

SOUTHERN RURAL COMMITTEE

24 MARCH 2011

***PART 1 – PUBLIC DOCUMENT**

AGENDA ITEM No.

6

**TITLE OF REPORT: EXTENDED CONSULTATION REGARDING NEW PROPOSALS FOR
INCORPORATION INTO A STREET TRADING POLICY**

REPORT OF THE HEAD OF HOUSING AND PUBLIC PROTECTION

1. SUMMARY

- 1.1 The Council recently undertook a public consultation regarding the adoption of a policy concerning Trading in Public Accessible Places.
- 1.2 The consultation took place between 7th June 2010 and 30th August 2010. The consultation invited the following to comment on the policy:
- All existing street trading permit holders;
 - Hertfordshire Constabulary;
 - NHDC Councillors;
 - NHDC Legal Services;
 - All existing licence holders as defined under the Licensing Act 2003;
 - Chambers of Commerce;
 - Neighbouring Hertfordshire Authorities;
 - Responsible Authorities as defined under the Licensing Act 2003;
 - Hertfordshire Highways; and
 - MIS

Comments were only received from the Town Centre Managers and Officers of the Council.

- 1.3 The purpose of this report is to consult the Area Committees in respect of Officers' proposals regarding the comments made by the Town Centre Managers.

2. BACKGROUND

2.1 Street Trading

The Council's powers in respect of street trading, as provided by the Local Government (Miscellaneous Provisions) Act 1982, have been considered by the Council on a number of occasions in the 1980s. However, the Council resolved on 26th April 2005 (minute 116) the following:

- to classify a number of streets within Baldock, Letchworth Garden City and Royston as Prohibited Streets (see paragraph 2.1.1 below)
- to make *all* streets within the conurbations of Hitchin, Letchworth Garden City, Baldock and Royston Consent Streets (see paragraph 2.1.2 below) with the exception of those determined to be Prohibited Streets
- to make major arterial roads within with the District Consent Streets, with trading limited to lay-bys only (see paragraph 2.1.2 below)
- that no street within the District shall be a Licence Street

The Council, at its meeting in April 2005, also resolved to adopt a common set of conditions to be applied to all Consents – these have since been superceded by the conditions included as part of the proposed policy.

The recorded reason for this decision was cited as follows:

- (1) To regulate street trading on specified streets in the administrative district of North Hertfordshire to prevent nuisance, obstruction of the highway and to encourage fair trade.
- (2) To ensure consistency in the administrative arrangements for the granting of consents and permissions within the town centres of Hitchin, Letchworth, Royston and Baldock.

2.1.1 Prohibited Streets

Table 1 summarises the streets that have been resolved by the Council to be Prohibited Streets as it is not safe to allow a vehicle or stall to trade from these locations.

Table 1

| | |
|--|---|
| Baldock <ul style="list-style-type: none">• High Street• Simpson Drive• Whitehorse Street• The Twitchell• Mansfield Road• Old slip road off South Road at roundabout with London Road | Letchworth Garden City <ul style="list-style-type: none">• Arena Parade• Gernon Road• Station Road• A1641 (Letchworth Gate) from junction with A1 to A505• Norton Way South (from Gernon Road to Station Road) |
| Royston <ul style="list-style-type: none">• Fish Hill• George Lane• King Street• Melbourn Street and Priory Lane• John Street• Kneesworth Street• Lower King Street• Baldock Street• Princes Mews | Hitchin <ul style="list-style-type: none">• There are no prohibited streets in Hitchin |

2.1.2 Consent Streets

The streets (with reference to the wide statutory definition) within the main conurbations of North Hertfordshire have been collectively determined to be Consent Streets as regards the Local Government (Miscellaneous Provisions) Act 1982; the only exception are those areas adopted as Prohibited Streets, above. Maps showing the boundaries of each town as regards Consent Street status are attached in Appendices A to D.

Furthermore, the following roads (as summarised in Table 2) have also been designated as Consent Streets:

Table 2

| | | |
|--------|--------|---------|
| • A10 | • A505 | • A602 |
| • A507 | • A600 | • A6141 |

However, it was resolved by Council in April 2005 that trading be limited to lay-bys only.

2.2 Whilst the Council adopted Prohibited and Consent Streets, a policy was never introduced to regulate street trading in public accessible places.

2.3 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. This activity is defined as “*the sale and exposing or offering for sale any article, including a living thing, in a street.*” Streets are further defined as to include any road, footway, beach, or other area to which the public have access without payment.

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:

- Prohibited Streets: those which are not open to street traders
- Consent Streets: where street trading is prohibited without local authority consent
- Licence Streets: where trading is prohibited without a local authority licence

Local authorities can place conditions on any Consent or Licence. The Act also 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 conviction, to a fine of up to £1000.

However, there are a number of exemptions provided in the Act:

- Trading as a Pedlar (see below)
- A market trader operating at a licensed market venue
- A news vendor selling only newspapers and periodicals (Big Issue vendors use this exemption)
- Trading at a petrol station
- Trading carried on in a street linked to an adjoining shop premises
- Charitable collections (see below)
- 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 (see below)

3. ISSUES

3.1 The Council's strategic priorities are:

- **Town Centres** to include delivery of actions arising from each of our four town centre strategies, sustaining our town centre businesses.
- **Green Issues** to include development of our final climate change strategy and increasing opportunities for recycling and in-vessel composting
- **Sustainable Development** to include controlling development and preserving our greenbelt/rural way of life wherever possible

The *Town Centres* priority is the most pertinent to this report. Whilst street trading, pedlars, and 'A' boards are not necessarily restricted to urban areas, recent experience suggests that they all have a particular impact on the Central Business Districts (CBDs) within North Hertfordshire. Accordingly, this report seeks to influence Town Centre activity to reflect the Council's aspirations in this area of public policy.

The adoption of a street trading licensing policy is an action on the 2010/11 Corporate Plan.

3.2 The issues raised by the Town Centre Managers are:

- i) requiring every street trading stall to have its own street trading consent would discourage town centre activity; and
- ii) non-commercial and charitable organisations would be discouraged for the reasons mentioned above.

3.3 The Officers' proposal is to grant the Town Centre Manager an annual permit for a predefined area. The Town Centre Manager would be able to allow traders to operate under the annual consent without the need to obtain their own additional consent and the need to pay the Council a fee for each consent submitted.

3.4 The Town Centre Managers consent would be issued with the same Terms and Conditions as an individual permit with the Town Centre Managers being responsible for compliance of those conditions.

3.5 If the Town Centre Manager chose not to allow an individual to use his consent that individual can still apply to the Council for their own individual consent.

3.6 The fees applicable to consents should only reflect the reasonable administration and enforcement activity in issuing the consent. This fee will be set annually by the Head of Housing and Public Protection in conjunction with the Portfolio Holder.

3.7 For any application not covered by the Town Centre Managers consent the Council would receive a fee to cover the Council's reasonable administration and enforcement costs.

- 3.8 For any application covered by the Town Centre Managers consent when the Town Centre Manager allowed multiple applications the Council would not receive an income directly as no application would be received.
- 3.9 The Council therefore is seeking the Area Committees views on whether they think that the Council should issue a Town Centre Managers annual consent and if so should there be a charge for it ?
If the Town Centre Managers expectations is for the Council to undertake the administration and enforcement, how will the Council recover their costs?
- 3.10 The Officers' proposal is that any fee charged by the Town Centre Manager for use of his permit should be split so that the Council receive their administration and enforcement cost with the balance being retained by the Town Centre Manager for enhancement and redevelopment of the town centre.
- 3.11 In relation to non-commercial and charitable organisations, the Council have the option not to charge for a consent. The Council, however, would have to undertake any administration or enforcement which would be at a direct loss to Council income. The decision to waive the need for a consent would be a decision of the Council not the Town Centre Manager. Does the Area Committee wish the Council to waive the need for a consent application and/or fee for non-commercial and local charitable organisations.
- 3.12 The proposed Street Trading Policy will be presented to the Licensing and Appeals Committee along with the proposed policies for Street Collections and House to House Collections. These two policies were sent to all Area Committee Chairman during the consultation process and have therefore not been attached to this report. The consultation on both policies has concluded, but officers are happy to answer any questions on these and how they relate to the draft Street Trading Policy being presented.

4. LEGAL IMPLICATIONS

- 4.1 There is no legal requirement for a policy, it is not a statutory policy such as that required under the Licensing Act 2003 and Gambling Act 2005.
- 4.2 A policy would ensure a transparent and consistent approach to licensing that would reduce the opportunity for challenge through the Courts.
- 4.3 Area Committees in their terms of reference may "consider the policies and actions of the Cabinet as to their appropriateness to the needs and aspirations of local communities" and "provide local input into centrally determined specifications for all services".
- 4.4 The policy will be considered by the Licensing and Appeals Committee who "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 of Finance Policy and Governance". Responsibility for adopting the policy lies with Cabinet who "prepare and agree to implement policies and strategies other than those reserved to Council".

5 FINANCIAL AND RISK IMPLICATIONS

- 5.1 An appropriate system should be implemented to allow the Council to cover the full costs of operation in order to protect the core budget.
- 5.2 The risk is that additional cost pressures could fall to the Revenue budget and therefore divert resource away from other Priority areas.

6. HUMAN RESOURCE AND EQUALITIES IMPLICATIONS

- 6.1 This Policy will not place any new human resource implications on the Council. The additional administration will be covered by existing officers.
- 6.2 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.

7. RECOMMENDATIONS

- 7.1 For the Area Committees to note the report and provide feedback as part of this additional consultation on the specific Town Centre issues.

8. REASONS FOR RECOMMENDATIONS

- 8.1 As one of the Council Strategic objectives is Town Centres, and in order for this report to fully address this objective, it was felt necessary to ask the Area Committees for their views as part of the wider consultation

9. OTHER OPTIONS CONSIDERED

- 9.1 The only other option to consider is to proceed with the Policy as originally consulted upon. This option was discounted due to its negative impact on Town Centre.

10. APPENDICES

- 10.1 Appendix A: Hitchin – Consent Street map
- 10.2 Appendix B: Letchworth Garden City – Consent Street map
- 10.3 Appendix C: Baldock – Consent Street map
- 10.4 Appendix D: Royston – Consent Street map

- 10.5 Appendix E: Hitchin – Proposed Town Centre Manager consent area
- 10.6 Appendix F: Letchworth – Proposed Town Centre Manager consent area
- 10.7 Appendix G: Baldock – Proposed Town Centre Manager consent area
- 10.8 Appendix H: Royston – Proposed Town Centre Manager consent area

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12 BACKGROUND PAPERS

- 12.1 Local Government (Miscellaneous Provisions) Act 1982 Section 3, 37 and Schedule 4
- 12.2 Council minutes: 26th April 2005
- 12.3 The draft Street Trading Policy