

**LICENSING AND APPEALS COMMITTEE
28 NOVEMBER 2017**

PART 1 – PUBLIC DOCUMENT

AGENDA ITEM No.

7

TITLE OF REPORT: CONSIDERATION OF AMENDMENTS TO THE STREET TRADING POLICY

REPORT OF THE: HEAD OF HOUSING AND PUBLIC PROTECTION
EXECUTIVE MEMBER: HOUSING AND ENVIRONMENTAL HEALTH
COUNCIL PRIORITY: PROSPER AND PROTECT

1. EXECUTIVE SUMMARY

- 1.1 Licensing of street trading, whilst governed by national legislation, provides for local discretion. Having a clear and transparent policy will assist applicants' understanding of the process and facilitate consistent decision-making by the Council.
- 1.2 Any Council Policy should be kept under review to ensure it remains fit for purpose therefore a public consultation was recently undertaken in respect of some minor amendments to the Policy.
- 1.3 This report seeks Members' approval of amendments to the existing Policy.

2. RECOMMENDATIONS

- 2.1 That the Committee:
 - (i) Consider the results of the public consultation and support the policy amendments;
 - (ii) Determine that the proposed amendments are minor in so far as they do not amend the licensing principles or main focus of the existing Policy;
 - (iii) Recommend that the Executive Member for Housing and Environmental Health approves the policy amendments under delegated powers;
 - (iv) Request officers to continue to investigate the available options, in conjunction with Hertfordshire County Council, in respect of the regulation of tables/chairs and 'A' boards.

3. REASONS FOR RECOMMENDATIONS

- 3.1 The existing policy has worked well since its adoption with effect from 2 April 2012 therefore no significant amendments were deemed necessary.
- 3.2 This view was supported by the responses to the public consultation.

LAC (28.11.17)

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Consideration was given to the incorporation of table/chairs and 'A' Board licensing within this Policy however this function is predominately one for the County Council, in their role as the Highways Authority, under Part VIIA of the Highways Act 1980.
- 4.2 Further consideration would need to be given to the financial and resourcing impact on the Council of undertaking the administration and enforcement of this discretionary function.
- 4.3 The Council would be reliant on information from the County Council in respect of the precise location of the highway, given that this function is restricted to regulating objects on the highway; definite highways maps are not currently available.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 The proposed amendments to the existing policy were highlighted in red and publicised on a specific licensing consultation webpage on the Council's website. All existing consent holders and consultees were contacted and signposted to the consultation page.
- 5.2 Given the potential to impact directly on town centres, a report summarising the proposed amendments was presented to each Area Committee.
- 5.3 The Executive Member for Housing and Environmental Health was consulted throughout the process.

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key decision that was first notified to the public in the Forward Plan on 5 May 2017.

7. BACKGROUND

- 7.1 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 is not an automatic entitlement and Council's must formally adopt the legislation if it wishes to regulate street trading in its area.
- 7.2 On 26 April 2005, the Council resolved to adopt the legislation and designate all streets within the conurbations of Baldock, Hitchin, Letchworth Garden City and Royston as consent streets. The Council further resolved to designate the main arterial roads within North Hertfordshire as consent streets but restricting trading to lay-bys. No streets within the rural villages were designated for the purpose of street trading regulation.
- 7.3 In order to ensure a clear and transparent licensing process, a Street Trading Policy was drafted during 2011 to seek to address some of the issues that had arisen since the Council's original adoption of the legislative provisions for the regulation of street trading.

- 7.4 The Policy sought to simplify the street trading process in a way that would not prohibit the provision of community and not-for-profit events in the town centres, whilst ensuring appropriate safeguards for the public.
- 7.5 Annual Town Centre Consents, Market/Special Event Consents and Council Land Consents were introduced whereby organisations such as BIDs could hold a consent for the town centre and allow community and not-for-profit organisations to utilise that consent rather than having to apply for their own. Equally, a Market/Special Event Consent could be obtained for community events, specialised markets, etc. rather than individual consents having to be obtained.
- 7.6 To ensure maximum flexibility, rather than designating streets as prohibited streets that would prevent street trading at all times, the Policy included a list of streets where an application would ordinarily be refused. This would allow a consent to be granted on a street that was temporarily subject to a road closure to facilitate an event whilst refusing an application at all other times due to the unsuitability of the street.
- 7.7 Following a public consultation, the Street Trading Policy was adopted to take effect from 2 April 2012.

8. RELEVANT CONSIDERATIONS

- 8.1 To assist the Committee with their deliberations, every proposed amendment is highlighted in red in the proposed Policy attached as Appendix C.

Policy Duration

- 8.2 In order to ensure that a policy is reviewed periodically, historically each policy has included the date by when it should be reviewed. If this date is passed, the Policy doesn't lapse but is at risk of challenge for not being kept under review. As part of the consultation it was proposed to extend the policy duration from five years to seven years, however Letchworth Area Committee expressed concern that changing circumstances could render a period of seven years as too long.
- 8.3 On reflection, a fixed term policy could be considered inappropriate particularly with ever-changing legislative or local requirements. A policy should be kept under regular review with the ability to amend or re-consult where necessary. As policy is a matter for Members, it is felt that the Executive Member for Housing and Environmental Health is best placed to determine when a policy should be amended or reviewed.
- 8.4 The Policy therefore has no fixed duration but will be kept under periodic review by the Executive Member who will have the authority to amend, approve for continuation or require a full consultation prior to a new policy being considered by Cabinet.

Lay-by Configuration

- 8.5 Trading on the arterial roads designated as consent streets is restricted to lay-bys only. The Highways Agency have responded to consultations for recent applications by providing a plan detailing the only lay-by design where they would support an application for street trading consent. To assist applicants, this layout plan has been incorporated within the Policy with a supporting paragraph explaining that only applications complying with the approved design is likely to receive consent.

Streets where Consent would ordinarily be Refused

- 8.6 Each Area Committee was specifically asked whether they wished to amend the list of streets currently included within those where consent would ordinarily be refused. Each Committee was content with the existing designations therefore no amendments are proposed.

Annual Consents with Quarterly Payments

- 8.7 Currently, individual consent holders pay for their consents quarterly and receive a quarterly consent. In order to increase efficiency, the Policy proposes to issue an annual consent subject to quarterly payments being received prior to the expiry of each quarter. At the suggestion of the Letchworth Area Committee, consent holders will be encouraged to enter into a direct debit arrangement with the Council to ensure each quarterly payment is received in a timely manner.

Council Land Consents

- 8.8 When a community or not-for-profit organisation wishes to organise an event on Council owned land they need to apply for a land licence; if the event involved street trading a separate application would be required for street trading consent. This is unnecessary duplication for voluntary organisations therefore it is proposed that an application for a land licence for the use of Council land also includes street trading consent.

Tables/Chairs and 'A' Boards

- 8.9 Both the Hitchin and the Letchworth Area Committees raised serious concerns in respect of the proliferation of 'A' Boards in the town centres and, to a lesser degree, tables and chairs on the town centre footways.
- 8.10 Section VIIA of The Highways Act 1980 regulates the provision of advertising structures and tables and chairs on the highway and is a function that can be undertaken either at County or District level. As this function would place a significant administrative and enforcement burden on the Council for which it could only recover its reasonable costs through licensing fees, it has historically been regarded as a County function.
- 8.11 In addition to the increased workload of this discretionary function, another significant obstacle to the Council undertaking this regulation is that there are no definitive maps available outlining the extent of the highway in each town. As regulation is restricted to the highway, the Council would be unable to effectively undertake this function without such clarification.
- 8.12 This Policy doesn't propose to include the licensing of advertising structures or tables and chairs on the highway for the reasons stated above. This report does however include a recommendation that officers investigate the options for future regulation of these structures which can be considered by Members at the appropriate time. As any proposal to include this additional regulation would be a significant amendment to the Policy, any proposal would be subject to a full public consultation and a decision being taken by Cabinet.

Clarification

- 8.13 Since the adoption of the Street Trading Policy, a number of minor administrative issues have arisen whereby some clarification of the wording of the Policy was necessary. The main areas for clarification have been the process for determining a departure from policy, revocation of a consent and the ability to amend standard consent conditions. This clarification has been included within the amended Policy.

Additional Standard Conditions suggested by Environmental Health

- 8.14 Environmental Health has a statutory duty to undertake regulation of the practices of businesses or individuals selling food to the public; they also have a statutory duty to ensure the health & safety of the public.
- 8.15 To supplement this role, the Environmental Health Team suggested some additional standard conditions during the consultation period that would assist them with ensuring the public remain protected. These conditions relate to matters such as Town Centre Consent holders being required to obtain certain information from food traders in advance of events, requiring infrastructure within a food vending vehicle/stall to promote food hygiene and health & safety best practice, and requiring risk assessments for any traders providing live animals as part of any event.
- 8.16 As protecting the public is one of the four objectives of the Policy, all suggested Environmental Health conditions have been included.

Definition of Minor Amendments

- 8.17 The Council's Constitution reserves "*to prepare and agree to implement policies and strategies other than those reserved to Council*" for Cabinet and all new licensing policies, other than those reserved to Council, have been referred to Cabinet for adoption. Once a policy has been adopted by Cabinet, an Executive Member has the authority for "*making minor amendments to adopted strategies, policies and procedures*".
- 8.18 The Constitution is however silent on the definition of a minor amendment therefore a definition can be sought from the existing adopted Policy. The current Policy adopted by Cabinet included a section entitled "Amendments to Policy". Within that section, a *substantial amendment* was defined as one that is likely to have:
- (i) *a significant financial effect on licence holders; or*
 - (ii) *a significant procedural effect on licence holders; or*
 - (iii) *a significant effect on the community.*

The Policy then clarifies that a minor amendment is defined as any amendment that does not fall within the scope of a *substantial amendment* and:

"Any minor amendments to this Policy may be authorised by the Executive Member for Housing and Environmental Health"

In the absence of a definition of minor in the Constitution, the existing Policy can be considered an indication of Cabinet's interpretation of minor when considering the initial adoption of the Policy.

- 8.19 It is suggested that none of the proposed amendments fall within the scope of the *substantial amendment* definition therefore are classified as minor amendments that can be made by the Executive Member. This is further supported by the fact that the four licensing objectives of the Policy remain unchanged.
- 8.20 If the Committee support the contention that the amendments to the existing Policy are minor then the amendments can be authorised by the Executive Member. If however the Committee believe the amendments are not minor and, in effect, a new Policy should be adopted then the proposed Policy should be referred to Cabinet.

9. LEGAL IMPLICATIONS

- 9.1 By virtue of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, adoption of a local policy in respect of street trading regulation is a matter for the Council's Executive.
- 9.2 The Licensing and Appeals Committee's terms of reference within the Council's Constitution includes at section 8.2.3:

"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 of Planning, Housing and Enterprise."

The Committee's role therefore is to consider the draft policy in light of the public consultation and decide whether to make a recommendation to the Executive in respect of adopting the proposed amendments.

As part of that consideration, the Committee should determine whether or not the proposed amendments should be considered 'minor amendments' that could be dealt with by the Executive Member under delegated powers.

In the absence of a definition of 'minor' within the Constitution, the Committee should have regard to the definition of 'minor amendment' within the existing adopted policy.

- 9.3 If the Committee determine that the proposed amendments are 'minor', section 14.8.1(l) of the Constitution states that an Executive Member has authority for:

"making minor amendments to adopted strategies, policies and procedures."

- 9.4 If the Committee determine that the proposed amendments are not 'minor' based on the definition included within the existing adopted policy then authority for adopting a new policy falls with Cabinet by virtue of section 5.6.1 of the Constitution that includes within the terms of reference for Cabinet:

"to prepare and agree to implement policies and strategies other than those reserved to Council."

10. FINANCIAL IMPLICATIONS

- 10.1 The amended policy would have no additional financial implications for the Council. Case law has determined that a Council can recover its reasonable costs of administration and enforcement through licensing fees.

11. RISK IMPLICATIONS

- 11.1 The risk to the Council of not periodically reviewing and amending policy is that the Policy may become outdated and no longer fit for purpose. Given that the Policy is a fundamental element of consistent decision making, a policy that was not fit for purpose would increase the risk of judicial challenge.

12. EQUALITIES IMPLICATIONS

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2 The proposed Policy does not place any barriers or unique requirements on any person on the grounds of ethnicity, gender, religion or any other protected characteristic. Officers work with all applicants and consent holders, where appropriate, to ensure that the Council's duty under the Equality Act 2010 is met, for example, guidance notes could be provided in other languages upon request.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 The Social Value Act and "go local" policy do not apply to this report.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 The policy will not place any new human resource implications on the Council.

15. APPENDICES

- 15.1 Appendix A - Schedule of consultation responses.
15.2 Appendix B - External consultation responses.
15.3 Appendix C - Street Trading Policy (incorporating the proposed amendments).

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

17.1 [Local Government \(Miscellaneous Provisions\) Act 1982](#)

17.2 [Highways Act 1980](#)

17.3 [Existing Street Trading Policy](#)