

LICENSING COMMITTEE (NONLICENSING ACT 2003 FUNCTIONS)

Agenda Item 24

Brighton & Hove City Council

Subject:	<i>Upper Gardner Street Trading Policy Review</i>		
Date of Meeting:	<i>12 March 2020</i>		
Report of:	<i>Director of Housing, Neighbourhoods, and Communities</i>		
Contact Officer:	Name:	<i>Jim Whitelegg</i>	Tel: <i>01273 292438</i>
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Ward(s) affected:	<i>All</i>		

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 has been reviewed a number of times since, most recently the policy was last considered at Licensing Committee on the 23rd November 2017, where the committee approved conditions prohibiting trading from double yellow lines and resident parking bays.
- 1.2. The Council's licensing team have recently consulted on reviewing the Council's Street Trading Policy, with regard to removing the exception wording applying to the Upper Gardner Street market in conditions D and E and notes attached. This would bring Upper Gardner Street in line with the rest of the Street Trading Policy and citywide market policy. The consultation letter and Street Trading Policy is contained in Appendix A.

2. RECOMMENDATIONS:

- 2.1. That members agree to approve the suggested varied conditions as listed below and shown in the amended Street Trading Policy in Appendix A.
 - Traders will ensure suitable refuse storage and remove refuse at the end of trading (~~delete with the exception of Upper Gardner Street~~)
 - D. The Trader shall not place, store or sell, expose or offer for sale any article outside the trading area marked out at the specified site (~~delete with the exception of Upper Gardner Street~~).
 - E. The Trader shall at all times whilst trading provide a suitable receptacle for rubbish and litter and remove the rubbish and litter from the site at the end of each days trading. Such rubbish and litter is not to be placed in municipal litter bins. ~~Delete In Upper Gardner Street in lieu of this condition being complied with the Council will offer a refuse collection service upon payment of an appropriate fee.~~

The conditions to take effect from the 1st April 2020.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS

The licensing authority welcomes the benefit that the Upper Gardner Street Market brings to the city and acknowledges that it has been in existence for over 100 years.

The aim of these proposed changes is to make Brighton & Hove's Street Trading Policy more transparent, enforceable and consistent and to bring the market in line with the rest of the Council's Street Trading Policy.

Following visits to Upper Gardner Street Market, officers have observed traders operating outside their specified marked site and refuse being left at the end of the trading day. This has led to obstruction and litter complaints from residents and other traders.

A spreadsheet of complaints received relating to obstruction and nuisance issues can be found in Appendix B.

The market operates from 7am-5pm on Saturdays. There are 92 numbered pitches on Upper Gardner Street, 18 of which are not allocated to allow for disabled access and not obstructing businesses and houses. Of the 74 pitches available, 54 pitches have been allocated as of January 2020 compared to 44 in 2019 and 38 in 2018. There has been a steady increase in the number of pitches allocated in the last 3 years.

The Licensing Authority does not actively promote the market but details of the market are included on the visitbrighton website and a markets information sheet that is sent out to visitors on request.

There is an elected market trader supervisor that deals with matters on the day and who can refer matters to the licensing team as needed. Historically, licensing officers carried out routine market inspections on a quarterly basis or as and when issues arose. However, more recently the Field Officers have been tasked with visiting the market on a more regular basis.

CONSULTATION

Consultation commenced on 30th October 2019 and lasted 4 weeks, closing on the 27th November 2019. Residents and traders on Upper Gardner Street were consulted. The consultation letter is contained in Appendix A.

A total of 12 responses were received; 4 from market traders and 8 from residents/business. The responses can be found in Appendix C. Two of the traders responses make reference to an on-line petition (ref. <https://www.change.org/p/jim-whitelegg-leave-the-rules-for-this-historic-market-unchanged>), a copy of which can be seen in Appendix C.

To summarise the written responses received, the market traders are opposed, whereas the residents are in favour of the proposed changes.

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 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. 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

4. FINANCIAL & OTHER IMPLICATIONS:

4.1 Financial Implications:

Street Trading fees are set at a level that officers reasonably believe will cover the costs of administering the service. Any costs associated with the proposed policy amendments will be met from within existing Licensing budgets. Fees are set as part of the annual Council budget setting process.

Finance Officer Consulted: Michael Bentley Date: 15/01/20

4.2 *Legal Implications: These are considered in the report. Members should also have regard to the consultation responses when making their recommendations.*

Lawyer Consulted: Rebecca Sidell Date: 16.01.2020

4.3 Equalities Implications:

We do not consider there are any equality implications as a result of this policy change.

4.4 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.

- 4.6 *Risk and Opportunity Management Implications:*
Street trading is a crucial business and employment opportunity and unnecessary regulation might lead to legal challenge.
- 4.7 *Corporate / Citywide Implications:*
Street trading represents some traditional, historic heritage

*SUPPORTING DOCUMENTATION**Appendices:**Appendix A – Consultation Letter and Revised Street Trading Policy**Appendix B – Complaints spreadsheet**Appendix C - Summary of responses received via consultation process**Documents In Members' Rooms:**None**Background Documents:**None*