

**To: GENERAL PURPOSE LICENSING COMMITTEE**

**Date: 12<sup>th</sup> October 2009** **Item No:**

**Report of: HEAD OF ENVIRONMENTAL DEVELOPMENT**

**Title of Report: Review of Street Trading Scheme - Update**

### **Summary and Recommendations**

**Purpose of report:** To update Committee on the progress with reviewing the Street Trading Scheme and to seek agreement for further actions.

**Report Approved by:**

**Finance: Paul Swaffield**

**Legal: Jeremy Franklin**

**Policy Framework:**

**Recommendation(s):**

**Committee is requested to:**

- 1) agree the draft Street Trading Policy based on the document appended to this report and give approval to more widespread consultation,**
- 2) agree to seek views on the principle of changing the designation of streets in all or part of the City Centre to Consent Streets,**
- 3) agree to seek views on the principle of a new approach for street trading in the northern part of St Ebbe's Street, and**
- 4) agree to consult on the above proposals.**

### **Introduction**

1. At its meeting on 15th June 2009, General Purposes Licensing Committee received a report on proposed changes to trading locations in the City Centre. Committee resolved to review and consult on the street trading scheme to include the following:

- (a) Criteria for deciding the allocation of consents for vacant sites;

- (b) Relocation of sites as a result of Bonn Square redevelopment and the Transform Oxford scheme;
  - (c) Quality and appearance of stalls;
  - (d) Fees charged and the fairness of the fee structure taking into account that some sites are more favourable than others;
  - (e) Procedure for determining applications where there is competition for the allocation of vacant sites;
  - (f) Consultation as part of the review.
2. Committee also resolved to consult on a range of proposed changes for locations in Bonn Square and Castle Street.

### **Street Trading Policy**

3. The current Street Trading Consent Scheme has been in place since 1986 with some subsequent amendments. Prior to the scheme being introduced street trading was largely uncontrolled. A 1927 byelaw prohibited the sale of fish, fruit, vegetables, ice cream, flowers, toys and other similar products between the hours of 10.00am and 8.00pm in certain streets within a ¼ mile radius of Carfax. During the early to mid 1980's the number of late night hot food vans trading in the City Centre had become an issue. However it fell outside the scope of the byelaw and was therefore largely uncontrolled. The 1986 scheme was introduced as a response to this issue. Under the scheme, anyone selling any items from a stall or vehicle in the street is required to hold a Street Trading Consent issued by the Council. The consent allows the consent holder to trade from a fixed site and is granted under the provisions of the Local Government (Miscellaneous Provisions) Act 1982.
4. It is arguable that the scheme is no longer fit for purpose as identified by Committee at its last meeting. In particular, the absence of a formal policy needs to be rectified. A draft policy (appended) building on the principles of the established scheme and incorporating the views expressed by Committee is therefore proposed. The Committee is asked to comment upon this draft before consultation takes place.
5. As Members will note, the proposed draft covers matters omitted from the current scheme. At present the creation of a new pitch is a cumbersome and lengthy process. Certain other cities have a more streamlined approach which relies on the adoption of a comprehensive policy which then guides officers when dealing with the details of determining consents under delegated powers.

6. Under the scheme of delegation in the Council's Constitution, Full Council sets policies on licensing and registration. The General Purposes Licensing Committee:

- recommends and reviews policies on licensing and registration,
- sets and reviews licence fees, and
- agrees and varies a street trading scheme.

The General Purposes Licensing Committee appoints a Licensing and Registration Sub-Committee to:

- decide street trading applications that are for longer than three months, and
- decide applications to renew street trading permission when there has been a complaint about the trader or the trader has broken the conditions of their street trading permission in the past year.

The Head of Environmental Development does everything else.

7. Key recommendations for the draft policy would be delegation to officers when there is no competition for a consent. If this were to be approved at a later stage, as a change to the constitution, then it would mean that consents would be determined in accordance with the policy.

### **Street Trading Sites**

8. Although Committee agreed to consult on relocating certain sites in the Bonn Square area at its last meeting, it may be advantageous to consult on a new policy document covering the whole of the city centre scheme at this time. During the officer review of the scheme and discussions with stakeholders, officers have looked at other approaches because it is clear that there is a desire for street trading to be relocated from Bonn Square and the western part of Queen Street.

9. Two other options for consideration are, firstly to explore changing the designation of some of the streets in all or part of the City Centre to Consent Street. Given Oxfordshire County Council's efforts to accommodate pedestrians through Transform Oxford, changing designation to Consent Street would allow for the creation of new pitches and the relocation of some pitches that should be closed. Any changes would be carried out in accordance with the new policy, if adopted.

10. The second option would be to explore a new approach for the northern part of St Ebbes Street. The idea is to create up to 10 new pitches and to decant the current pitches from Bonn Square and the western part of Queen Street to this location. The whole area could be tidied up in the process and a mini-market of stalls of the same design could be created. Early discussions with stakeholders have been productive and if Committee were to support further developing this option, officers would work on its feasibility.

## **Legal Issues**

11. Should the Council decide to designate or redesignate a street as a Prohibited, Licence or Consent Street, it must follow the procedure laid down in the Local Government (Miscellaneous Provisions) Act 1982. This involves advertising, consultation and considering representations before passing a resolution to designate the street and advertising the outcome.
12. Legal opinion was sought prior to moving three street traders to temporary locations to accommodate the Bonn Square redevelopment. It was advised that a consent is not regarded as a possession under the European Convention on Human Rights and a consent holder cannot have a legitimate expectation that a consent will be indefinitely renewed. It was also advised that a street trader cannot be said to enjoy security of tenure and there is no requirement for the Council to give compensation for the loss of any consent (other than any refund of consent fees paid in advance).
13. However, any decision to terminate street trading consents may be subject to a judicial review and therefore the Council was advised to consult the existing traders before making a decision.

## **Financial Issues**

14. The Council collects licence fees for the Street Trading function. Fees are reviewed annually prior to the council setting its budget. Predicted income from licence fees is included in the Council's budget.

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Background papers:

**Version number: 2**

### Draft Street Trading Policy

#### 1 Purpose of the Policy

- 1.1 This policy sets out Oxford City Council's framework for the management of street trading in Oxford City Centre. Through the street trading scheme the Council aims to regulate the location and number of street traders in the City Centre. The scheme also aims to prevent the obstruction of the streets of Oxford by street trading activities. In doing so, it recognises the importance of licensed businesses to the local economy and the character of the area whilst trying to ensure that the activities do not cause nuisance or annoyance to the people in the area.
- 1.2 This document will guide the Licensing Authority when it considers applications for Street Trading Consents. It will also inform applicants of the parameters in which the authority will make decisions and how their needs will be addressed.
- 1.3 It also highlights the Council's undertaking to avoid duplication with other statutory provisions and our commitment to work in partnership with other enforcement agencies.

#### 2 Consultation

- 2.1 In determining this policy, the Council has consulted the following people and bodies:
  - Thames Valley Police
  - Oxfordshire Fire and Rescue Service
  - Oxfordshire County Council Highways
  - Central, South and West Area Committee
  - Oxford City Centre Manager
  - Nightsafe
  - All current consent holders
- 2.2 We have also consulted various other professional people within the council. These include:
  - Planning
  - City Works
  - Legal Services
  - Property and Facilities Management
  - City Executive Board Member for Environment
- 2.3 We have considered and taken into account the views of all the appropriate bodies and organisations.

### **3 Review of the Policy**

- 3.1 This policy will be reviewed every three years. At the time of the review, we will again consult all interested parties. As well as the three-yearly reviews, we will continue to evaluate the policy and may update it at any time. Any minor changes can be agreed by the General Purposes Licensing Committee.

### **4 Legislation and current provision**

- 4.1 In 1986 the Council resolved that Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 should apply to its area. Under Schedule 4 of the Act the Council can manage street trading by designating streets as 'consent streets', 'licence streets' or 'prohibited streets'.

'Street Trading' is defined as the selling or exposing or offering for sale of any article (including a living thing) in a street – subject to a number of exceptions such as:

- (a) Trading as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871.
- (b) Any trade in a market or fair, the right to hold which having been obtained by a grant, enactment or order.
- (c) Trading as a news vendor.
- (d) Trading at or adjoining a shop premises as part of the business of the shop.
- (e) Offering or selling things as a roundsman.

Schedule 4 defines a street as any road, footway, beach or other area to which the public have access without payment; and a service area as defined in section 329 of the Highways Act 1980.

A consent street is a street in which street trading can only take place if the consent of the local authority has first been obtained.

Prohibited streets are streets where no street trading may take place at all.

A licence street is a street that requires a formal licence before any form of street trading can take place.

Annexe 1 lists the streets in the City Centre that are designated as prohibited streets, consent streets, and the approved street trading sites.

There are currently no licence streets within Oxford.

Street Traders that serve hot food or drink at any time between 11.00pm and 05.00am the following day will also require a Premises Licence under the Licensing Act 2003.

## **5 The Licensing Process and Delegation of Functions**

5.1 This part of the document sets out how we will deal with applications for Street Trading Consents in the City of Oxford. The Council aims to provide a clear, consistent licensing service for service users. At the same time, it aims to protect the safety of highway users and to prevent nuisance or annoyance.

5.2 Delegation is laid out in the Council's Constitution as follows:

Full council sets policies on licensing and registration.

The General Purposes Licensing Committee:

- recommends and reviews policies on licensing and registration
- sets and reviews licence fees
- agrees and varies a street trading scheme.

The General Purposes Licensing Committee appoints a Licensing and Registration Sub-Committee to:

- decide street trading applications that are for longer than three months
- decide applications to renew street trading permission when there has been a complaint about the trader or the trader has broken the conditions of their street trading permission in the past year.

The Head of Environmental Development does everything else.

### **Applications for a Street Trading Consent**

5.3 Street Trading Consents are limited to the sites listed in Annexe 1 (to be specified) and tend to remain with the same person for a number of years. Street Trading Consents are renewed annually for the period 1 April to 31 March unless granted for a reduced period. 3 sites are designated for weekly consents and the process is managed by the Environmental Development Service. Consents may be revoked by the City Council at any time. In the event of the consent being revoked, surrendered or lapsing without being renewed then the Council will invite new applications for the vacant site.

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 of the stall or vehicle should be provided.

(e) Needs of the Area

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

(f) Local Employment

Street Trading gives people the opportunity to begin a business at minimal cost. Priority will be given to applicants who live in or close to the Oxford City Council area.

(g) Environmental Credentials

The impact of the proposed operation on the local environment including carbon footprint, supply chain, packaging, waste minimisation, waste disposal and power supply.

(h) 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.

**Renewals**

- 5.6 Street Trading Consents are issued for a period of up to one year.
- 5.7 Applicants should re-submit their application if they wish to continue to trade at least one month before the expiry of their current consent. At this renewal time, the Council may consult further to determine if the street trader is a cause for concern or has been the subject of complaints.
- 5.8 If a renewal application is not made before the expiry of the current licence, a new application will have to be made. (The effect of this will



be that a trader will not be permitted to trade until the new licence is issued.)

- 5.9 Where a renewal application has been made and there have been no justifiable complaints, no enforcement issues and all fees have been paid on time, then the consent will be renewed.
- 5.10 Where a renewal application has been made and there have been complaints or enforcement issues or fees have not been paid on time, then the application will be referred to the Licensing and Registration Sub-Committee.

### **Decisions**

- 5.11 Where an application is referred to the Sub-Committee, it will determine each application on its own merits. Members of the Sub-Committee will consider all information attached to the application. If a member of the Sub-Committee has an interest in a neighbouring premises or knows an applicant personally, they must declare an interest in accordance with the Code of Conduct adopted in accordance with the Local Government Act 2000. Members should take advice from the legal officer present at the meeting as to whether or not the interest prevents them from determining the particular application.
- 5.12 Following the determination of an application by the Licensing and Regulation Sub-Committee, the Council will notify the applicant of their decision in writing as soon as possible after the decision.
- 5.13 There is no statutory right of appeal against refusal to issue a consent.

## **6 Markets**

*To be completed with reference to the status to Gloucester Green Markets / Covered Market (charter status?) being outside the scope of this legislation.*

## **7 Special Events**

- 7.1 For special events such as Christmas / Continental Markets, the Council will issue one consent to the person organising the event, rather than to each individual trader. This policy is aimed at promoting events and encouraging more traders to attend them.
- 7.2 For successful applications, we will issue a single consent, which will cover a number of traders.

## **8 Fees**

- 8.1 Fees will be set and reviewed annually on a full cost recovery basis. The level of fees applicable takes into account the location, the duration of the consent, trading hours, and the articles to be sold. Where trading ceases during the term of a consent, refunds will not be

given for any outstanding period of less than 3 months. Details of the current fees can be found on the Council's website or on application to the licensing office. Fees must be paid in advance and arrangements are in place to enable annual fees to be paid quarterly in advance.

- 8.2 The application should be accompanied by a non-refundable fee of £100. If the application is approved, the balance of the fee will be due before the consent is issued. If the application is not successful the fee will be retained to cover the cost incurred in processing the application.

## **9 Conditions**

- 9.1 The Council applies standard conditions to Street Trading Consents. There are four elements to the standard conditions:

- General conditions applicable to all consents
- Conditions for weekly let trading sites
- Additional conditions applicable to Hot and Cold Food
- Additional conditions applicable to Special Events

The standard conditions are not exhaustive and other conditions may be added to individual consents where appropriate.

## **10 Enforcement**

- 10.1 The Council is committed to enforcing the provisions contained within the relevant legislation and to work in partnership with all enforcement agencies, to provide consistent enforcement on licensing issues.
- 10.2 The Licensing Team aims to work closely with other enforcement authorities when dealing with issues on the street.
- 10.3 Where licensable activities are conducted without the benefit of a licence, permit or consent the Council will look to gather evidence and take enforcement action as appropriate.
- 10.4 If the Council feels that there is an issue of public order or threat to public safety in any particular instance, it will call for assistance from Thames Valley Police.
- 10.5 The Council may call for assistance from the CCTV centre when dealing with such issues.
- 10.6 The Council will enforce the provisions of all appropriate legislation and will ask persons causing a nuisance to cease the activity that they are conducting and leave the area.

## 11 **Contacts**

The licensing function is part of the Licensing and Development Division of the Environmental Development Service.

Our address is:

Licensing and Development

Ramsay House

10 St Ebbes Street

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OX1 1PT

To ask about any licensing issue, first contact the Licensing Team 01865 252565, or visit our website: [www.oxford.gov.uk](http://www.oxford.gov.uk), or via email on [\*\*licensing@oxford.gov.uk\*\*](mailto:licensing@oxford.gov.uk)

**Consent, Prohibited Streets and approved sites**

*To be specified*