

# BALDOCK & DISTRICT COMMITTEE

4 SEPTEMBER 2017

PART 1 – PUBLIC DOCUMENT

AGENDA ITEM No.

8

## TITLE OF REPORT: CONSULTATION IN RELATION TO THE PROPOSED STREET TRADING POLICY 2018-2025

REPORT OF THE LICENSING MANAGER

EXECUTIVE MEMBER: HOUSING AND ENVIRONMENTAL HEALTH

COUNCIL PRIORITY: PROSPER AND PROTECT

### 1. EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to provide members of the Baldock Committee with an opportunity to comment on the proposed Street Trading Policy, in particular in relation to any matters specific to Baldock.

### 2. RECOMMENDATIONS

- 2.1 That the Baldock & District Committee notes the report and provides any comments it wishes to be considered as part of the consultation process.

### 3. REASONS FOR RECOMMENDATIONS

- 3.1 A thorough discussion as to the suitability of the proposed Street Trading Policy, particularly with input from the Area Committees as well as the public consultation, will enable a fully informed decision to be made by the Council.
- 3.2 To ensure that the Policy remains appropriate and strikes a balance between proportionate regulation and ease of access to applicants.

### 4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 There are no alternative options to consider as the Policy needs to be periodically reviewed to ensure it remains fit for purpose.

### 5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 The Council will be undertaking a public consultation regarding the adoption of a policy concerning trading in publicly accessible places
- 5.2 The consultation will take place between 1 September and 31 October 2017. The consultation will invite the following to comment on the Policy:

- All existing street trading permit holders;
- Hertfordshire Constabulary
- NHDC Councillors
- NHDC Legal Services
- All existing consent holders

5.3 The Executive Member for Housing and Environmental Health is aware of the public consultation and will be kept fully informed of all consultation responses.

5.4 Upon completion of the public consultation, officers will prepare a report to be considered by the Licensing and Appeals Committee detailing all consultation responses and the proposed policy (including any amendments as a result of the consultation).

5.5 The Licensing and Appeals Committee have the option of making any amendments before recommending a final policy to Cabinet, who have the authority to adopt policy on behalf of the Council.

## **6. FORWARD PLAN**

6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

## **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, however, is not an automatic entitlement and councils must formally adopt the legislation if they wish to regulate street trading in their areas.

7.2 On 26 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. It further resolved to make arterial roads within the District of North Hertfordshire consent streets but with trading limited to lay-bys only. The resolution also stated that no street within the District shall be a licence street.

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

7.4 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.

7.5 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;

- (ii) Consent Streets  
Where street trading is prohibited without local authority consent;
  - (iii) Licence Streets  
where trading is prohibited without a local authority licence
- 7.6 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 summary conviction, to a fine of up to £1000.
- 7.7 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.
- 7.8 The granting of permissions for the placing of tables and chairs outside of a business providing refreshment, or the placing of advertising boards outside of any business, is provided for by section 115 of the Highways Act 1980.
- 7.9 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 is of the opinion that Hertfordshire Highways, acting as the Highway Authority on behalf of Hertfordshire County Council, is best placed to administer this function.
- 7.10 The Council will not, therefore, issue any permission pursuant to section 115 of the Highways Act 1980. All applications for tables and chairs, or advertising structures, on the highway should be directed to Hertfordshire Highways.

## **8. RELEVANT CONSIDERATIONS**

### **Current policy**

- 8.1 The existing policy has worked well since its adoption in 2012 therefore only minor amendments have been proposed.

### **Policy duration**

- 8.2 It is proposed to extend the policy duration from 5 years to 7 years to reduce the administrative burden of reviewing the policy unnecessarily early.

### **Arterial road lay-bys**

- 8.3 Hertfordshire County Council have revised their guidance on the acceptable layout of lay-bys on arterial roads that are suitable for lay-by trading. To assist applicants, this guidance is attached to the Policy as Appendix G and only lay-bys conforming to that guidance will be issued Consents.

### **Annual Consents**

- 8.4 To reduce the administrative burden, it is proposed to replace the issuing of quarterly Consents with annual Consents subject to each quarterly payment being received in advance of each new quarter. Non payment of a quarterly fee would automatically revoke the Consent.

### **Council Land Consent**

- 8.5 Currently, any applicant wishing to use Council owned land for an event has to make two applications; one application for a land licence and another application for street trading permission (if the land is publicly accessible land). To ease this burden for applicants, the application for a land licence will encompass the street trading request thereby removing the need for a separate street trading application.

### **Revocation**

- 8.6 Some clarification on the revocation process has been added to make this process more transparent for existing and potential consent holders.

### **Streets where applications are ordinarily refused**

- 8.7 Whilst the Council has the opportunity to designate streets as prohibited streets, thereby preventing street trading from taking place, this removes flexibility to consider each application on its own merits. For example, trading in a street may be wholly inappropriate ordinarily but may be acceptable when the road was temporarily closed to traffic for town centre events.
- 8.8 To alleviate this issue, the existing policy contained a list of streets where applications would ordinarily be refused (Appendix F of the Policy). It is proposed to continue with this aspect of the Policy therefore the Area Committee should give consideration to any streets it believes should be contained within Appendix F of the Policy.

## **Operational issues or clarification**

- 8.9 Highlighted in red throughout the Policy are minor amendments clarifying various operational issues that have arisen in relation to the existing policy or where the existing policy was silent or ambiguous on certain matters.

## **9. LEGAL IMPLICATIONS**

- 9.1 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.
- 9.2 A policy would ensure a transparent and consistent approach to licensing that would reduce the opportunity for challenge through the Courts.
- 9.3 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”
- 9.4 The policy will be considered by the Licensing and Appeals Committee who “consider all Licensing matters with the exception of statements of licensing policy under the Licensing Act 2003 and the Gambling Act 2005 and those matters delegated to the Licensing Sub-Committee and officers”. Responsibility for adopting the Policy lies with Cabinet who “prepare and agree to implement policies and strategies other than reserved to Council”.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 There are no financial implications as existing case law provides for local authorities to recover the full cost of any licensing process through licensing fees.
- 10.2 Licensing authorities cannot charge more than it reasonably costs to administer and enforce the legislation.

## **11. RISK IMPLICATIONS**

- 11.1 There are no direct risk implications associated with this report as its purpose is to consult the Area Committee as part of a wider public consultation

## **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 There are no specific equalities implications associated with this report.

## **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 This Policy will not place any new human resource implications on the Council as it will be implemented using existing resources

**15. APPENDICES**

- 15.1 Appendix A - Proposed new policy.

**16. CONTACT OFFICERS**

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**17. BACKGROUND PAPERS**

- 17.1 [Existing Street Trading Policy](#)