

ESSENTIAL REFERENCE PAPER 'A'

IMPLICATIONS/CONSULTATIONS

<p>Contribution to the Council's Corporate Priorities/ Objectives:</p>	<p>Priority 1 – Improve the health and wellbeing of our communities</p> <p>Priority 2 – Enhance the quality of people's lives</p> <p>Priority 3 – Enable a flourishing local economy</p>
<p>Consultation:</p>	<p>Over the past year officers from East Herts Council (EHC) have been working with town clerks from Bishop's Stortford, Hertford and Ware Town Councils and have provided information for their Members, to help inform the decision making process.</p> <p>Advice has been sought from the National Association of British Market Authorities (NABMA).</p> <p>If the council changed the process in which to apply for a stall (i.e. from a market stall to a street trading consent) it is proposed to engage with the market traders affected.</p>
<p>Legal:</p>	<p>Markets are not a statutory service.</p> <p>Market rights can arise from a range of means such as Royal Charter, Letters Patent, Prescription, Custom and Practice, Local Legislation and General Legislation. Both Hertford and Ware have charters but EHC has resolved to operate the markets under the Food Act 1984.</p> <p>Operating a market gives market rights. EHC currently owns the market rights as it owns Bishops Stortford, Hertford and Ware markets. The owner of market</p>

rights has the ability to hold markets and control markets within six and two third miles from any market licensed by the council.

In addition to any charter, all town and parish councils are entitled to use the powers contained in Part 111 of the Food Act 1984 to establish markets.

If town councils made the decision not to manage the markets, and EHC no longer ran the market, by virtue of not having a market there would no longer be market rights in the area.

Where the market ceases, individual “street trading consents” could be granted under the legislation of the Local Government (Miscellaneous Provisions) Act 1982. There is a provision within the street trading legislation confirming that street trading is quite separate to a market and therefore this does not grant market rights, as the activity does not constitute a legal market. As this is not a market this also means that there is no limit to the number of stalls.

It would be recommended that whoever operated the markets becomes a member of NABMA, to ensure professional standards are maintained and to help resolve any trader disputes.

Market stall holders may challenge the council’s decision by judicial review. In order to do so it will have to show that there is some illegality, irrationality or procedural unfairness in the council’s decision:
-With regard to illegality, the council may close the market as the market rights holder. This has been confirmed by NABMA. Therefore there will be no illegality.

-This decision has been taken to enable the council to

	<p>meet its medium term financial plan. The decision should not therefore be considered irrational.</p> <p>-With regard to procedural unfairness, the decision to close the market should be taken after a consultation with stall holders regarding the council's plans. EHC will also assist them to apply for a street traders licence.</p> <p>As the council will no longer be the market rights holder, it will therefore be unable to stop other markets setting up locally to compete with stall holders operating under a street trading licence. However, street traders will be able to move to a competing market if they wish.</p>								
<p>Financial:</p>	<p>Overall the markets service operates at a deficit and in 2017-18 this was approximately £50k. The budget deficit for 2018/19 is approximately £55k.</p> <p>By devolving the Bishops Stortford market to BSTC there will be savings to EHC. For 2018/19 there is a £15k net cost to the council.</p> <p>If the market made a loss in the first 3 years the council would provide assistance subject to outgoing costs being no more than 2018-19 levels. EHC would fund the difference as follows:</p> <table border="1" data-bbox="488 1559 1442 1767"> <tr> <td>100 % year one (2019/20)</td> <td>Up to £15,000</td> </tr> <tr> <td>50% year two (2020/21)</td> <td>Up to £7,500</td> </tr> <tr> <td>25% year three (2021/22)</td> <td>Up to £3,750</td> </tr> <tr> <td>0% year four (2022/23)</td> <td>£0</td> </tr> </table> <p>The three year period gives BSTC time to invest in the market and reduce costs further and reduces their risk during the transitional period.</p> <p>Where financial support is provided there will be a</p>	100 % year one (2019/20)	Up to £15,000	50% year two (2020/21)	Up to £7,500	25% year three (2021/22)	Up to £3,750	0% year four (2022/23)	£0
100 % year one (2019/20)	Up to £15,000								
50% year two (2020/21)	Up to £7,500								
25% year three (2021/22)	Up to £3,750								
0% year four (2022/23)	£0								

	<p>requirement to produce annual audited accounts for the market.</p> <p>Subject to consultation, transferring market traders at Hertford and Ware to street trading consents would result in a saving of £40k per annum. This would increase the saving to the full £55k after year 4 of the Bishops Stortford transition arrangements.</p>
<p>Human Resource:</p>	<p>The member of staff affected by the options has been consulted regarding this report. Specialist HR legal advice has confirmed that there are no TUPE implications. Agreement of the proposals would mean that the post of markets coordinator would be deleted and a staff consultation process would be applicable in these circumstances.</p>
<p>Risk Management:</p>	<p>A range of options have previously been considered as part of an options appraisal.</p> <p>If EHC continues to run the markets there is a risk that the savings identified within the Medium Term Financial Plan will not be achieved.</p> <p>If markets were to cease in Hertford and Ware there is a potential risk of adverse publicity. This risk would be mitigated by offering stall holders street trading consents as an alternative way to provide the service and to trade in the town, and engaging and supporting them throughout any service change. There is also a risk that traders are unhappy with the change and leave the market.</p> <p>In Hertford where there are a greater number of traders and a farmers market there is a greater risk. The traders also have rights to challenge the decision to close the market which will be mitigated by the consultation and engagement proposed during the</p>

	<p>summer of 2018.</p> <p>If the Hertford and Ware markets were discontinued, EHC would lose the market rights. This means other markets in the area could potentially be unregulated.</p>
<p>Health and wellbeing – issues and impacts:</p>	<p>Local markets provide a resource for local communities in terms of supporting the local economy as well as providing an enjoyable leisure activity. Fresh local produce also encourages healthy eating.</p> <p>A transfer to management of markets at a more local level could ensure closer trader and community involvement.</p>
<p>Equality Impact Assessment required:</p>	<p>Not required. Markets serve everyone equally. This is an operational change with no equalities implications. There is likely to be no substantial change to how residents access the service. Any equalities issues will be maintained and managed by either the town council operating the market or through EHC when considering street trading consents.</p>