

LICENSING COMMITTEE (NONLICENSING ACT 2003 FUNCTIONS)

Agenda Item 6

Brighton & Hove City Council

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| Subject: | Street Trading Policy Review | | |
| Date of Meeting: | 29 June 2017 | | |
| Report of: | Director of Neighbourhoods, Housing and Communities | | |
| Contact Officer: | Name: | Jim Whitelegg | Tel: 01273 292438 |
| | Email: | Jim.whitelegg@brighton-hove.gcsx.gov.uk | |
| Ward(s) affected: | All | | |

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1. The Council's Street Trading Policy was set by Members at Licensing Committee after extensive consultation in November 2009 and was last considered at Licensing Committee on the 21st November 2013. At the November 2016 Licensing Committee (Non-Licensing Act 2003) considered a report of the Executive Director, Neighbourhoods, Committees & Housing that set out the results of the limited review of all street trading activity within 50m of schools as requested by the Committee at its meeting held in November 2016. The committee noted the contents of this report, recommending that officers should continue to monitor trends of applications/complaints and illegal activity to inform future policy.
- 1.2. Furthermore, the committee requested officers to explore options for a review of the street trading policy with a view to changing the designation of streets in zones A and B and consider options to prevent or restrict traders from trading on yellow lines or otherwise (potentially) contravening any road traffic regulations, and bring a report to the next committee for consideration.
- 1.3. This request primarily relates to councillor/resident/business enquiries into two mobile traders with Zone B permits trading close to the Zone A boundary of Church Road, Hove. One trader is trading on double yellow lines and the other is trading from a residents parking bay.

2. RECOMMENDATIONS:

That the Committee notes the contents of this report and decides which of the following options (if any) to ask officers to initiate consultation on in order to change the Street Trading Policy.

- 2.1. Consult on amending conditions so that trading cannot take place on yellow lines and/or otherwise contravene TROs (Traffic Regulation Orders) including parking restrictions. Legislation allows for the Council to vary the conditions of a street trading consent as they consider reasonably necessary.

Conditions may specify trading time limits on yellow lines or parking restrictions, e.g. 30 minutes.

- 2.2. Consider re-designating some of the streets in Zones A & B. This would require a wholesale review of the policy with statutory provision to consult. A firm proposal with rational and identification of proposed consent streets to become prohibitive streets would be needed to go out to consultation. Therefore, resolve to set up a officer and member working group to consider this.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS

Current street trading process

- 3.1. The city centre streets, with a few exceptions, are prohibited streets. There are five static pitches within the City Centre (Zone A), mainly off Western Rd Brighton (Castle Street, Clarence Square, Dean Street, Crown Street and Marlborough Street) where trading is permitted. Outside of the city centre (Zone B), traders with a consent can trade on the highway, providing they are not causing a nuisance, obstruction or danger to the public. The Council's street trading policy can be found from the following link <http://www.brighton-hove.gov.uk/content/business-and-trade/licensing-and-gambling/street-trading> and in Appendix A, which sets out in a table the type of trading permitted in certain areas of the city.
- 3.2. The Seafront area including Grand Junction Road and Kings Road is designated a consent street but is outside the trading policy established by the Council and control of that area is the responsibility of the Seafront Office.
- 3.3. Officers in Environmental Health and Licensing issue permits for street trading. Any appeals against officer's decisions are heard by the Licensing Committee (Non-Licensing Act 2003).
- 3.4. A street market is held each Saturday in Upper Gardener Street between the hours of 07.00 and 17.00. Occasional markets are held in Bartholomew Square and George Street Hove. New Road and Black Lion Street in Brighton need to be authorised for street markets.
- 3.5. Street artists and hot chestnut sellers are permitted to operate in East Street, Duke Street, Bartholomew Square and Market Street.
- 3.6. Ice cream and burger vans are issued permits by the Licensing Team giving them consent to trade as "Mobile Street Trading". This is allowed in Zone B (outside of the city centre), with the exception of Parks & Gardens and within 1 mile of the Falmer Community Stadium therefore it gives mobile trading a wide area to trade from. There are no stipulations of roads but only that trading takes place within Zone B in accordance with the Street Trading Policy. We have 18 Zone B permits currently issued.

- 3.7. There are areas throughout the city in which street trading is prohibited. These areas are generally main thoroughfares or areas in the city centre and run from the western boundary of Brighton & Hove in Vale Road, Portslade, along Portland Road, Sackville Road, Church Road, Western Road, Montpelier Road, Chatham Place, Viaduct Street, Upper Lewes Road, then southwards down Lewes Road, Albion Street and Grand Parade before heading East along Edward Street, Eastern Road and finishing in Arundel Road. Street trading is also prohibited within 1 mile of the Community Stadium, but excluding council owned public spaces, which would remain undesignated.
- 3.8. The table in Appendix B lists the Zone A & B traders. We currently have 17 year round Zone B traders and 6 seasonal (ice cream traders). Of the 17 year round Zone B traders, 7 tend to trade on yellow lines or resident/display parking bays.

Commentary on street trading policy

- 3.9. Historically, parks have remained undesignated to allow Leisure officers flexibility in permitting outdoor events. The Seafront has been a consent street managed on a day to day basis by Seafront officers. Economic development members and officers are considering corporate market policies and officers are working to ensure corporate market policies and street trading policy work in harmony.
- 3.10. For members assistance and as reported last time:

The regulation of street trading by consents covers infrequent, itinerant trading. There is no right of appeal against refusal and so it is vital that licensing authorities behave in a fair and reasonable manner. An established street trader would have a reasonable expectation that his/her consent would continue. Street trading consent regulations' primary purpose is to prevent obstruction of the street or danger to persons using it, or nuisance or annoyance to people using the street or otherwise.

Street trading is selling articles on the street, including exposing or offering articles for sale. It does not include provision of services, like henna tattooing, hair braiding, tarot reading etc.

The following activities are not subject to street trading controls:

- Pedlars, with a pedlar's certificate issued by the Police under the Pedlars Act 1871. These are itinerant traders.
- Markets covered by enactment or order (ancient – none in Brighton & Hove)
- Trunk road picnic areas (none in Brighton & Hove)
- News vending
- Trading at petrol filling station

- Trading on the street adjoining a shop as part of the business of the shop
- Selling things on a round like milk doorstep delivery
- Objects on a highway licensed under highways legislation, like tables and chairs or A boards
- Recreation or refreshment facilities licensed under highways legislation
- Charitable street collections which are subject to separate permissions
- Controls only apply to the street or other public places.

3.11. Legal position - consents could include conditions that trading cannot take place on yellow lines and/or contravene TROs that are in place. Advice is based on the provisions of the Local Government (Miscellaneous Provisions) Act 1982. Schedule 4 of this Act deals with the issue of street trading licences and consents and includes the following powers:

a) Schedule 4, paragraph 7(4) provides that when granting or renewing a street trading consent the council may attach such conditions to it as they consider reasonably necessary.

Paragraph 7(5) states that without prejudice to the generality of (4) above, the conditions that may be attached to a street trading consent include conditions to prevent:-

- (a) Obstruction of the street or danger to persons using it
- (b) Nuisance or annoyance (whether to persons using the street or otherwise)

The Council may at any time vary the conditions of a street trading consent

It seems to be a reasonable condition to require street traders to comply with existing TROs; arguably to allow trading on double yellow lines for any length of time thwarts the purpose of the making of the TRO.

The consents could be issued with the condition that they are subject to any traffic regulation orders which would include single and double yellow lines, resident bays and pay and display bays.

3.12. Highways have indicated that they would support no trading on yellow lines.

3.13. A summary of complaints/enquires relating to street trading over the last 3 years is detailed in the table below.

| Complaints | Illegal | Obstruction | Noise/Odour/Litter | App Enquiries | Misc | Schools |
|------------|---------|-------------|--------------------|---------------|------|---------|
| 2016-2017 | 16 | 11 | 4 | 10 | 8 | 2 |
| 2015-2016 | 13 | 8 | 0 | 21 | 16 | 1 |
| 2014-2015 | 16 | 14 | 3 | 13 | 22 | 0 |

The figures include complaints relating to Upper Gardner and George Street markets. The complaints about obstruction relate to traders obstructing the

highway, pavements, parking bays or blocking access for residents/businesses and cycle lanes.

Where a trader is found to be causing a nuisance, obstruction or danger to the public the licensing team will consider revoking the street trading permit.

- 3.14. Changing the Street Trading Policy by re-designation of streets is subject to a statutory procedure which would require an extensive consultation exercise which would have resource implications and there would need to be valid grounds for triggering such a review. The basis for such change would need to be appropriate and lawful. The statutory scheme or imposition of conditions cannot be used to achieve an ulterior motive or aim outside the purpose of the enabling legislation. Concerns to protect existing businesses on Church Road may come within this category.
- 3.15. Varying the conditions of street trading consents is not subject to a set statutory process but consultation should be undertaken with existing traders and other relevant bodies such as the Highway authority.

4. CONSULTATION

The nature and extent of the consultation would depend on the change proposed and those affected, namely a wholesale review or varying conditions.

- 4.1 If the Committee decide that street trading should be reviewed, a full and measured consultation should involve residents (via the council's website), residents associations and Community Associations including the North Laine Community Association, businesses (including individual street traders) in Brighton & Hove, Police and Highway Authority, Economic Development and Regeneration regarding the corporate markets policy, Tourism, Events Office, Seafront Office (including Seafront Trader Association), Trading Standards, City Clean, Legal, Finance, Ward Councillors, City Centre and Hove Business Fora, Trader Associations including North Laine Traders Association, Upper Gardener Street Traders Association, Brighton & Hove Albion Football Club, and the Education Authority (Children's Trust).

5. FINANCIAL & OTHER IMPLICATIONS:

- 5.1 Financial Implications:

Street Trading fees are set at a level that officers reasonably believe will cover the costs of administering the service. Fees are set as part of the annual Council budget setting process. Any costs associated with the Street Trading Policy will be met from within existing Licensing budgets. The costs of a consultation exercise would depend on the extent of the review. The majority of costs would relate to staff time, although there may be some other stationary, travel and printing costs. All costs would need to be managed from current licensing budget resources. Therefore this needs to be a

consideration when deciding on the level of consultation to avoid a service pressure arising on this budget.

Finance Officer Consulted: Monica Brooks Date: 08/06/17

5.2 Legal Implications:

Section 3 of the Local Government (Miscellaneous Provisions) Act 1982 enables a district council in England and Wales to adopt a code for the regulation and control of street trading within its area and the Council has adopted Schedule 4 of the Act which governs street trading. Schedule 4 permits the Council to designate by resolution streets as prohibited, licence or consent streets. There is no obvious mechanism for creating exclusion zones, but part of a street could be re-designated a prohibited street. There is a statutory procedure for this involving publication of a notice in a newspaper and inviting representations which must then be considered. There should be good justification for changing the designation of streets. Reasons that are outside the purpose of the enabling legislation would be open to challenge. Challenge might reasonably be expected from those adversely affected by changes to street designation both on administrative law and human rights grounds.

Lawyer Consulted: Rebecca Sidell Date:

5.3 Equalities Implications:

Diversity is valued and strong, safe communities are vital to future prosperity.

5.4 Sustainability Implications:

Some street trading supports recycling of goods. Farmers markets may reduce "food miles".

5.5 Crime & Disorder Implications:

Transparent, proportional street trading controls minimise danger of obstruction and nuisance. Street trading can be a source of stolen or counterfeit goods.

5.6 Risk and Opportunity Management Implications:

Street trading is a crucial business and employment opportunity and unnecessary regulation might lead to legal challenge.

5.7 Corporate / Citywide Implications:

Street trading represents some traditional, historic heritage

SUPPORTING DOCUMENTATION**Appendices:**

Appendix A – Council's Street Trading Policy

Appendix B – Spreadsheet of Zone A&B traders as of May 2017

Documents In Members' Rooms:

None

Background Documents:

None

