

**BROMSGROVE DISTRICT COUNCIL**

**LICENSING COMMITTEE**

**7TH SEPTEMBER 2009**

**STREET TRADING CONSENT**

Responsible Portfolio Holder	Cllr. P. Whittaker
Responsible Head of Service	Dave Hammond

**1. SUMMARY**

1.1 To consider reviewing the Council's policy including the fee structure in respect of street trading consent and extending the designated area to cover the boundary of Bromsgrove district, with the exception of Bromsgrove High Street and its immediate environs.

**2. RECOMMENDATION**

2.1 That members approve:

- (a) the extension of the designated consent streets area to cover the whole of Bromsgrove, with the exception of those streets set out at Appendix 1;
- (b) that the streets shown in Appendix 1 be designated as prohibited streets;
- (c) the revised Street Trading Policy including model conditions in respect of Street Trading Consents as set out at Appendix 3;
- (d) That applications for Street Trading Consents which do not fall within the Street Trading Policy or those in respect of which objections are received are determined by the Licensing Applications Sub-Committee;
- (e) That consideration to revoke a Street Trading Consent be determined by the Licensing Applications Sub-Committee;
- (f) That public speaking be introduced at the Licensing Applications Sub-Committee on contested applications for Street Trading Consents and that authority is delegated to the Head of Legal, Equalities and Democratic Services in consultation with the Chairman and Vice-Chairman of Licensing Committee and the Principal Licensing Officer to prepare a hearing procedure and guidance to reflect paragraph 3.16 below.

2.2 That members recommend to Council:

(a) That the proposed fee structure be adopted.

(b) That the scheme of delegation be revised in respect of street trading as follows:

(i) "To authorise the Head of Planning and Environment Services to be responsible for inspections of premises to ensure compliance with street trading consent legislation, Council policy and any conditions attached to a consent; and

(ii) "To authorise the Head of Planning & Environment Services to determine applications for consents for street trading in consent areas designated by the Council" .

### **3. BACKGROUND**

3.1 A number of options are available to local authorities in respect of street trading. Authorities may decide to designate part of or all of their area as a "Consent Street" which means that street trading is prohibited without the consent of the local authority. Alternatively, authorities may decide to designate part or all of their area as a "Licence Street" which means that street trading is prohibited without a licence having been granted by the local authority. Authorities may also designate part or all of their area as a "Prohibited Street" which means that no street trading can take place at all. Finally, a local authority may choose not to designate any area in which case street trading is permitted and the local authority has no control over it.

3.2 The following are not deemed to be street trading:

- Trading by a pedlar;
- Anything done in a market or fair established by a grant, enactment or order;
- Trading in a trunk road picnic area;
- Trading as a news vendor (subject to certain conditions);
- Trading carried on as part of the business of the shop;
- Roundsman business;
- Trading from an object or structure placed on the highway which is licensed under the Highways Act 1980; and
- Recreation and/or refreshment facilities operated by a council on a highway.

3.3 As Members are aware this Council's existing Street Trading Policy designates the High Street and parts of surrounding streets as outlined in Appendix 2 as Consent Streets. This means that no street trading is permitted in that designated area without the specific consent of the Council. With regard to the remainder of the district, these areas were never designated and therefore we currently have no control over any street trading activity outside of the High Street area.

- 3.4 At present the Council's policy is not to grant Street Trading Consents except in the most exceptional circumstances. The only permits which are now granted are (a) for the regular Farmer's Market, (b) for the annual Elizabethan Street Market and (c) for the hot dog stall which trades in conjunction with the Christmas Lights switch-on.
- 3.5 It is proposed that the whole district (other than the High Street and surrounding streets as outlined in Appendix 1) should be designated as a Consent Street and that the High Street and the surrounding area as shown in Appendix 1 should be designated as a Prohibited Street.
- 3.6 Should Members be minded to approve Consent Street status across the whole district, this will mean that all existing highway traders and any new traders will have to obtain consent from the Council following implementation of the revised policy. This will give the Council greater control over these mobile units in terms of ensuring that they comply with all relevant legislation governing food hygiene, litter, noise nuisance and pollution and public safety. Furthermore, enforcement action can be taken against a trader if they are found to be in breach of any of the conditions attached to a Consent, in line with the Council's Enforcement Policy. If it was felt necessary to consider revoking a Consent, the matter would be referred to the Council's Licensing Applications Sub Committee to determine and the Consent holder would be invited to attend the hearing.
- 3.7 Those traders that are currently operating from lay-bys will be given a transition period of three months to submit an application.
- 3.8 If Members decide to designate the High Street and surrounding areas as shown on Appendix 1 as a Prohibited Street, the effect is that no street trading can be permitted. This will not prevent the Council from holding the regular market or any themed Markets as the right to hold this has been granted by Charter and therefore is specifically excluded from the street trading regime. Furthermore, it would not prevent the Council from operating facilities for recreation or refreshment on the High Street, perhaps as part of its street entertainments programme. In drawing up the list of Prohibited Streets, full consultation has taken place with the Council's Economic Development Manager, who is fully supportive of this view as he feels that this will not detract from the market and is a positive step in revitalising the High Street area.
- 3.9 A notice of intention to pass a resolution designating all streets as Consent Streets (with the exception of those outlined in Appendix 1) has been published and consultation has taken place with the Police Authority and the Highways Authority. No representations were received during the 28 day consultation period.

3.10 As part of the revision to the existing Street Trading Policy, Members may wish to consider adopting a more comparative fee structure. At present the Council currently charges £15.00 per application.

3.11 The fees charged by neighbouring authorities are as follows:

Wychavon District Council	Hot Food	£564 per annum
	Cold Food	£396 per annum
	Non food	£564 per annum
	Renewal fee	£206 per annum
	Occasional consent up to one calendar month	10% of appropriate charge
Worcester City Council	Single Unit 10x10	£3168 per annum
	Single unit over 10x10	£5884 per annum
	Day fee	£58 plus £16 per additional trading day
	Mobile traders	£87 per annum
Wyre Forest District Council	Mobile traders	£572 per annum
Redditch Borough Council	Mobile traders (They have not issued an annual consent)	£84 plus VAT per trading day

3.12 It is proposed that the following fees will apply:

Annual Street Trading Consent - £552.00 per annum

Occasional Street Trading Consent - £25 per day

3.13 Should a consent be refused, surrendered or revoked, the Council is under a duty to remit or refund the whole or part of any fee paid. It is proposed that any refund of the application fee is pro-rata depending on the remainder of the term left on the consent, less an administration fee of £25.00.

3.14 The Scheme of Delegation currently delegates authority to the Head of Planning & Environment Services to determine applications for street trading licences in consent areas. It is proposed that in practice that delegation will only be exercised if those applications fall within the Street Trading Policy and provided no objections are received during the consultation period from the individuals and organisations whom it is proposed should be consulted on each application. It is proposed that applications for Street Trading Consents which do not fully comply with the Street Policy or in respect of which representations are received during the consultation period will be referred to the Council's Licensing Applications Sub-Committee for determination.

3.15 It is proposed that the wording in the Scheme of Delegation be revised to read, "To authorise the Head of Planning & Environment Services to determine applications for consents for street trading in consent areas designated by the Council" as this better reflects the wording of the

legislation. It is suggested that in order to retain flexibility to determine applications at short notice that the Scheme of Delegation is not revised to specifically exclude the Head of Planning & Environment Services from determining applications which fall outside policy or where objections are received, although in practice that will be the case.

3.16 In order to ensure that applicants and objectors have the opportunity to fully put forward their case and as part of the Council's policy of increasing public participation, it is proposed that public speaking should be permitted if applications are to be determined by the Licensing Applications Sub-Committee. If Members approve public speaking at the Sub-Committee, all parties concerned would be invited to attend the meeting and put forward their case and would operate along similar lines to the public speaking at Licensing Act 2003 hearings and taxi licensing hearings, namely:

- (i) The applicant and or his representative will be invited to attend the meeting to address the Sub-Committee and answer any questions the Sub-Committee may have;
- (ii) Those consultees/interested parties who have made representations will be invited to attend the meeting to address the Sub-Committee and answer any questions the Sub-Committee may have;
- (iii) The applicant and/or his representative will be allowed 10 minutes to explain the application. If any questions are put to the applicant and or his representative these will not form part of the allocated 10 minutes;
- (iv) 10 minutes will be allocated to consultees/interested parties to put forward their representations. If any questions are put to the consultee/interested party these will not form part of the allocated 10 minutes;
- (v) The Chairman be given a discretion to extend these times with the consent of the Sub-Committee.

3.17 It is recommended that the Head of Legal, Equalities and Democratic Services in consultation with the Chairman, Vice-Chairman and Principal Licensing Officer develop a hearing procedure and guidance for applicants and objectors.

#### **4. FINANCIAL IMPLICATIONS**

4.1 The cost of implementing the decisions contained in this report will be met from existing budgets.

4.2 The income generated from licensing existing traders could amount to approximately £19,000, which would be additional income for 2010/11.

#### **5. LEGAL IMPLICATIONS**

5.1 The Local Government Miscellaneous Provisions Act 1982 section 3 empowers local authorities to designate all or part of their areas for the

purposes of street trading. Schedule 4 of that Act specifies the procedure for resolving to designate streets, and for issuing Street Trading Consents. Paragraph 7 of Schedule 4 of the Act permits the Council to grant a Street Trading Consent if they think fit and to attach conditions to it as they consider reasonable necessary to prevent obstruction of the street or danger to persons using it; or nuisance or annoyance (whether to persons using the street or otherwise).

- 5.3 Paragraph 8 of Schedule 4 of the Act, further permits the Council to include in a Street Trading Consent permission for its holder to trade in a Consent Street from a stationary van, cart, barrow or other vehicle or from a portable stall.
- 5.4 Paragraph 10 of Schedule 4 of the Act states that a Street Trading Consent may be granted for any period not exceeding 12 months, but may be revoked at any time.
- 5.5 There is no right of appeal against the refusal to grant a Street Trading Consent.
- 5.6 In respect of making changes to the designated area, the Council must publish a notice of their intention to in a local newspaper circulating in their area and consult with the Police Authority and Highways Authority.
- 5.7 The Council must consider any representations relating to the proposed resolution.
- 5.8 A District Council may by resolution designate any street in their district as:
  - (a) a prohibited street;
  - (b) a licence street; or
  - (c) a consent street.
- 5.9 If members approve the extension to the designated area, the Council will be required to publish a notice stating that the Council has passed such a resolution in two consecutive weeks in a local newspaper.
- 5.10 Should the Council wish to rescind a designation or re-designate a street the same procedure must be followed.

## **6. COUNCIL OBJECTIVES**

- 6.1 This proposal contributes to the Council's objective "Sense of community and well being".

## **7. RISK MANAGEMENT**

- 7.1 The main risks associated with the details included in this report are:
  - *Inability to regulate unlicensed traders*

7.2 These risks are being managed as follows:

- Inability to regulate unlicensed traders:

Risk Register: *Planning and environment Services*

Key Objective Ref No: 6

Key Objective: *Effective, efficient and legally compliant Licensing Service*

## 8. **CUSTOMER IMPLICATIONS**

8.1 Application packs will be sent to all existing traders informing them of new Council Policy. Whereafter they will be given a period of three months to apply for a licence should they wish to continue to trade. Information will be made available on the website.

## 9. **EQUALITIES AND DIVERSITY IMPLICATIONS**

9.1 Each application will be considered on its own individual merits.

## 10. **VALUE FOR MONEY IMPLICATIONS**

There are no value for money implications.

## 11. **OTHER IMPLICATIONS**

Procurement Issues - None
Personnel Implications - None
Governance/Performance Management - None
Community Safety including Section 17 of Crime and Disorder Act 1998 - None
Policy – If members approve the revised policy, it will supersede all existing policies relating to Street Trading Consents.
Environmental – The impact of possible increased litter has been addressed in the Policy and conditions will be placed on any consents granted that each trader must ensure hold a current trade waste contract to dispose of any business related waste and all waste must be removed from the site by close of trade. They will also be responsible for ensuring all litter resulting from their trade is cleared prior to them vacating the site.  Any waste or litter left behind at the close of trade will be dealt with through the appropriate enforcement channels (Environmental

Protection Act 1990 and Clean Neighbourhood and Environment Act 2005).

## 12. **OTHERS CONSULTED ON THE REPORT**

Portfolio Holder	Yes
Chief Executive	No
Executive Director (Partnerships and Projects)	Yes
Executive Director (Services)	Yes
Assistant Chief Executive	No
Head of Service	Yes
Head of Financial Services	Yes
Head of Legal, Equalities & Democratic Services	Yes
Head of Organisational Development & HR	No
Corporate Procurement Team	No

## 13. **WARDS AFFECTED**

All wards will be affected.

## 14. **APPENDICES**

Appendix 1 Proposed list of Prohibited Streets  
Appendix 2 List of streets currently designated as Consent Streets  
Appendix 3 Draft Policy for Street Trading Consents

## 15. **BACKGROUND PAPERS**

None

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## Appendix 1

### List of Proposed Prohibited Streets

Worcester Road	All parts
Hanover Street	All parts
St. John Street	All parts
Chapel Street	All parts
Mill Lane	All parts
Market Street	All parts
Church Street	All parts
Station Street	All parts
High Street	All parts

## Appendix 2

### List of Existing Designated Consent Streets

Stourbridge Road (part)	From High Street in a northerly direction to its junction with Market Street.
Birmingham Road (part)	From High Street in a northerly direction for a distance of approx. 30 metres.
High Street (part)	Between its junction with Stourbridge Road, and Birmingham Road and its junction with Stratford Road.  Between its junction with New Road and its junction with St. John Street.  Between its junction with Stratford Road and its junction with New Road.
Worcester Road (part)	Between its junction with St. John Street and its junction with Hanover Street.
Hanover Street	All parts.
St. John Street	All parts.
Chapel Street (part)	Between its junction with High Street and its junction with Windsor Street.
Mill Lane	Between its junction with High Street and the service road off Market Street.
Church Street (part)	Between its junction with High Street and Market Street.
Market Street (part)	From its junction with High Street in a south-westerly direction for a distance of approximately 90 metres.
Parkside	All parts.