

Background Papers, if any, are specified at the end of the Report

STREET TRADING POLICY

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RECOMMENDATIONS

That Members approve the Street Trading Policy and recommend it for approval by Full Council

Report

- 1 The Local Government (Miscellaneous Provisions) Act 1982 enables a local authority to impose limitations on street trading within its area. Such a resolution was passed with the result that a number of streets within Chiltern DC are designated as consent streets. This means that anyone who wishes to trade on these streets must hold a street trading consent and there are penalties for non compliance.
- 2 The power to designate streets exists for the benefit of the public and is not primarily intended to provide employment or other security for particular individual traders. The designation of consent streets provides the Council with the discretion to grant or refuse applications and there is no right of appeal against the decision. A street trading consent cannot be granted for longer than twelve months and can be revoked at any time. The Council may attach any reasonable condition, which can be varied at any time.
- 3 The aim of the Council's draft Street Trading Policy is to provide a policy framework that will guide the decision-making process when considering applications and provide guidance to applicants. The policy will also encourage a street trading environment which complements premises-based trading, is sensitive to the needs of residents, provides diversity and consumer choice, and seeks to enhance the character, ambience and safety of local environments.
- 4 A draft Street Trading Policy was presented to the Licensing and Regulation Committee on 1st March 2012 and formal consultation has since taken place.
- 5 To date two comments had been received from Ward Members despite a wide consultation circulation. At the time of writing the consultation had not ended and a verbal update will be provided. The questionnaire used as part of the consultation is at **Appendix 1** and the draft Street Trading Policy is presented in **Appendix 2**.

- 6 Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 provides little guidance for licensing authorities when considering applications other than for specifying the location and times of trading and the issue of consents with conditions which it considers reasonably necessary particularly for the prevention of any nuisance and inconvenience or obstruction that may arise to those using the streets in question.
- 7 Therefore, in view of the above, it is important that key considerations are adequately addressed and aired as part of policy development and in consulting on the draft policy, a number of key considerations were highlighted:
- Considerations when considering an application (section 4.12 - 4.14)
 - Those activities where a fee is not payable (section 6.3)
 - Markets and Special Events (Section 7)
 - Standard Conditions, and
 - Extent of Consent Streets

Considerations when considering an application

- 8 Within the draft policy, it is proposed that a number of factors are taken into account when assessing consent street applications, primarily related to public safety and minimising nuisance to local residents and other users of the highway.
- 9 Additional considerations (section 4.14) have also been consulted upon, namely the appearance of the vehicle/stall and whether the needs of an area/demand for goods in terms of either existing street traders or neighbouring shops and provision from other trade outlets in the vicinity should be grounds for refusal. Condition 16 stipulates that *'The consent holder shall maintain the stall or vehicle in a clean state and its structure shall be kept in good order, repair and condition to the satisfaction of an Officer of the Council authorised in writing under the appropriate legislation.'* The issue of appearance etc. is a subjective one and as such, commonly acceptable standards form the basis of this assessment rather than anything more prescriptive.
- 10 With regard to considering demand/need (section 4.12), an analogy with Planning Policy can be drawn in that the Premises Class Use can be used to determine the number and location of retail outlets in a particular town centre but once granted, the actual nature of the outlet is governed by market forces. Therefore the question is whether an application should be refused at the outset on the basis of a demand already being met either by other traders or fixed premises or whether market forces should be allowed to dictate the success or otherwise of a mobile trader.

Those activities where a fee is not payable

- 11 The policy (section 6.3), in an attempt to encourage street trading as a means of complementing premises-based trading, supporting local traders and enhancing the character and ambience of a local area, identifies different trading activities which would benefit from the waiving of fees and charges. These are currently outside the scope of fees and charges and it is recommended that this policy continues.

Markets and Special Events

- 12 However it is proposed that markets and similar events, other than those above, would pay the necessary fee except where the activity is for charitable purposes. In order to encourage traders and promote such events, the consent would be issued only to the organiser responsible for the event and for ensuring that traders comply with the conditions.

Conditions

- 13 Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 enables licensing authorities to issue consents with conditions which it considers reasonably necessary and in particular the location and times of trading and for the prevention of any nuisance and inconvenience or obstruction that traders may occasion to those using the streets in question.
- 14 The draft policy establishes a set of standard conditions which will be attached to each street trading consent detailing the holder's responsibilities to maintain public safety, avoid nuisance and generally preserve the amenity of the locality. Specific conditions will also be attached such as the days and hours when street trading is permitted, the goods which may be sold and the size and location of the pitch.
- 15 The consultation process raised other key points for consideration:
- a) *the setting of trading hours through policy (Condition 12)* - Members are reminded of a trader's right to apply for the hours they wish to trade within. However by considering each application on its own merits, together with the power to apply conditions if the Committee is of the opinion that the application may undermine the key objectives, it is recommended that no trading hours are set within the policy other than those restricting trading on Bank Holidays and Christmas Day and New Year's Day if falling on a weekend. It should be noted that traders wishing to trade in hot food and drink after 23.00 will require a licence for the sale of late night refreshment under the Licensing Act 2003;
 - b) *application of a 7m buffer zone to engage the policy (Condition 1)* - this was originally proposed to define those areas adjacent to

controlled streets accessible by the public without payment, including private land. However, a High Court case *West Berkshire v Paine* [2009] All ER EWHC (422) considered the definition of a “street” and held that there was no need to narrow down the wide definition defined in the wording in paragraph 1(1)(a) of Schedule 4. The question of whether premises were private property was an immaterial consideration for the purposes of considering what constituted a street that it enabled a local authority to regulate sellers who operated without premises and itinerant traders so that it could assess the suitability of sellers; assess what nuisance or obstruction they might cause, and ensure consumer protection. Therefore it is recommended that this definition is removed from the policy.

- c) *to provide WC facilities for staff and public where seating is provided (condition 15)* – this condition was consulted upon to establish whether it would be reasonable for a trader to provide such facilities for customers or whether it would be unreasonably prohibitive.

Extent of Consent Streets within the District

- 16 The provisions of Part III of the Local Government (Miscellaneous Provisions) Act 1982 were brought into effect on 19th June 1984. Since then the designation of consent streets has been introduced on an adhoc basis following complaints of street trading in areas within the District. The result is a number of consent streets within the District primarily focused around the main town centres.
- 17 It was considered appropriate to consider the coverage of consent streets within the District as part of the consultation and to establish whether there was evidence to suggest a widening of the scheme. To date no representations have been received to suggest that there is a need to widen the current distribution of the consent streets.

Transitional Arrangements

- 18 It is proposed that consents will run from 1st April – 31st March, thus bringing them in line with the financial year and the fee setting process. Applications received within this period will be charged on a pro-rata basis. Chiltern DC currently has only one consent holder who sells fish from a mobile van on a Friday. It is therefore proposed that, for the existing consent holder, a transition period up to 31st March 2013 would be given to allow time to comply with the proposed new standard conditions. For new applicants, the policy will take immediate effect.