

East Herts Council Report

Executive

Date of Meeting: 7 July 2020

Report by: Paul Thomas-Jones, Service Manager –
Environmental Health

Report title: Proposed Revised Street Trading Consent
Policy

Ward(s) affected: All

Summary

RECOMMENDATIONS FOR EXECUTIVE THAT:

- (a) The Proposed Revised Street Trading Consent Policy be considered and that suggested amendments, additions, deletions and/or clarifications raised by the Executive then be considered by the Executive Member for Wellbeing and the Head of Housing and Health prior to drafting the final proposed version, and accompanying report, for determination by Council; and
- (b) The recommendations put forward by the Overview and Scrutiny Committee be considered by the Executive and any amendments to the policy made before being determined by Council.

1.0 Proposal(s)

- 1.1 It is proposed that the council's existing Street Trading Consent Policy, which was drawn up in 1984, be revised and updated taking into account relevant case law and best practice and how the policy could further the council's latest priorities and objectives.
- 1.2 It is proposed that the Executive utilises its power under

the council's Constitution to assist in the drafting of the final revised version to be put to Council for determination in due course.

2.0 Background

- 2.1 The Local Government (Miscellaneous Provisions) Act 1982, "The Act", allows for the council to adopt 'streets' in which trading requires the consent of the council. This is a means of controlling street trading within the council's area.
- 2.2 On 30 May 1984, the council adopted a policy, which is still in force. This is presented at Appendix A. This policy named a number of streets within East Herts which had the general effect of rendering it an offence for any person to engage in street trading in one of the named streets unless they have first been authorised to trade in that street by the council.
- 2.3 The named streets consisted of, all streets within the designated urban areas of Bishop's Stortford, Hertford, Sawbridgeworth and Ware and a number of trunk roads in the district. The full list of streets is included in Appendix A.
- 2.4 The existing policy is now 36 years old and arguably overdue for review.

Proposed key changes to the existing policy

- 2.5 Appendix B presents a significantly revised policy which is now being proposed. The proposed changes reflect case law and best practice established over the near 40 years since the Act's introduction.
- 2.6 The revised policy proposes the following changes.

Policy area	Proposed change
Streets on which consent to trade is required	<ul style="list-style-type: none"> • extension from only certain streets being covered by the policy to trading on all streets within East Hertfordshire requiring the council's consent
Application requirements and procedures	<ul style="list-style-type: none"> • introduction of clear guidelines on what can be taken into account when considering a street trading consent application • an increase in the range of consultees when considering consent applications to include the Town and Parish Councils together with the District Council Ward Member • introduction of clear guidance on the level of refund applicable if the consent is surrendered part-way through the term of the consent • introduction of a right to appeal a decision where an applicant for street trading consent feels they have been treated unfairly • establishment of a public register of street traders
Street trading standards	<ul style="list-style-type: none"> • introduction of acceptable standards of appearance for any street trading vehicle or stall • introduction of acceptable standards of behaviour for street traders • specification of the level of food hygiene training for street traders together with a requirement for a minimum rating of three under the national Food Hygiene Rating Scheme (within the range of 0-5 stars)
Criteria for restricting consent to trade	<ul style="list-style-type: none"> • restriction of street trading in Air Quality Management Areas for those traders who require their vehicle engines to be running or the use of a petrol or diesel generator • adoption of national standards regarding an acceptable size of a layby in which to allow street trading • restriction on selling of food and confectionary near educational establishments, that is, within 100 metres

Anticipated potential impacts of the proposed changes

2.7 The council currently gives consent for three static and

eight peripatetic street traders. In addition, on the 23rd October 2018, Council approved a switch to the use of street trading consents for managing the markets in Hertford and Ware.

- 2.8 Work by the council's Environmental Health team suggests the following impacts should the proposed revised policy be approved by Council:
- 1.8.1 adopting national standards on what is deemed to be an acceptable size of a layby to allow street trading would negatively impact on one trader currently operating in a layby that would be deemed too small in which to safely operate. Without adding some discretionary measures within the new policy, this trader would have to cease operating at the current location because the council could no longer give consent at the time of consent renewal later this year
 - 1.8.2 moving to trading on all streets in the district requiring consent would mean those currently trading outside of the named streets would be brought within the consent regime. The Environmental Health team does not have a record of the exact numbers of such traders this would cover although from existing contact regarding food safety it is anticipated that the new duties could be accommodated within the existing staffing complement
 - 1.8.3 a restriction on consent in the Air Quality Management Areas (AQMAs) (broadly defined as Gascoyne Way, Hertford, Hockerill Junction, Bishop's Stortford and London Road, Sawbridgeworth) for traders requiring their engines to keep running to power their stall/vehicle or the use of a petrol/diesel generator would impact traders currently relying on these power sources. There are not currently

any static traders within the AQMAs.

- 1.8.4 restricting the sale of food and confectionary near educational establishments would adversely impact on traders wishing to do this. The Environmental Health team does not know of any static traders, who have a current street trading consent from the Council, operating in this way.

Proposed changes to fees

2.9 The Act allows local authorities to:

- charge fees as they consider 'reasonable' for granting or renewal of a street trading licence or a street trading consent
- determine different fees for different types of licence/consent according to:
 - duration of licence/consent
 - the street in which it authorises trading
 - description of articles in which the holder is authorised to trade.

2.10 It is appropriate when setting a fee to consider charging on a full cost recovery basis, incorporating costs for processing applications/renewals and any further costs of enforcement and officer training. The proposed fees in the revised draft policy reflect the current fees and would be reviewed each year as part of the council's budget setting process.

Consultation

2.11 Public consultation was conducted in February 2020 including publicising the proposals in the local press and directly e-mailing all street traders in the district, and market traders in Hertford and Ware, currently

requiring council consent to trade. Two responses were received. One respondent registered their approval of the proposed revisions. The other respondent raised a number of more detailed questions about the operation of any consents regime. Full details of the consultation responses are included in Appendix C. Neither response has led to any substantive amendments to the proposed revised policy.

2.12 The proposed updated Street Trading Consent Policy was considered by members of the Overview and Scrutiny Committee on the 16 June 2020. The Committee made a number of recommendations for the Executive to consider which are summarised below.

- That the list of prohibited goods at section 6.1 k) of the proposed new policy should be extended also to include Chinese Lanterns, Helium Balloons and Fireworks.
- That any existing traders affected by the new policy should be treated with the maximum consideration to avoid any adverse impact on existing businesses.
- That the new policy should discourage any street trading within an Air Quality Management Area.

3.0 Reason(s)

3.1 The Act requires that determination of a street trading consent policy is a matter for Council, this is reflected in the council's Constitution. Thus, in due course a final draft of the revised policy will be put to Council for consideration.

3.2 It is good practice to review policies on a regular basis; the existing policy is now 36 years old.

3.3 Since the adoption of the original policy, Council priorities, Codes of Practice and case law have all lead to changes in the way Street Trading should operate within

4.0 Options

- 4.1 In exercising its power the Executive has the option to:
- signal its contentment with the revised Street Trading Consents Policy as currently drafted. If this approach is taken, this will be relayed to Council when it considers the final draft version or
 - suggest amendments, additions, deletions and/or clarifications to the report. If this approach is taken, all such suggestions will be considered by the Executive Member for Wellbeing and the Head of Housing and Health and will either be incorporated into the final draft or brought to the Council's attention as being the views of the Executive in accompanying report to the final draft version put to Council in due course or
 - consider that there is an insufficient case for the revised policy, whether amended or not, to be put to Council for determination. If this approach is taken, the Executive should make their rationale for this approach explicit so that the Executive Member for Wellbeing and the Head of Housing and Health can assess whether to desist from putting the policy to Council in its current form or to proceed to determination by Council in which case the Executive's views would be included in the accompanying report

5.0 Risks

If the policy was not revised

- 5.1 There are no risks associated with not updating the current policy other than, arguably, the council

depriving itself of the opportunity to improve the standards of street trading in the district and utilising the policy to further air quality and healthy eating objectives, among others.

- 5.2 The current policy while dated is in keeping with the Act and thus there is no risk of challenge associated with not having updated it.

If the policy was revised

- 5.3 Should the proposed revised policy ultimately be approved by Council, there are possible reputational risks associated with adverse impacts on current and/or potential future traders as discussed in section 2 above.
- 5.4 As with all new policies, there is a risk of legal challenge from a person adversely impacted should they believe the council has acted contrary to the legislation. Any risk of a successful legal challenge is considered minimal as officers have ensured that the proposed revisions accord with the Act and subsequent case law and best practice.

6.0 Implications/Consultations

- 6.1 The outcome of the public consultation is discussed in section 2 above.
- 6.2 There are no adverse financial implications arising from either retention of the existing policy or ultimate adoption of the revised policy as the cost to administer the current policy is built into the existing budgets and the revised policy envisages the cost to process and monitor consents being recovered in full through the fees charged.

Community Safety

Yes – the proposed revised policy includes standards for traders and

restrictions on the granting of consents where laybys are unsuitable. Both amendments would arguably have a positive impact on community safety.

Data Protection

No

Equalities

Yes – an equalities assessment will be completed prior to finalisation of the version put to Council for determination. Work conducted to date does not indicate any detriment to anyone with a protected characteristic.

Environmental Sustainability

Yes – the proposed restriction on the continuous running of a vehicle's engine or the use of petrol/diesel generators in an AQMA would have a positive impact on air quality and environmental sustainability.

Financial

No – the proposed policy is predicated on full cost recovery of the council's costs through the fees charged. This is allowable under the Act.

Health and Safety

Yes – the setting of agreed standards for traders will maximise the health and safety of workers and customers.

Human Resources

No

Human Rights

No

Legal

No – the revised policy is compliant with Local Government (Miscellaneous Provisions) Act 1982.

Specific Wards

No

7.0 Background papers, appendices and other relevant material

- 7.1 Appendix A – existing Street Trading Consent Policy
- 7.2 Appendix B – proposed revised Street Trading Consent Policy
- 7.3 Appendix C – summary of consultation responses
- 7.4 Appendix D – equalities impact assessment

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