

Licensing Committee Meeting	Agenda Item: 6
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Meeting Date	Thursday 21 January 2010
Report Title	Street Trading: Resolution under Schedule 4
Portfolio Holder	Cllr John Morris
SMT Lead	Mark Radford
Head of Service	Monica Blades-Chase
Lead Officer	Michael Moss
Key Decision	No
Classification	Open
Forward Plan	Reference number:

Recommendations	1. Approve a change in the Resolution

Purpose of Report and Executive Summary

- 1.1 To ensure compliance under the EU Services Directive, a report proposing a variation to the resolution adopted by Council on 28 September 1993, (under Part 2(13) Schedule 4: Local Government (Miscellaneous Provisions) Act 1982) on Street Trading within Swale, was presented to executive on 6 January 2010.
- 1.2 The resolution originally passed by Council in 1993 designated all streets, with the exception of the following:
- High Street in Queenborough
 - East Street in Sittingbourne
 - High Street in Sittingbourne
 - Broadway in Sheerness
 - Central Avenue in Sittingbourne

as 'Prohibited Streets'. This is unlikely to comply with the requirements of the EU Services Directive for the reasons set out in paragraph 2.6 below. It was proposed to executive to change the designation from Prohibited streets to Consent streets.

2 Background

2.1 On 28 September 1993, Swale Borough Council adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, this regime came into force on 17 December 1993. The definition of street trading is set out in Appendix I to this report. This statutory provision permits the Council to designate streets within its area as either: -

2.2 Licensed Streets

Trading on a 'Licensed Street' may only take place when a Street Trading Licence has been granted by the local authority. A licensed street designation is appropriate for the more formalised, market type of trading in a street where the strict control of a limited amount of space is required. Once a street has been designated a licensed street the council will be under a duty to grant a licence unless one of the grounds specified by the Local Government (Miscellaneous Provisions) Act 1982 applies.

2.3 Consent Streets

Trading on a 'Consent Street' may take place without a Street Trading Licence, but the seller must obtain advance consent from the local Authority.

- The council is under no duty to grant a consent to trade on a street which has been designated as a consent street.
- such conditions as considered reasonably necessary can be attached to prevent obstruction of the street or danger to persons using it, or to prevent nuisance or annoyance.
- Unless the trader also obtains a "street trading consent permission", they cannot trade from a van, vehicle, stall etc.
- The council is not required to specify grounds for refusal.
- Similarly, there is no right of appeal against the refusal of consent or the attaching of conditions to a consent. However, some authorities offer a local appeals mechanism and this is recommended.

2.4 Prohibited Street

Once a street has been designated as a 'Prohibited Street', no trading of any kind is allowed. The grounds for a prohibited street designation are not specified by the legislation, but there should not be a blanket approach.

2.5 Under the 1993 resolution all streets within Swale were designated as 'Prohibited Streets' with the exception of those mentioned above. The reason these streets were designated as 'Licensed Streets' was to allow craft fairs, foreign markets and other themed markets.

2.6 The current resolution is unlikely to comply with the requirements of the EU Services Directive which requires:

- local authorities to make most business licensing and permit applications and variations available to all businesses across the EU from 28 December 2009
- Local authorities to make it easier for businesses, particularly small and medium size enterprises, to set up in an area.
- That all relevant legislation be:
 - non-discriminatory - applying equally to all providers;
 - necessary - justified by some genuine underlying policy objective; and
 - proportionate - must not be more stringent or onerous than is necessary to tackle the particular problem it is designed to address.

3 Proposal

3.1 The authority had to reconsider its policy on street trading; ensure that it does not adopt a blanket approach; and that any restrictions imposed are non-discriminatory, necessary and proportionate. It was therefore proposed that, apart from the current Licensed streets, all streets should be designated Consent streets until such time as a decision can be taken on whether there is a need to designate any further streets as Licensed or Prohibited.

3.2 It will be at the Council's discretion whether or not to grant a street trading consent, but it must act reasonably when exercising that discretion. During this interim period it is proposed that the following may be grounds for refusal: - .

- The applicant is under the age of 17 years
- The street to which the application relates is subject to a control order under section 7 of the Local Government (Miscellaneous Provisions) Act 1976
- There is not enough space in the street, and street trading would result in undue interference or inconvenience to persons using the street.
- There are already enough street traders trading in the street from shops or otherwise
- The applicant is unsuitable to hold the licence due to a conviction or other reason

In future, the following grounds may also apply

- The applicant has previously been granted a street trading consent but persistently failed to pay fees
- The applicant has not complied with one or more of the terms and conditions of a consent

3.3 The Council will give further consideration to whether some streets should be designated as Licensed or Prohibited Streets and the types of activities that will be permitted within the borough. It is anticipated that the Economic Development and Cultural Services Department will put in place a draft policy and go out to consultation within the next six months. As a result the substantial revision will not be completed until June 2010.

3.4 **Fees**

The Council can charge such fees as it considers reasonable for licences and consents. Fees may vary depending on type of licenses, streets or articles traded. A benchmarking exercise was carried out across neighbouring authorities and the results were:

Medway Council: Street Trading Fees.

£257 per years

£56 per day

Maidstone Borough Council: Street Trading Fees.

£351 per Year

(Currently no facility for daily licence, though this is currently being reviewed)

Canterbury City Council: Street Trading Fees.

The fee is set depending on the size of the stall, or the goods sold. It can be anything from £10 - £25 per day. There is no fee set for annual licence, the 'Licence Holder' is only charged for the days spent trading. The fees are determined by the Licensing Officer with the agreement of the Licensing Manager.

3.5 **Enforcement**

Street trading without a licence or consent is criminal offence. The enforcement function for any breaches in relation to street trading is currently delegated to the Head of Environment and Amenities. It is likely that the need for enforcement in this area will increase, however it is proposed that the enforcement provision will be provided by existing resources within the Environmental Response Team.

3.6 **Scheme of Delegation**

Failure to have adequate provisions in place to deal with applications for street trading consents or licences could result in any application being granted 'Tacit Authorisation'. In essence this means that if the council does not deal with an application within a reasonable timescale the applicant will automatically be granted an unconditional licence.

3.7 The current scheme of delegations at Part 3 of the Councils Constitution delegates the Licensing function in relation to street trading to the Head of Legal. However, it is proposed that for the time being applications for consent are submitted to the Licensing Sub-Committee for decision. Therefore it is necessary for this function to be delegated to the Licensing Committee by Council.

3.8 There is no legal obligation to offer a right of appeal, but it is considered good practice to do so. It is therefore proposed that any representations against a decision to refuse a Consent, should be referred to a differently constituted Licensing Sub-committee.

4 Alternative Options

4.1 With regard to the designation of streets, the options are:

(a) to maintain the status quo with all streets, bar three, being designated as Licensed. The risks arising from this option are set out in the legal and risk management implications below.

(b) to designate some streets as Licensed streets which would impose a duty on the Council to grant the licence unless one of the ground applies.

4.2 The decision on whether or not to grant a Consent, can be taken by either: -

(a) the Head of Legal, in consultation with the Chair of the Licensing Committee or

(b) the Licensing Committee

It is proposed that for the time being all applications should be considered by a sub-committee of the Licensing Committee

5 Consultation Undertaken or Proposed

5.1 Once the draft resolution has been agreed by the Licensing Committee, there is a statutory requirement for the resolution to be advertised for a period not less than 28 days. Representations will be considered before the final resolution is adopted by full council. There must then be two further press releases prior to resolution coming into force. The proposed timetable is set out in Appendix II

5.2 Statutory consultees to the proposed resolution that all streets should be designated Consent streets will be:

- Kent Police
- Town & Parish Councils
- Kent County Council Highways
- Highways Agency
- Fire and Rescue

5.3 Consultation on any future policy to designate streets as Licensed or Prohibited will be extended to include local business fora and representatives of groups for people with disabilities.

5.4 Once a street has been designated a Consent street, there will be consultation with Kent Police, the Highway Authority, Ward Members, and the Council's Planning and Environmental departments on each application for a Consent.

- 5.5 Any objections received will be referred to the Licensing Sub-Committee for decision on the application. Any decision to grant or refuse must be in accordance with the grounds for refusal in paragraph 3.2 above. This arrangement should be reviewed when the draft street trading policy is considered in June 2010.

6 Implications

Issue	Implications
Corporate Plan	
Financial, Resource and Property	<p>Applicants for street licences will be required to pay a fee. The level of fees must cover the council's cost in providing this service and may also generate some income for the authority, however they must be reasonable. It should be noted that the EU Services Directive states that fees should not include enforcement costs. Proposals as to the level of fees will be presented after undertaking a benchmarking exercise.</p> <p>There will be costs arising from the statutory requirement to advertise the change in the resolution.</p>
Legal and Statutory	<p>The Council's current resolution regarding Street Trading might be considered as overly prohibitive and if this is not changed the Council could face a legal challenge, by individuals or the European Commission.</p>
Crime and Disorder	<p>It is an offence to trade in the street without an appropriate licence or consent. The proposals in this report set out arrangements for regulating this activity.</p>
Risk Management and Health and Safety	<p>Once the EU Services Directive comes into force on 28 December, if the authority does not have a policy on Street Trading that is compliant with the legislation, it will be in breach of the legislation.</p> <p>Tacit approval will be granted to the licence application if applications are received and they are not dealt with within the timescales. It is proposed that as an Interim arrangement that all applications to be considered by Licensing sub-committee – who may grant a temporary licence between 28/12/09 and the date that any new policy is adopted. The arrangements are set out in paragraphs 3.2 and 3.6.</p> <p>Increased Street Trading may increase competition for the markets and affect income for the Council from that source. This is not yet defined but should not interfere with the requirement of the council to provide proper arrangements for Street Trading.</p>
Equality and	<p>An initial Equalities Impact Assessment will be carried out and the result should be considered by members when they consider the</p>

Diversity	revised resolution and draft policy.
Sustainability	There are no sustainability implications. On regeneration, properly licensed and controlled street trading can add to the footfall and economic activity of the Borough, providing it does not inappropriately compete with existing market and retail offers. .

7 Appendices

7.1 The following documents are to be published with this report and form part of the report

- Appendix I: - Local Government (Miscellaneous Provisions) Act 1982
Schedule 4 Street Trading
- Appendix II – Timetable
- Appendix III – Notice of Intention

8 Background Papers

- Resolution passed by Council on 28 September 1993
- Local Government (Miscellaneous Provisions) Act 1982.
- The European Services Directive Guidance for Local Authorities

APPENDIX I

SCHEDULE 4 STREET TRADING

Annotations:

Modifications etc. (not altering text)

Sch.4: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), Sch. 4 applied (with modifications) *prosp* by 2000 c. viii, ss. 3, 4

Interpretation

1(1)In this Schedule—

“consent street” means a street in which street trading is prohibited without the consent of the district council;

“licence street” means a street in which street trading is prohibited without a licence granted by the district council;

“principal terms”, in relation to a street trading licence, has the meaning assigned to it by paragraph 4(3) below;

“prohibited street” means a street in which street trading is prohibited;

“street” includes—

(a) any road, footway, beach or other area to which the public have access without payment; and

(b) a service area as defined in section 329 of the Highways Act 1980, and also includes any part of a street;

“street trading” means, subject to sub-paragraph (2) below, the selling or exposing or offering for sale of any article (including a living thing) in a street; and

“subsidiary terms”, in relation to a street trading licence, has the meaning assigned to it by paragraph 4(4) below.

(2)The following are not street trading for the purposes of this Schedule—

(a)trading by a person acting as a pedlar under the authority of a pedlar’s certificate granted under the Pedlars Act 1871;

(b)anything done in a market or fair the right to hold which was acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of an enactment or order.

(c)trading in a trunk road picnic area provided by the Secretary of State under section 112 of the Highways Act 1980;

- (d) trading as a news vendor;
 - (e) trading which—
 - (i) is carried on at premises used as a petrol filling station; or
 - (ii) is carried on at premises used as a shop or in a street adjoining premises so used and as part of the business of the shop;
 - (f) selling things, or offering or exposing them for sale, as a roundsman;
 - (g) the use for trading under Part VIIA of the Highways Act 1980 of an object or structure placed on, in or over a highway;
 - (h) the operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980;
 - (j) the doing of anything authorised by regulations made under section 5 of the Police, Factories, etc. (Miscellaneous Provisions) Act 1916.
- (3) The reference to trading as a news vendor in sub-paragraph (2)(d) above is a reference to trading where—
- (a) the only articles sold or exposed or offered for sale are newspapers or periodicals; and
 - (b) they are sold or exposed or offered for sale without a stall or receptacle for them or with a stall or receptacle for them which does not—
 - (i) exceed one metre in length or width or two metres in height;
 - (ii) occupy a ground area exceeding 0.25 square metres; or
 - (iii) stand on the carriageway of a street.

APPENDIX II

Time table:

- SMT – 15 December 2009
- Cabinet – 6 January 2010
- Licensing Committee – 21 January 2010 – Decision on Draft Resolution/draft Notice of Intention to designate Licensed streets
- Publication of Notice of Intention – Consultation with Police/Highways etc.
- Full Council – 24 February 2010 – takes on revised Resolution
- Final Notice
- Adverts
- June 2010 – Cabinet and Licensing Committee to consider any proposals for Consent or Prohibited streets

APPENDIX III

Swale Borough Council Local Government (Miscellaneous Provisions) Act 1982 Schedule 4 Street Trading

Notice is given that Swale Borough Council intends to pass a resolution in the following terms:-

“All streets within the Borough of Swale with the exception of:

1. - High Street, Queenborough
(between Park Road and Holy Trinity Church)
2. - East Street, Sittingbourne
(between West Lane and Bell Road)
3. - High Street, Sittingbourne
4. - Broadway, Sheerness
(between High Street and Trinity Place)
5. -Central Avenue, Sittingbourne
(between High Street and the roundabout adjacent to the War Memorial)

will cease to be designated “prohibited streets” and will be designated “consent streets” with effect from **(a date to be specified on the passing of the resolution)**”

The purpose of the intended resolution is to secure compliance with the European Services Directive which came into force on 28 December 2009. The effect of the resolution would be to end the unqualified prohibition of street trading in the streets covered by the resolution and to treat any street trading proposals received on their merits.

Any representations relating to the intended resolution should be made in writing (with ref. MH/MM) to:

Head of Legal, Swale Borough Council, Swale House, East Street, Sittingbourne, Kent ME10 3HT; within 30 days of the publication of this notice.