

Report of: Head of Environmental Health

To: Central, South and West Area Committee 11th December 2007
and General Purposes Licensing Committee 16th January 2008

Date: **Item No:**

Title of Report : Street Trading Enforcement Service.



Summary and Recommendations

Purpose of report: To seek comments from Central South & West Area Committee on the operation of and possible amendments to the current street trading scheme and to request a decision from General Purposes Licensing Committee on the proposed amendments.

Key decision: **No**

Portfolio Holder: Councillor Jean Fooks

Duties Responsibility:

Ward(s) affected: All

Report Approved by: Environmental Health Business Manager
Legal Services – James Pownall
Finance – Andy Collett

Policy Framework: Street Trading Scheme

Recommendation(s):

Central South & West Area Committee is requested to comment on the operation of and possible amendments to the current street trading scheme.

General Purposes Licensing Committee is recommended to:-

Decide whether to support an increase in the number of street trading sites.

Agree an increase of either:-

- i) £815 per annum in street trading fees to fund full time 5 day per week (weekday) enforcement resources.

- ii) £1304 per annum in street trading fees to fund full time 6 day per week (weekday plus Saturdays) enforcement resources.
- iii) £1965 per annum in street trading fees to fund full time 7 day per week enforcement resources.

C) decide whether to support a move towards an alternative means of allocating consent sites by way of an annual random draw or other method.

D) decide whether it supports the process of obtaining a local Act of Parliament to strengthen the powers in relation to unlawful street trading.

Introduction

1. The Oxford City Council introduced the Street Trading Consent Scheme in 1986. The scheme is governed by the Local Government (Miscellaneous Provisions) Act 1982 and is in place to regulate trading from the city centre and its suburbs. There are exemptions to the scheme in that anyone who trades as a Pedlar, roundsman, news vendor or trades in an authorised market or fair is exempt from the control of the street trading scheme.
2. The power to agree and vary the Scheme is vested in the General Purposes Licensing Committee.
3. Street trading takes place across the City but most markedly within the Central, South and West, North and East Area Committees areas. The Central, South & West Area Committee asked for a report on the current operation of the street trading scheme and a report was presented to CSWAC on 11th September 2007. Following receipt of the committee's views, this report has been updated and is now presented to CSWAC for a final comment prior to being presented to the General Purposes Licensing Committee for decision on 16th January 2008. The other Area Committees have not made any comments so far on this issue.

Operation

4. The scheme operates by requiring traders to hold a street trading consent, renewable annually, which entitles them to trade from a fixed location in the City. Most consents are renewed by the existing consent holder and therefore there is relatively little change in the consent holders from year to year.
5. There are currently 30 annual let sites within the consent area, 16 for evening sales of hot food, 11 for daytime sales (mainly non food) and 3 for ice cream (effectively summer only lets). Two weekly let sites (Bonn Sq & Cornmarket St) were introduced in 2004 as a means of providing a low cost weekly site for those traders either running very small businesses or those just starting out.

6. The scheme was originally designed as a means of regulating & controlling, rather than promoting, trading in the city centre. It was therefore not designed to maximise income from street trading, a decision which Committee may wish to review.
7. The current fee for an annual consent is £4,140, calculated on a pro rata basis for any 1, 3 or 6 month lets. The weekly let rate is currently £135. The scheme also allows payment of a “market rate” for any sites categorised as difficult to let. This occurs where a site has either been traded unsuccessfully and surrendered within a short period by more than one trader or where owing to some intrusion into the trading area it is felt that the trader would be disadvantaged and customer footfall is significantly less than other sites. These fees increase annually in line with the general inflationary increase of fees & charges. The fees cover the cost of administering the scheme, including all enforcement costs, on costs & recharges.

Enforcement Resources

8. The officer resource in the establishment for street trading enforcement across the city is half post (0.5 fte). For the last 15 years, enforcement has taken place from Wednesday to Friday with occasional weekend and evening work as an overtime event. This has not been an ideal arrangement, especially as weekend street trading has grown markedly in recent years.
9. The part time post holder’s responsibilities include monitoring the authorised street traders, and regular patrols to detect and discourage itinerant traders and pedlars. The enforcement officer also checks compliance with the Pavement Café conditions and Charitable Street Collection requirements and prepares documents for prosecutions etc. The street traders compliance with current food safety and health and safety legislation is also monitored. This workload has increased considerably over recent years.
10. The Environmental Enforcement Officers cannot cover the range of duties and responsibilities that form the Street Trading Enforcement Officer role. This is mainly because they have other duties, which fully take up all their available time. In addition, their posts are not graded to the level of the Street Trading Officer post, nor is there sufficient funding at present to bring about such a change.
11. The part time post was vacated in December 2005. In June 2006 a specialist contractor was temporarily engaged to cover this programme area. During the process of seeking specialist contractors to cover this work area it was apparent that no contractor was available to provide regular weekday and weekend cover – even assuming that the costs could be met.

12. A corporate bid to increase the staffing resource failed so Central, South and West Area Committee was asked if it would support an increase in staffing but it declined to do so.

Current Issues & Options

A) Improving Enforcement via Fee Increase

13. The current situation of having only part time cover leads to significant gaps in enforcement cover which is seemingly being exploited by Pedlars & other itinerant traders. The cost of increasing the post to basic full time cover Monday to Friday would be £18,760 per year from April 2008. However, this does not include any provision for weekend or evening working. Extending the working hours to additionally provide full time cover for Saturdays would cost £29,992, and to provide full time 7 day per week cover the additional cost would be £44,968. This funding would need to be recurring each year to ensure the permanent continuation of full time Street Trading cover.
14. An option is to increase the current street trading fees significantly to provide the additional funding needed. Approximately 23 sites are occupied on a full time basis and a fee increase of £815 per site would provide the necessary funding to increase to full time cover during the week (excluding weekends). An additional increase of £1150 per site would provide the necessary funding to increase to full time cover during weekends. Therefore, a total fee increase of £1965 per site would provide the necessary funding to provide full time 7 day per week cover. It has already been determined that if the evening hot food traders are granted additional trading hours they will have their fees increased by £300 to cover this extra provision. If four evening traders were to want extra hours, this would provide another £1200 per annum, but would also mean more evening enforcement would be required so that there would not be significant extra income to cover extra enforcement at other times.
15. Central South & West Area Committee discussed the matter on 11th September and formed the opinion that they would support a reasonable increase in street trading fees to fund additional enforcement.

Improving Enforcement Via Additional Sites

16. Another alternative is to seek additional locations for new street trading sites. For example, Cornmarket is seen by traders as a prime location (hence the weekend pedlars siting themselves there) but there is currently only one authorized street trading location present (a weekly let site). Creating additional sites in this location would provide additional income and may also have some effect in dissuading itinerant traders from monopolising this area.

Other Issues

17. With any new location, agreement has to be reached with Oxfordshire County Council Highways and Thames Valley Police to ensure there are no obstruction or crime & disorder issues associated with the proposed location. In the past, Thames Valley Police has indicated that although it has no wish to see existing sites extinguished, it also does not wish to see a significant increase in the number of sites. Oxfordshire County Highways has previously expressed concern over the streets being very congested in relation to finding new kerbside locations.
18. Local businesses may also take a view on having traders located close to their premises. There are some existing sites which have not been occupied for some time as they are regarded as being too out of the way to generate sufficient business. Positive promotion of these sites has resulted in some recent interest but not at a sustained level. The creation of new trading locations, if supported, is a longer term prospect which will take several months to realize.
19. Any income received from such changes would need to be directed towards improving the enforcement and administration staffing resource rather than be just added to general annual income targets.
20. Central South & West Area Committee discussed the matter on 11th September and formed the opinion that it would not, at this stage, support an increase in the number of street-trading sites. However, it indicated that, if at some later stage, suitable sites were identified then it would be willing to consider them.
21. Central South & West Area Committee was not willing to make funding available for weekend work but did ask if it would be possible to exchange weekday enforcement for weekend enforcement. When contractors were being sought to cover this role, the general response was that regular weekend working would prove unfavourable and was therefore not an available option. A further conversation with the agency supplying the current contractor has reiterated the fact that weekend working is not favoured by their staff. If at some future date the permanent Street Trading Officer post (half or full time) is cleared for recruitment, this option can be revisited. It should be borne in mind that the present half week funding is not sufficient to cover full weekend working, even leaving aside the recruitment issue.

B) Pedlars & Itinerant Traders

22. There is currently a significant problem with itinerant traders and Pedlars operating at weekends. Many of these traders appear to operate in organised groups rather than as individuals and although successful prosecutions have been taken (with a further 13 currently being processed by Legal Services), the Pedlars continue to return to

the city, as it seems the income to be made from this trade outweighs the costs of prosecution (with relatively small penalties).

23. A recent attempt via a Private Member's Bill to amend the Pedlars legislation and thereby strengthen the powers to deal with unlawful trading, appears not to be progressing as well as was hoped and seems unlikely to be successful.
24. A better long term solution therefore is seen to be the introduction of a local Act of Parliament to prohibit such trading outright. This is the approach that other affected local authorities are taking as they have also experienced the difficulties of trying to regulate pedlars under existing legislation. Although in itself a local act will not prevent pedlars arriving in the City, it can provide stronger legal powers which dissuade regular pedlars from repeatedly visiting the City.
25. Preliminary work has been undertaken to determine the process by which a local act may be introduced and from conferring with local authorities who have pursued this option, it appears the costs of this course of action are estimated to be in the region of £50,000. As this is a significant financial cost, there may be the possibility of this being shared (for example by the Council, Thames Valley Police, Oxfordshire County Council, local businesses etc). However, this approach obviously depends on the value placed on obtaining such a local act by the parties asked to contribute. There may also be the possibility of approaching OX1 for a contribution if the BID scheme is successfully introduced, though BID rules may restrict such an approach.
26. Central South & West Area Committee discussed the matter on 11th September and repeated its support for the promotion of a local Act of Parliament aimed at strengthening powers to control street trading.

Consent Fees v Competitive Tenders

27. The current street trading scheme relies upon consents being granted to traders, all of whom pay the same fee (except where the site is categorised as "difficult to let" where a fee reduction is offered).
28. The possibility of granting consents on the basis of competitive tendering has been explored and it is the view of Legal Services that this approach is not possible within the existing consent scheme regime. Therefore this issue has not been progressed further.

Allocation of Sites

29. Many of the existing street trading consent holders have been present in their current locations for a significant number of years (some traders have been present since the inception of the scheme in 1986). This has led to a feeling by some traders that they "own" the sites and they are very protective of "their" sites. This has led to some conflicts over

the years where traders have had to be resited to accommodate either temporary or permanent developments, roadworks etc.

30. An alternative possibility is that although existing traders in good standing are offered an annual renewal of their consent, the actual site to which the consent relates is allocated by a random draw. This has the effect of breaking the long term link between traders and sites. Some traders may welcome this approach, as there are some sites which are seen as more attractive than others, whereas others would be reluctant to break their long term association with a "good" site. The other issue for traders is that over the years they have built up a regular customer base and their fear is that these customers may be "site loyal" rather than "business loyal" so would not follow any relocation of the particular trader.

31. Central South & West Area Committee discussed the matter on 11th September and formed the opinion that it did not to support a move towards an alternative means of allocating consent sites.

Conclusion

32. There are a number of possible options to explore in relation to amending the current street trading consent scheme. These range from a series of amendments to a complete overhaul of the scheme. It should be borne in mind that changes which lead to a perceived negative effect on existing traders are likely to cause complaints and possible legal challenges from these traders.

Recommendations

33. General Purposes Licensing Committee is recommended to:-

A) decide whether to support an increase in the number of street trading sites.

B) agree an increase of either:-

i) £815 per annum in street trading fees to fund full time 5 day per week (weekday) enforcement resources.

ii) £1304 per annum in street trading fees to fund full time 6 day per week (weekday plus Saturdays) enforcement resources.

iii) £1965 per annum in street trading fees to fund full time 7 day per week enforcement resources.

C) decide whether to support a move towards an alternative means of allocating consent sites by way of an annual random draw or other method.

D) decide whether it supports the process of obtaining a local Act of Parliament to strengthen the powers in relation to unlawful street trading.

Name and contact details of author: Neil Bacon
Food Safety Team Manager
Oxford 252480

Background papers: None

