

To: General Purposes Licensing Committee

Date: 14 June 2010 **Item No:**

Report of: Head of Environmental Development

Title of Report: Proposal by Councillor Morton for Street Trading in Dawson Street, Cowley Road and Circus Street.

Summary and Recommendations

Purpose of report:

To respond to the proposal made by Councillor Morton concerning Dawson Street, Cowley Road and Circus Street.

Key decision: No

Report Approved by:

FINANCE: Gillian Chandler

LEGAL: Daniel Smith

Policy Framework: Improving the local environment, economy and quality of life.

Recommendation(s):

Committee is requested to:

- 1) note the report,
- 2) agree to introduce new categories of weekend and single day consents for street trading on Dawson Street, and
- 3) agree a fee of £75 for a weekend consent and £50 for a single day consent.

Introduction

1. Councillor Morton submitted a proposal for street trading in Dawson Street, Cowley Road and Circus Street in response to the public consultation on the street trading policy earlier this year. A copy of the proposal is appended to this report. Committee requested a further report on the proposal.
2. Dawson Street was formerly designated a Prohibited Street, as defined within the Local Government (Miscellaneous Provisions) Act 1982, This meant no trading of any kind was permitted in Dawson Street. Council

resolved to change the designation of Dawson Street to Consent Street and the legal process to alter the designation was completed on 1st May 2009.

Findings

3. Dawson Street is a designated highway within the terms of the Highways Act 1980. Section 137 of The Highways Act 1980 creates the offence of unnecessary obstruction. This provides “If a person without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway he shall be guilty of an offence and shall be liable to a fine.
4. The Highways Act 1980 is the primary legislation to consider before granting a Consent to Street Trade. The key words are perhaps “lawful authority”. This is satisfied if the street trader is granted consent to trade by the designated local authority, in this case Oxford City Council.
5. Essentially before a Street Trading Consent can be approved the views of Oxfordshire County Council highways have to be considered. They have to consider the legal obligations alluded to earlier. This requirement is recognised in the new policy at paragraph at 5.4 (h).

Legal Position

6. Councillor Morton’s suggestion clearly states the intention is to set up a permanent weekend “market” (of 5 to 8 stalls) that operates all year round. Markets are treated differently to street trading at law. “Markets” have a specific legal definition which is different to that of street trading. It has been assumed that we are considering street trading, even though traders may be operating adjacent to each other in the same consent street .
7. It is doubtful whether a grant under a prerogative could validly create market rights over an existing highway. Planning permission would normally be required to create a new market as it must be subject to development control.
8. The activity suggested by Councillor Morton must be regarded as Street Trading as a market in Dawson Street would clearly have no legal pedigree. For this to change to a market there would have to be an Act of Parliament. Any application received would be considered having regard to the Highways Act 1980 and the Street Trading Policy.
9. The current fee structure under the street trading scheme only accommodates traders with weekly consents and street traders who trade on a yearly basis. The current fee for a weekly consent is £145. The annual charge is £6540. There is currently no “daily” or “weekend fee” and Committee may wish to introduce one to facilitate Councillor

Morton's proposal. It is suggested that new categories of weekend and single day consents are introduced for street trading on Dawson Street, at a fee of £75 for a weekend consent and £50 for a single day consent.

Processing Applications

10. The new street trading policy means there is an agreed framework to consider before a Street Trading Consent is issued. Paragraphs 5.4. of the policy details the factors that will be considered.

“5.4 In considering applications for the grant or renewal of a Street Trading Consent the following factors will be considered:

(a) Public Safety

Whether the street trading activity represents, or is likely to represent, a substantial risk to the public from the point of view of obstruction, fire hazard, unhygienic conditions or danger that may occur when a trader is accessing the site.

(b) Public Order

Whether the street trading activity represents, or is likely to represent, a substantial risk to public order.

(c) The Avoidance of Public Nuisance

Whether the street trading activity represents, or is likely to represent, a substantial risk of nuisance to the public from noise or misbehaviour, particularly in residential areas.

(d) Appearance of the stall or vehicle

The stall or vehicle must be of smart appearance and meet criteria, including size, laid down in the standard consent conditions. Photographs or sketches, including dimensions, must be provided with all new applications and requests for approval of changes to or replacement of a stall or vehicle.

(e) Needs of the Area

The demand for the articles for sale, and the geographical location of the proposed site.

(f) Environmental Credentials

The impact of the proposed operation on the local environment including street surfaces and materials, power supply, carbon footprint, supply chain, packaging, waste minimisation, waste disposal and waste created by customers. Mitigating measures to minimise the environmental impact of the proposed operation.

(g) Food Traders

Applicants to trade in hot or cold food must hold a current Level 2 Food Hygiene Certificate accredited by The Chartered Institute

of Environmental Health, or The Royal Society of Health, or The Royal Institute of Public Health and Hygiene.

(h) Highway

The location and operating times will be such that the highway can be maintained in accordance with the Oxfordshire County Council's requirements and that there are no dangers to those who have a right to use the highway and no obstruction for emergency access."

11. If the Committee resolve to support Councillor Morton's proposal the way forward may be the adoption of a new category of Street Trading Consent so this activity is legally recognised as Street Trading and cannot be confused as a Market.
12. It is suggested that it be termed a "Daily or Weekend Street Trading Consent" It is important to do this as it would attract different fees and conditions. It cannot be right to charge the same as a weekly fee or subject the traders to exactly the same conditions imposed on weekly traders. There is a very different environment in Dawson Street to that in the city centre. E.g. weekly traders cannot sell food of any kind. Conditions unique to this type of activity should be drafted which better reflect the informal nature of a weekend gathering. Conditions should reflect the sorts of conditions attached to both weekly and annual consents.
13. The street trading scheme provides for consultation with Thames Valley Police, Oxfordshire County Council Highways Department, Oxfordshire Fire and Rescue Service, Oxford City Council Licensing Department and Oxford City Council Planning Department (and neighbouring retailers?).
14. Finally there is the insurance aspect to consider. Oxfordshire County Council require anyone trading on a highway with lawful authority must be on risk for £10,000,000 of public liability and public indemnity insurance to indemnify any claim against both the County and City Authorities. There must be no risk to the public purse from activities carried out for private gain.

Further Comments on the Proposals

15. Dawson Street is a Consent Street and trading is permissible. Applications to street trade can be considered now. It is open to individuals applying for a consent within the terms of the current scheme.
16. Circus Street is a Prohibited Street and is unsuitable for Street Trading due to the layout of the Street. There will be objections from County Highways to designate this a Consent Street.

17. Cowley Road is a Consent Street from the Plain to Howard Street. This was done to legally permit street trading in conjunction with the Cowley Road Carnival. It is unsuitable for any other form of Street Trading and any application to trade in this location is likely to be rejected. This is due to the road width and the fact that Cowley Road is a main traffic route with a high volume of bus movements.
18. Applications will be granted if the criteria within the policy are met and there are no objections. If there are objections a hearing would be required first.

Summary

19. The proposal should be limited to street trading in Dawson Street. As a Consent street, applications can be made for individual stalls or a group of stalls and will be processed in accordance with the Street Trading Policy. A new category of street trading could be established for Dawson Street that caters for a single day or weekend.

Recommendations:

20. Committee is requested to:
 - 1) note the report,
 - 2) agree to introduce a new categories of street trading for weekend and single day consents in Dawson Street, and
 - 3) agree a fee of £75 for a weekend consent and £50 for a single day consent.

Background papers: None

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APPENDIX

The following proposal has been received by Councillor Morton.

To whom it may concern,

As the Councillor for St Mary's Ward I have been asked to look into opening up street trading sites in the lower end of Cowley Rd. Dawson St and Circus St are the obvious first choices, with Dawson St being reclassified as a permitted Street and there being a potential for Circus St to follow. The informal group called 'Plain Traders' has given me a list of local businesses that support street trading in Dawson St, with a weekend market becoming established year round. They believe this would help draw passing trade to the area and protect against the collapse of the local economy:

CAPE OF GOOD HOPE, RJ 21, BALLROOM, SAREE, MUSIC BOX,
MELE, TARMED,
MAROC DELI, HILO, DOOR 74, G & D'S, ANGLE AND GREYHOUND,
HALFMOON,
CUCINA, NEWSAGENT, BLACKHORSE

Please take this into consideration when going over the street trading consultation. My suggestion would be that permanent trading plots are measured up for Dawson St and a means of booking such plots are negotiated. A locally constituted group could be involved in the management of such a 'market'. The number of plots will be limited, between 5 and 8, I imagine, though further consultation with interested parties, particularly CoCo's and Kasba, as well as those affiliated with Plain Traders, would be needed to come to final figures.

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