar, legislative requirements of pedlaring.
- 3.11.3 Should the Pedlars Act 1871 be repealed, the Policy will need to be amended to clarify how the Council intends to deal with pedlars in respect of street trading legislation. It is anticipated that, subject to any subsequent legislation, the definition of pedlars for the purposes of street trading would not change and that the policy could be amended to reflect this through the minor amendment procedure provided for in the policy.

3.12 Tables, Chairs and 'A' Boards outside of Business Premises

- 3.12.1 The granting of permissions for the placing of an object or structure on, in, or over a highway for the purpose of the production of income, in particular in relation to refreshments and advertising, is provided for by section 115 of the Highways Act 1980.
- 3.12.2 With the recent regeneration of the town centres, it has become increasingly popular for businesses to offer an outdoor seating area for the consumption of refreshments purchased from the business. In such cases, a licence is required from the licensing authority. This provision not only relates to tables and chairs for the consumption of refreshments, but also to advertising structures such as 'A' boards.
- 3.12.3 The licensing powers provided by section 115 of the Highways Act 1980 are available to both District and County Councils in two-tier authority areas. As the legislation is designed to ensure that highways are kept free of obstructions and nuisance, the Council are of the opinion that Hertfordshire Highways, acting as the Highway Authority on behalf of Hertfordshire County Council, are best placed to administer this function.
- 3.12.4 It is proposed within the Street Trading Policy, therefore, that the Council will not issue any permissions pursuant to section 115 of the Highways Act 1980. All applications for tables and chairs provided for the consumption of refreshments, or advertising structures such as 'A' boards, on the highway would need to be made to Hertfordshire Highways.
- 3.12.4 Discussions have taken place between the Council and Hertfordshire Highways in respect of this issue and Hertfordshire Highways have acknowledged in writing that section 115 licensing is their responsibility. This decision is consistent with the Council's adopted policy of not undertaking the duties of another regulator without robust reasons for doing so
- 3.12.5 Negotiations between the Head of Housing and Public Protection and the District Manager (North Herts) of Herts Highways are progressing with view to the adoption of a new Highways Enforcement Agreement that will formalise this approach.

4. APPROACH TO THE STREET TRADING POLICY

- 4.1 The development of the Street Trading Policy has been based upon a consultation process undertaken by the Licensing and Enforcement Team, with consideration to the existing legislative requirements and current case law.
- 4.2 The consultation process was undertaken between Monday 7th June 2010 and Monday 30th August 2010 inclusive. A policy consultation page was created on the Council's website including the proposed policy and an explanation of the process for making a representation.
- 4.3 A letter advising of the consultation process was sent to each of the following consultees:
- (i) All existing Street Trading consent holders;
 - (ii) Hertfordshire Constabulary;
 - (ii) NHDC Councillors (via Members Information Service);
 - (iii) NHDC Legal Services;

- (iv) All existing licence holders as defined under the Licensing Act 2003;
- (v) Neighbouring Authorities in Hertfordshire;
- (vi) Responsible Authorities as defined under the Licensing Act 2003;
- (vii) Hertfordshire Highways; and
- (ix) Town Centre Managers

4.4 It was felt that, in general terms for the purpose of the initial consultation, the current procedures appeared to be working well, therefore, no significant changes were proposed in respect of policy content.

4.5 Development of the Policy

4.5.1 The law on this aspect of local authority licensing is complex and is evolving rapidly. In particular, the ability to set local policies leads to a significant degree of variation from one authority to another. It would be of assistance to local businesses, charities and community groups, therefore, if the Council's views on street trading could be clarified and published in an adopted policy.

4.5.2 Likewise, the relationship between this Council and Hertfordshire County Council, acting in its capacity as Highway Authority, vis-à-vis licensing and associated highway enforcement matters would benefit from formal clarification. In particular, the Highways Act 1980 is silent as to which council, in 2 tier administrative areas, should entertain Section 115 licence applications and enforce statutory provisions pertaining to highway obstructions.

4.5.3 The blanket designation of consent streets within the conurbations of North Hertfordshire, by virtue of the Local Government (Miscellaneous Provisions) Act 1982, has created a number of anomalous situations as regards not-for-profit trading activity and/or community events. For example, Leys Square and Garden Square in Letchworth Garden City are regularly used for French, Farmers, and Italian markets, etc. Ordinarily, each individual stall, vehicle or pitch would require a specific consent from this Council as they involve the exposure, for sale, of goods unassociated with existing fixed retail premises. It has not been the recent practice of this Council to require such stall vendors, in this context, to possess a consent as this would impose additional costs not only to the entrepreneur or charitable body but also to the Council in terms of additional administrative activity.

4.5.4 In order to have a consistent and robust approach to street trading in the towns of Baldock, Hitchin, Letchworth Garden City and Royston some amendments to the current arrangements are necessary to ensure that the previous resolution of the Council is fully implemented.

4.5.5 These amendments, as incorporated in the draft policy published for consultation, were designed to ensure that the policy is:

- (i) clearly understandable to the public;
- (ii) consistent with the Council's commitment to the regeneration of town centres; and
- (iii) cost neutral, that is the costs of the consents cover the reasonable costs of the Council in terms of administration and enforcement;

4.6 Following the feedback received during the consultation from the Town Centre Managers, it was clear that additional provisions were required for the licensing of town centres to maintain and develop the varied community and cultural activities therein.

4.7 Given the potential impact on the towns, the additional provisions to facilitate the specific needs of the town centres were subject to a further consultation with the Area Committees in 2011.

4.8 Following the additional consultation with the Area Committees, the final draft policy was finalised for consideration by the Licensing and Appeals Committee.

5. CONSIDERATIONS

5.1 Land ownership

5.1.1 One of the major issues arising from the consultation is the difficulty in determining land ownership, particularly in Letchworth Garden City. Whilst any consent issued by the Council would allow street trading, it would not provide consent to actually use the land; permission would also be required from the landowner.

5.1.2 Where an application is received for land that is, or appears to be, highway land, paragraph 3.3.5 of the Policy requires the Council to consult with Hertfordshire Highways. Assuming that the land is highway land, Hertfordshire Highways response to the application will be carefully considered by the Council as part of the determination.

5.1.3 In the case of highway land, if Hertfordshire Highways refuse to grant consent for the land to be used the application will be refused. If Hertfordshire Highways do not refuse consent to use the land but raise concerns relating to the application, consideration would be given to additional conditions addressing the concerns raised.

5.1.4 Should the land subsequently be confirmed as not highway land, paragraph 3.2.3 of the Policy requires the applicant to provide landowner's consent prior to any application being granted.

5.1.5 In the case of land that is privately owned, or where the land ownership is unknown, paragraph 3.2.3 of the Policy requires the applicant to provide land owner's consent as part of the application. If the Council undertook such investigations into land ownership, administrative costs incurred could be considerable particularly where Land Registry searches are necessary. Given that the consent fees should cover the Council's administrative and enforcement costs, provision for land ownership investigations would have to be built into the fees costings which would then make the costs prohibitive to applicants. By putting the onus on applicants to demonstrate landowner support, fees can be kept at a minimal level to encourage applications. Where an applicant is unable to provide landlord's consent due to uncertain ownership, consent will be refused and the applicant encouraged to find an alternative location.

5.2 Facilitating town centre trading

5.2.1 The intention of the Policy is to provide applicants with clear and consistent guidance of how the Council will regulate street trading following the resolution of Full Council to adopt the street trading provisions in April 2005.

5.2.2 It was clear from the feedback from all Area Committees that town centre activities, both commercial and not-for-profit, should be encouraged and that,

where possible, regulatory burdens discouraging such trading should be removed.

- 5.2.3 Area Committees were particularly keen to see not-for-profit organisations encouraged to use town centres and were concerned that as the law stands each individual stall would require its own individual consent.
- 5.2.4 In order to assist not-for-profit organisations, the Policy provides for the issuing of Town Centre Consents that can be issued for a twelve month period. The consent holder could then allow different organisations to use that consent rather than have to obtain their own individual consents.
- 5.2.5 The consent holder would be responsible for ensuring that the consent conditions were complied with which could further assist individual users as the requirements of the consent conditions, particularly those with cost implications, could be split between the consent users.
- 5.2.6 Given the complexity of land ownership the Policy proposes that any person may apply for a Town Centre Consent to allow maximum flexibility to town centre organisations. There would be a requirement, however, for the applicant to demonstrate that they have land owner's consent to use the land covered by the Town Centre Consent (see paragraph 5.1.5).
- 5.2.7 The Town Centre Consent holder would be permitted to allow both commercial and not-for-profit organisations to use the annual consent. Whilst commercial organisations could be charged a fee by the consent holder to use the permit, no such charge would be permitted for not-for-profit organisations.
- 5.2.8 A Town Centre Consent does not reserve exclusivity of that area to the consent holder. If the use of a Town Centre Consent is refused, an application for an individual consent can still be made to the Council. In determining such an application, however, the Council would consider any activities already planned under a Town Centre Consent to ensure the promotion of the objectives of this policy.
- 5.2.9 In order to ensure that holders of Town Centre Consents are considering applications in a fair and appropriate way, they will be required to keep records of all applications and decisions made to allow the Council to monitor the use of Town Centre Consents. Additionally, the Council will require all applications to the consent holder to be determined in accordance with the Council's Policy. These requirements form part of the conditions attached to Town Centre Consents and therefore if the consent holder fails to follow the correct process, the Council has the ability to withdraw the consent for failing to comply with conditions.

5.3 **Markets / community events**

- 5.3.1 Continental markets, either in their own right or part of a larger community event, contribute to the town centre economy by encouraging additional footfall in the town.
- 5.3.2 As the law stands each individual stall would require its own individual consent unless the market was part of an existing licensed or charter market. Clearly this additional administrative requirement and cost for stallholders may prohibit the provision of these markets.

- 5.3.3 The Policy would allow for the market organiser to apply for a single time specific consent for the whole market providing the applicant could demonstrate that they have landowner's permission to use the land.
- 5.3.4 As with Town Centre Consents, the consent holder would be able to charge a fee for the use of the consent.
- 5.3.5 Community activities such as Fun Days, Street Fairs, etc provide an important contribution to the vibrancy of towns, as well as providing valuable fundraising opportunities for the community organisations. As with markets, community event organisers would also be able to apply for a time specific Community Event Consent to facilitate such events. No charge for the use of these consents would be permitted in the case of not-for-profit organisations.

5.4 Tables, chairs and 'A' boards

5.4.1 Section 115 of the Highways Act 1980 provides for either the District or the County Council in two tier authority areas to undertake the licensing of structures placed on the highway for the purposes of:

- (i) the consumption of refreshments purchased from a business; or
- (ii) advertising any business (for example, 'A' boards)

5.4.2 It is the Council's adopted policy not to undertake regulatory activity on behalf of other authorities unless there are compelling reasons to do so.

5.4.3 Equally, as this particular form of regulation is designed to manage obstructions to the highway it is appropriate that decision making in connection with this issue is undertaken by a body experienced in highways matters.

5.4.4 For these reasons, the Council consider that Hertfordshire Highways is better placed to undertake this activity and is actively seeking a formal Highways Enforcement Agreement that will reflect this. In the meantime, written confirmation has been received from Hertfordshire Highways agreeing to undertake section 115 licensing and so the Policy confirms this arrangement.

5.4.5 The Policy confirms that any application for permission in accordance with paragraph 5.4.1 of this report must be made to Hertfordshire Highways who act as the licensing and enforcing authority for such applications.

5.5 Council owned land

5.5.1 Council owned land within the four towns provides an excellent opportunity for the encouragement of community and cultural activities. Sometimes, however, restrictions on the use of the land exist, for example in the case of land that has benefited from Heritage Lottery Funding.

5.5.2 Use of such land for community events is to be encouraged by the Council, however, as the law stands, stallholders within community events would each require an individual consent. Clearly this additional administrative requirement and cost for stallholders may restrict or prohibit these events.

5.5.3 The Policy provides for a single time specific Council Land Consent that would facilitate such events. Whilst it would be permissible for commercial organisations to be charged a fee for using such a consent, no fee would be levied on not-for-profit organisations.

5.5.4 In order to ensure that Council land is only used in accordance with any restrictions placed on it and to ensure that the condition of the land, particularly green areas, is maintained, Council Land Consents will only be issued to organisations that have fulfilled the requirements of the Council's Safety Advisory Group.

5.6 Fees

5.6.1 Area Committees were concerned that the fees for the issuing of any street trading consent were set in such a way that they cover the Council's reasonable administrative and enforcement costs but do not prohibit charitable, community and cultural activities.

5.6.2 The proposed Policy states at paragraph 8.1 that any fees charged should cover the reasonable cost of administering and enforcing this service.

5.6.3 The proposed Policy states at paragraph 8.5 that the Council reserves the right to vary fees dependant on the individual circumstances of each application and exempts not-for-profit organisations from fees, either directly or when using any of the special consents mentioned in paragraphs 5.2, 5.3 and 5.5 of this report.

5.7 Not-for-profit organisations

5.7.1 In ensuring that the Area Committees' concerns that charitable, community and cultural activity is encouraged, the proposed Policy contained within **Appendix C** exempts such organisations from fees.

5.7.2 Given the wide-ranging definitions of 'charitable' and the subjective nature of what is a 'cultural event', the definition used in the Policy relating to the fees exemption is 'not-for-profit' organisations. This definition should be sufficiently wide to encompass all organisations intended to benefit from the exemption but equally exclude any commercial organisation claiming to provide cultural or community benefits for commercial profit.

6. LEGAL IMPLICATIONS

6.1 The Licensing and Appeals Committee's terms of reference include 'to consider all Licensing matters with the exception of the statements of licensing policy under the Licensing Act 2003 and the Gambling Act 2005 and those matters delegated to the Licensing Sub-Committee and the Strategic Director'. The Licensing and Appeals Committee will therefore consider the draft policy and decide whether to make a recommendation to Cabinet as to its implementation.

6.2 Cabinet's terms of reference include 'to prepare and agree to implement policies and strategies other than those reserved to Council.'

6.3 Any changes in street designation require a resolution to be passed by Full Council. The steps to be followed are outlined in Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982:

- (i) The Council must publish a notice of intention to pass the resolution in a local newspaper with a copy of the draft resolution.
- (ii) Representations may be made and a time limit of at least 28 days must be specified for receipt of representations. A copy of this notice

must also be served on the Chief Officer of Police and the Highways Authority.

- (iii) The Council must then consider any representations and decide whether or not to proceed with the designation and pass a resolution to this effect
- (iv) Once the resolution has been passed, the Council must publish that fact for two consecutive weeks in a local newspaper.
- (v) There must also be a period of 28 days between publication of the resolution in the local newspaper and the date on which the resolution comes into force.

The same procedure must be followed to re-designate any streets already designated.

- 6.4 Street trading consents may not be granted to persons less than 17 years old and the Council may attach such conditions as it considers reasonably necessary. In particular, conditions to prevent obstruction of the street, danger to persons using it, or nuisance or annoyance. The consent may be granted for any period not exceeding 12 months, may be revoked at any time and may stipulate the times between which trading can take place.
- 6.5 A person who engages in street trading in a prohibited street, or in a consent street without being authorised to do so, or contravenes a condition, is guilty of an offence liable on conviction to a fine not exceeding £1,000.
- 6.6 The other legal implications, such as the relevant legislation, are set out within the body of the report.

7. FINANCIAL AND RISK IMPLICATIONS

- 7.1 When setting the fees associated with this Policy, it is important that costings are undertaken to ensure that the Council's reasonable administrative and enforcement costs are recovered through the fees structure.
- 7.2 Assuming the principle of 7.1 above is achieved, this Policy will not place any new financial resource implications on the Council.
- 7.3 Given the intention to facilitate the majority of town centre trading through multi-user consents and the intention not to charge not-for-profit organisations, this Policy will not significantly increase the fees income received by the Council.
- 7.3 As the refusal to grant, or imposition of conditions on, consents has no appeal to the Magistrates Court it is essential that the Council exercises its discretion reasonably and consistently to avoid the risk of a judicial review or an Ombudsman complaint. The provision of a robust Policy will help mitigate this risk.
- 7.4 Street trading and its associated licensing/enforcement activity is not considered to represent a significant risk to the Council and, therefore, there is no corresponding entry on the Council's Risk Register.

8. HUMAN RESOURCE AND EQUALITY IMPLICATIONS

- 8.1 The processing of the additional consents arising from this Policy can be incorporated within the existing staffing resource. The number of additional consents required is likely to be minimal, as it is anticipated that Town Centre Consents will be issued in each town to facilitate community and cultural events. Specialist and occasional markets, likewise, are likely to be subject to Special Event / Market Consents rather than individual applications.
- 8.2 The Council incorporates the statutory equalities duties which apply to all its activities into policies and services as appropriate, as set out in the Council's Corporate Equality Strategy. We also recognise that in our society, groups and individuals continue to be unfairly discriminated against and we acknowledge our responsibilities to actively promote good community relations, equality of opportunity and combat discrimination in all its forms.

9. CONSULTATION WITH EXTERNAL AND INTERNAL STAKEHOLDERS

- 9.1 The full list of consultees is contained in paragraph 4.3 of this report.
- 9.2 The original draft of the Street Trading Policy, as used for the consultation, is available on the Council's website. A hard copy can be forwarded on request.
- 9.3 A schedule of comments received in response to the public consultation and the action taken in respect of these comments is attached as **Appendix A** of this report.
- 9.4 A schedule of comments received in response to the additional Area Committee consultation and the action taken in respect of these comments is attached as **Appendix B** of this report.
- 9.5 The proposed Street Trading Policy, incorporating amendments, is attached as **Appendix C** of this report.

10. RECOMMENDATIONS

- 10.1 That the proposed Street Trading Policy, as attached at **Appendix C** to the report, incorporating the results of the public and Area Committee consultation exercises, be supported by the Licensing and Appeals Committee.
- 10.2 That the Licensing and Appeals Committee recommend to Cabinet the formal adoption of the Street Trading Policy as contained within **Appendix C**.
- 10.3 That the Licensing and Appeals Committee recommend to Full Council the formal resolution of all streets within the town centres of Baldock, Hitchin, Letchworth Garden City and Royston, as annotated within Appendices A to D of the Street Trading Policy, and all arterial roads within North Hertfordshire, as listed in paragraph 2.2.3 of the Street Trading Policy, as consent streets for the purpose of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.

11. REASONS FOR RECOMMENDATIONS

- 11.1 As matters stand, a consent is required for each stall, van or pitch associated with street trading within the consent street areas adopted by the Council in 2005. Whilst this arrangement is appropriate for specific traders in locations

such as lay-bys, it creates a logistical problem in respect of open areas within town centres that host not-for-profit events that are transient in nature. The costs of securing a consent for each stall, pitch, etc., in these circumstances are likely to be significant both in terms of the overall profitability of the event and the community benefit associated with it.

- 11.2 The proposals contained within this report will encourage activity such as continental markets, charitable fund raising events, etc., in the town centres of Baldock, Hitchin, Letchworth Garden City and Royston by changing the requirement for each consent application (currently limited to a single van, pitch or stall) to be accompanied by confirmation of public liability insurance cover of a maximum claim value of at least ten million pounds. The adoption of the proposed Street Trading Policy will enable town centre landowners, or their agents, and not-for-profit event organisers to apply for a collective consent. Whilst this will also need to be supported by the prescribed level of public indemnity insurance, this collective approach to street trading will enable transient street traders to operate from these locations without them necessarily having to individually secure the prescribed level of insurance cover; this would remove a significant obstacle for smaller traders and charities.
- 11.3 The granting of a consent by virtue of the Local Government (Miscellaneous Provisions) Act 1982 does not amount to a disturbance of market rights associated with the existing charter or statutory markets operating locally.
- 11.4 Given the proliferation of tables, chairs, 'A' boards and other objects placed on the highway within the urban centres of North Hertfordshire some form of active regulatory control is necessary. Appropriate control will enable businesses to operate from the highway where it is safe to do so, but prevent pedestrians (and other users of the highway) from being unduly inconvenienced or put at significant risk.
- 11.5 Since section 115 of the Highways Act 1980 essentially seeks to manage obstructions to the highway it is appropriate that decision making in connection with this issue is undertaken by a body experienced in highways matters. The proposed Policy also reflects the agreed policy of this Council that it will not routinely undertake the duties of another public body. For these reasons, Hertfordshire Highways is better placed to undertake this activity than North Hertfordshire District Council.

12. ALTERNATIVE OPTIONS CONSIDERED

- 12.1 The regulation of town centre street trading could be implemented in strict accordance with the Council's resolution of April 2005, however, this would significantly hinder the active use of town centres, in particular by not-for-profit organisations, as described earlier in this report.
- 12.2 Alternatively, the consent street status of pedestrianised areas and parks of the town centres of Baldock, Hitchin, Letchworth Garden City and Royston could be removed. This would effectively deregulate all street trading within these areas, however, this would limit the Council's powers to deal with nuisances, dangers and other potential deleterious issues associated with street trading at these locations.
- 12.3 Neither North Hertfordshire District Council or Hertfordshire County Council are obliged by the Highways Act 1980 to take enforcement action to control

obstructions to the highway. Accordingly, the increasing use of the highway to support business activity could continue unchecked.

13. APPENDICES

- 13.1 Appendix A - Schedule of comments received during the consultation, including recommendations
- 13.2 Appendix B - Schedule of comments received during the additional consultation with the Area Committees, including recommendations
- 13.3 Appendix C - Proposed Street Trading Policy

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15. BACKGROUND PAPERS

- 15.1 Local Government (Miscellaneous Provisions) Act 1982.
- 15.2 Council resolution of 26th April 2005 in respect of the adoption of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.