

To: General Purposes Licensing Committee

Date: 8 February 2010 **Item No:**

Report of: Head of Environmental Development

**Title of Report: Review of the Street Trading Scheme and Policy –
Consultation Responses**

Summary and Recommendations

Purpose of report: To report back to Committee on the responses to the public consultation on the Street Trading Scheme and Draft Policy. To seek Committee's agreement to amendments to the Draft Street Trading Policy and recommend adoption by Council. To seek Committees agreement to further actions.

Report Approved by:

Finance: Gillian Chandler

Legal: Daniel Smith

Policy Framework:

The Committee is recommended to:

- (a) amend the proposed Street Trading Policy and refer this to Council for consideration and adoption, and for the policy to come into effect on publication for new Street Trading Consent applications and from 1st April 2011 for current Street Trading Consents,**
- (b) authorise the Head of Environmental Development and Head of Law and Governance to make textual changes to the policy in consultation with the Chair of the General Purposes Licensing Committee,**
- (c) request Council to consider and delegate subsequent revisions of the Street Trading Policy to the General Purposes Licensing Committee,**
- (d) agree to change in principle the Street Trading designation of streets in the City, and request a further report outlining the proposed changes,**
- (e) ask the Head of Environmental Development to explore the feasibility of the new approach for street trading in the northern part of St. Ebbe's Street in conjunction with any plans to regenerate the area,**
- (f) decide on the status of street trading sites that have been brought into question by the street trading review as set out in paragraphs 25-37 of this report,**

(g) agree to delegate authority to the Head of Environmental Development to determine Street Trading Consent applications as set out in paragraphs 14 – 16 of this report,
(h) receive a further report on the apportionment of Street Trading Fees and resolve that the Council shall not lose money on the Street Trading Scheme and will ensure fees are set to recover the costs, and
(i) decide whether to ask the Head of Environmental Development to explore the feasibility of Councillor Morton's proposal for Dawson Street and report back to Committee.

Introduction

- 1 At its meeting on 12 October 2009, General Purposes Licensing Committee received a report on the Street Trading Scheme and Draft Policy. Committee resolved to carry out public consultation on the Draft Street Trading Policy and to seek views on the principle of a new approach for street trading in the northern part of St Ebbe's Street and the principle of changing the designation of streets in all or part of the City centre to 'Consent Street'. This report summaries the responses to the consultation, gives comments from officers, discusses fees, and issues around some of the current street trading sites which need resolving.

Consultation

- 2 A consultation pack (Appendix 1) was produced including the draft policy agreed by Committee and a comments sheet (questionnaire). Consultation packs were made available on the Council's website and sent to the consultees agreed at the last meeting.
- 3 In addition, a consultation meeting was held with street traders on 30 November 2009, and officers attended the Covered Market Traders Meeting on 4 December 2009, and Central South and West Area Committee on 8 December 2009. Minutes and notes of the meetings referred to in paragraph 2 are appended (Appendix 2).
- 4 40 representations have been received in response to the consultation. A list of respondents is given in Appendix 3. These representations are reproduced in Appendix 4.

Summary of Responses

- 5 The consultation pack included a questionnaire. A summary of the matters raised in responses follows.

6 Question 1. Comments on Draft Street Trading Policy

- There was general support for the introduction of the policy document and a number of amendments were suggested.

- There was concern about the level of waste created particularly by hot food outlets. Oxfordshire County Council would like to see site specific special cleansing of street trading sites and to not allow trading where enhanced materials have been used.
- The perceived impact of street trading on local traders who are subject to far more stringent health and safety conditions, higher rents and rates and employ local people.
- Reservations were expressed about Consent Holders having to be physically present at the particular business (as the person may have several businesses and use employees).
- A suggestion was made to prohibit day time street trading in the retail prime pitch and other heavy footfall streets.
- The opportunity to improve environmental quality by developing high quality uniform stalls and supporting infrastructure should be pushed.
- Daytime street traders would like to start earlier than 10.00 am as permitted at present.
- It was claimed that the evening start time of 6.30pm is too early when peak bus frequencies often continue after 7.00pm. Daily trading hours of 8.00pm to 4.00am would fit better with traffic and pedestrian flows. (If daytime locations were changed to finish at 20.00 then this could result in more efficient use of certain sites).
- The request was made that future consultations on new street trading activity should simultaneously go the Police, Fire Officer and Oxfordshire County Highways.
- Concern was expressed by current street traders that if changes are to be implemented from April 2010, this which will give limited time to comply with new conditions.
- There was also a request from current street traders for a consent lasting 3 years.
- The Covered Market traders suggested that commercial impact, not only in relation to the Council's properties and Covered Market, but also more generally should be considered in determining the pitches and costs for street traders.
- The Area Committee (Central South and West) expressed concern over the re-siting of particular stalls from Westgate into Cornmarket Street and asked that protecting cycle routes be given a high priority.
- There was a comment that the Council's Street Trading Policy does not appear to be an integrated element of a wider city centre retail strategy or a business development strategy.

7 Question 2. Whether greater controls should be in place over the space occupied by individual street trading pitches and the appearance of stalls so that they are of uniform look and quality.

- There was general support for greater controls but some opposition from traders to a uniform appearance for stalls.

- It was claimed that whilst the idea of a uniform stall is superficially attractive, the quality and uniqueness of the goods on offer that makes more for a vibrant “street trading/market atmosphere”.

8 Question 3. Whether there is a need for more enforcement of street trading legislation.

- There was strong support for more enforcement and in particular to deal with illegal street trading and pedling.
- There was also support for more enforcement at weekends.

9 Question 4. Whether there should be more or less street trading in the city.

- The on-line responses were; 38% said there was too much, 38% said the right amount and 25% said not enough.
- Similar results were presented from the written responses.

10 Question 5. The principle of changing the designation of streets in all or part of the city to consent streets.

- There were mixed views.
- Current street traders were very concerned about losing consent to trade in main shopping streets.
- It was felt that historic locations should be protected but as more streets become pedestrianised this might provide additional street trading opportunities.
- It was suggested that streets with high flows of buses should have ‘Prohibited Street’ status and that certain streets on the prohibited list could be redesignated as ‘Consent Streets’ to accommodate traders removed from main thoroughfares.
- The Covered Market Traders suggested that Cornmarket Street and Market Street should be ‘Prohibited Streets’.

11 Question 6. The principle of a new approach for street trading in the northern part of St. Ebbe’s Street.

- This was widely supported
- 82% of respondents to the on-line consultation thought it was a good idea and agreed that such approach was needed.
- There were also some negative responses received. A minority of respondents did not favour this approach. This was either because they were opposed to stalls in St Ebbes (preferring them in Cornmarket Street) or they opposed further stalls in the City.

Officer Comments

12 St. Ebbes Street.

The majority of respondents were in favour of the refurbishment of St.

Ebbe's Street. Oxfordshire Highways acknowledge this is a key pedestrian and cycle route into the City. Views on the provision of a small market in St Ebbes were mixed.

13 **'Consent Streets'**

With regard to redesignating all or some of the streets to 'Consent Streets', there was support for not permitting street trading near historic sites and avoiding the main thoroughfares. County Highways suggested that certain streets on the 'Prohibited Streets' list could be redesignated as 'Consent Streets', to accommodate traders removed from main thoroughfares: for example, Gloucester Street (especially the section nearest to George Street), Queens Lane (section nearest High Street) and Pembroke Street.

14 **Authority to Determine Applications for Street Trading Consent**

Under the adopted provisions of the Local Government (Miscellaneous Provisions) Act 1982, the Council is required to decide the designation of streets and has designated 'Prohibited Streets' and 'Consent Streets'. Historically, the General Purposes Licensing Committee has also approved the street trading sites in Oxford which are listed in Annex 1 of the draft policy document. The list of designated 'Consent Streets' includes a number of streets where there are no approved sites. It could be assumed that an application for a Street Trading Consent for a pitch in one of these Consent Streets should be approved if it meets the necessary criteria.

15 Committee is requested to consider whether, in the interests of efficiency, new and renewal application decisions should be delegated to the Head of Environmental Development where there are no issues with the application and it meets the criteria. Currently, the Licensing and Registration Sub-Committee decides street trading applications that are for longer than three months and renewals when there has been a complaint about the trader or the trader has broken conditions of their consent in the last year. The Sub-Committee also decides applications for sites that become vacant at annual renewal as there is competition for the Consent.

16 Committee is asked to consider the following changes to delegation.

The Head of Environmental Development is authorised to:

(a) issue Street Trading Consents and to attach such conditions as are necessary under the Local Government (Miscellaneous Provisions) Act 1982;

(b) refuse any application for a Consent that;
(i) in the opinion of the Head of Environmental Development does not comply with the Council's conditions and policies;

(ii) where there are objections from any of the following consultees; (Police, Fire or Highways on the grounds of Public or Highway safety);

- (c) refer applications to the Licensing and Registration Sub-Committee;*
(i) when there has been a complaint about the trader or the trader has broken the conditions of their Street Trading Consent in the past year;
(ii) where there is competition for a vacant approved site.

- 17 In addition, Committee is asked to amend the draft policy and create a new paragraph 5.4.

“Applications will only be considered for sites in ‘Consent Streets’. An applicant for the grant of a new street trading consent site shall provide a copy of a map showing all streets and other public areas within a radius of 500 metres from the proposed location of the Street Trading site. The map shall clearly indicate the location of the site in the centre of the map, and the locations of other street traders and outlets trading in similar commodities to those proposed.”

18 **Shopping Precincts and The Covered Market**

The Clarendon Centre walkways, the Covered Market and The Westgate Centre walkways are designated ‘Prohibited Street’. As these are under the control of each of the shopping centres, this designation appears inappropriate and it is suggested that these are taken out of the scheme.

19 **Consent Period**

Some of the current street traders have asked the Council to consider extending the consent period to up to 3 years. The Local Government (Miscellaneous Provisions) Act 1982, Schedule 4 paragraph 7(10), restricts the period for which a street trading consent may be granted to “*any period not exceeding 12 months*”.

20 **Amendments to the Draft Street Trading Policy**

There were a number of good suggestions for amendments to the Draft Street Trading Policy in context of the criteria for considering applications for Street Trading Consents and the standard conditions. Proposed amendments are covered later in this report.

Fees

- 21 The Head of Environmental Health was asked to consult on the outcome of consideration of the apportionment of fees by the Interim Head of Property and Facilities Management and on the possibility of pitches being auctioned to the highest bidder. The apportionment of fees was not available for the consultation and the auctioning of street trading consents is not an option lawfully available to the Council.

Further work will be carried on the fee structure changed and will be reported to a future meeting of this Committee. Committee is asked to resolve that the Council shall not lose money on the Street Trading Scheme and will ensure fees are set to recover the costs.

- 22 The Council is empowered to charge such fees as it considers reasonably necessary providing they reflect the total costs of operating the street trading scheme. It may not use the collection of fees as a general revenue raising exercise (*R v Manchester City Council ex p. King 1991*). An auction would be likely to raise considerably more than the costs of operating the scheme and the amount raised would bear no relationship to the costs of operation
- 23 The Council may determine different fees for different types of consent and having regard to such matters as the duration of the consent, the street in which trading is authorised and the kind of article in which trading is proposed. This allows the Council to take into account the profitability of the particular trader's business and set an appropriate fee, providing those fees are based upon the costs of operating the scheme.
- 24 The fee must be designed from the outset only to recoup the costs of operating the scheme. This includes the cost of administration and enforcement. The Council must assess what those costs are likely to be and fix the fee only with the purpose of meeting those costs. An operating profit may be within the powers of the local authority but only if it is an unintended result. It would have to be shown that it arose from an overestimate of those costs at the time the fee was set.

The Location of Specific Street Trading Sites

- 25 Representations received in relation to a number of the current sites are outlined below along with recommendations for these sites.
- 26 **5. Bonn Square outside 13a Bank House**
This site has to be relocated as a result of the changes made by Transform Oxford. The trader has been operating in Queen Street at the corner with New Inn Hall Street since the Transform Oxford changes to Queen Street.
Comments: *This pitch be moved along Queen Street a short distance and defined as the Queen Street, junction with New Inn Hall Street. This trading location does not appear problematic.*
- 27 **7. Castle Street, east side layby**
This site has to be relocated as a result of the changes made by Transform Oxford.. A new pitch has been created in New Road on the opposite side to the road to the Living Room at the Oxford Castle. Nuffield College has objected to this new location and have proposed moving it to Nuffield College's car park in Worcester Street although Worcester Street is designated a Prohibited Street.

Comments: *To relocate this site to New Road Northside and pursue the feasibility of a further relocation to the car park.*

28 **9. George Street, outside number 25.**

The County Council has suggested this trading location should be moved because the presence of the trader causes disruption to bus/taxi flows and bus stops. He has proposed Gloucester Street as an alternative trading location.

Comments; *The Street Trading Officer has seen no evidence the presence of this trader causes a highway obstruction. He has visited this location late at night and early morning and has not witnessed a traffic problem. Gloucester Street is a Prohibited Street. It is understood there is a proposal as part of Transform Oxford to reroute taxis away from Gloucester Green Market place and direct them towards Beaumont Street from George Street. The presence of a trader in Gloucester Street will then obstruct the new flow of taxis. It is unsuitable from a licensing perspective as there is a public safety risk in such a dark street that has limited CCTV coverage. No change to this site is recommended.*

29 **10. High St outside Lincoln College Library (on the road)**

The County Council has suggested this site causes disruption to bus stop L1, now much more intensively used since Transform Oxford. Possible relocation to King Edward Street. Last year it became evident there was a significant increase in the number of bus movements past this point. Any sort of obstruction here presents an unacceptable risk to the public and /or any trader. This location is now unsuitable for street trading.

Comments: *Consider moving this site to King Edward Street as suggested by County. Committee decide whether this is necessary and whether our partners and those who may be affected should be consulted first.*

30 **11. High Street outside University College**

The County Council has commented that although the street is wider here, this still causes friction with bus flow. He has suggested possible relocation to Catte Street.

Comments: *There is not a strong case to move this site. The proposed alternative, Catte Street, is not considered a suitable location for the sale of hot food in the evenings. Accessing Catte Street will be a problem for the trader. The solution appears to be to vary the start time and retain the current trading position. Conditions could be varied to prevent trading or setting up to trade before 8.00pm on any day. There will be far less conflict with buses after this time. It is recommended this pitch be retained in the same location and that setting up and trading times not commence before 8.00hpm on any day.*

31 **15. St Aldates (Outside Christchurch College).**

There have been concerns expressed by the County Council about the suitability of this location and made the following comments "Causes

severe conflict with buses at stop H5. Bus layby has been lengthened to improve operation of bus stops. Suggest Pembroke Square (opposite side to McCoys), or Pembroke Street”.

Comments: *The Licensing and Registration Sub-Committee granted consent to a new trader for this site in March 2009. The consent was granted for a purpose built Pizza Van to replace the kebab van that had been the subject of complaints about nuisance. This site is located on the south side of Tom Gate outside Christchurch. Since this decision was taken, the County Council, without consultation about the location of the street trading pitch, have lengthened the bus stop H5 and effectively disregarded the street trading pitch. There seems to be conflict of interest here between the City and County. It is recommended that this site be retained and that there should be more consultation between the City and the County to avoid unnecessary conflicts of interest.*

32 **17. & 18. St Giles, layby outside the Taylorian Institute.**

There are two pitches in St Giles outside the Taylorian, both selling hot food in the evenings. The County Council has made these comments regarding this location. *“Although currently no evening buses from bus stops outside Taylorian, this space could be better used to relocate certain ‘country’ bus services, such as those towards Bicester, which do have an evening service. Also these sites are identified for possible intensification of bus stopping activity under ‘Transform Oxford’ proposals.”*

Comments: *It is recommended that these sites be retained and that there should be more consultation between the City and the County to avoid unnecessary conflicts of interest.*

33 **19. Woodstock Road.**

The County Council has made the comment, “This location needs to be checked, for proximity to bus stops”.

Comments: *This pitch has been established for a long time and not been found to conflict with the bus stop. No change to this site is recommended.*

34 **26. Penny-farthing Place.**

This site has become unusable. The pitch was located near to the rear door for Primark which was formerly used as a staff entrance and presented no problem. However, the staff entrance has been converted to a fire exit. There is now insufficient space to safely permit the egress of people from this exit during an emergency evacuation.

Comments: *Committee is recommended to ask the Head of Environmental Development to find a suitable alternative site in a Consent Street to relocate this site.*

35 **Sites affected by the Bonn Square redevelopment and Transform Oxford. 5. Bonn Square outside 13a Bank House, 7. Castle Street east side lay-by, 20. Bonn Square outside Westgate Library, 21. Bonn Square junction with New Inn Hall Street, 27. Queen**

Street outside New Look Fashions, Weekly Let site at Bonn Square south side (outside Westgate)

These sites were the subject of a report to General Purposes Licensing Committee in June 2009. Proposals for the treatment of the evening hot food sites outside 13a Bank House and Castle Street lay-by, have been dealt with above.

- 36 Since the Bonn Square redevelopment and Transform Oxford, the coffee stall has continued to operate outside New Look Fashions in Westgate and the Crepe stall has been positioned alongside.
Comments: *It is recommended that the site currently occupied by the Crepe stall be confirmed.*
- 37 The flower stall and the weekly let site have both been operating temporarily in Cornmarket Street which is a Consent Street. There is also a second weekly let site in Cornmarket Street which has been established for several years. Responses to the consultation included support from a local shop for the temporary sites continuing in Cornmarket Street. There were also comments from the Covered Market meeting asking for the removal of these sites because of their commercial impact. Transform Oxford has resulted in additional street furniture outside the Westgate and there is insufficient space to relocate both trading sites.
Comments: *It is recommended that consideration is given to the following options. (a) Confirming the 2 additional sites in Cornmarket Street, (b) confirm 1 of the sites in Cornmarket Street and relocate the other back to outside the Westgate, (c) relocate 1 of the sites back to outside the Westgate and ask officers to find a suitable alternative site should be found in a Consent Street to relocate this site.*

Proposed Amendments to the Draft Street Trading Policy

- 38 The following amendments to the Draft Street Trading Policy are proposed for consideration by Committee.
- 39 Add the following to the 7th paragraph under 4.1, "When considering new street trading sites, we will seek the advice of Thames Valley Police, Nightsafe, Oxfordshire Fire and Rescue Service and the Highways Department of Oxfordshire County Council."

the new paragraph will read,

"Annexe 1 lists the streets in the City Centre that are designated as prohibited streets, consent streets, and the approved street trading sites. When considering new street trading sites, the Council will seek the advice of Thames Valley Police, Nightsafe, Oxfordshire Fire and Rescue Service and the Highways Department of Oxfordshire County Council."

40 Amend paragraph 5.3 (g) Environmental Credentials from,

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

to,

“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.”

41 Amend the standard trading hours in paragraph 9.2 to change the daytime trading start time from 10:00am to 8:00am as requested by traders. Amend the evening start time to 8:00pm as requested by County Transport Planning to fit better with traffic and pedestrian flow.

If agreed the new paragraph 9.2. will read

Standard Trading Hours are:

(a) Roadside locations for vehicles.

Daytime sale of Ice Cream from 8:00am to 6:00pm.

Evening sale of Hot Food from 8:00pm to 3:00am (can be extended to 4:00am Thursdays, Fridays, and Saturdays on application and subject to approval).

(b) Pavement locations.

From 8:00am and 9:00pm.

Add a further criterion to paragraph 10,

“(i) 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.”

42 In connection with paragraph 17 above, a new paragraph 5.5 should be added,

“Applications will only be considered for sites in ‘Consent Streets’. An applicant for the grant of a new street trading consent site shall provide a copy of a map showing all streets and other public areas within a radius of 500 metres from the proposed location of the Street Trading site. The map shall be to a scale of 1:2500 and clearly indicate the location of the site in the centre of the map, and the locations of other

street traders and outlets trading in similar commodities to those proposed.”

- 43 Amend and divide condition 14 in Annex 2 of the draft policy into 4 conditions (14, 15, 16 and 17) and renumber the subsequent conditions. Delete condition 18 as it is the same as the new condition 16 below,

Delete

“14 A Street Trading Consent cannot be transferred or sold to another person. It is prohibited. It is only transferable to a direct member of the consent holder’s family in the event of the consent holder’s death. The sub letting of a pitch is prohibited. The Consent holder must be the principal operator of the stall and must be physically present at that stall/vehicle the majority of the time. Occasional help is permissible with prior approval of the City Council. A Consent Holder may terminate Consent by written notice to the Council. A refund of the fee will be payable on a pro rata basis and the Council may retain £50 of the fee to cover administrative costs”

and amend to read,

”14 A Street Trading Consent cannot be transferred or sold to another person. It is transferable to a direct member of the Consent Holder’s family in the event of the consent holder’s death or incapacity on payment of a fee. The sub letting of a pitch is prohibited.”

”15 The Consent Holder must be the principal operator and have day to day control of the stall/vehicle. The Consent Holder may employ any other person to assist in operating the stall/vehicle and shall notify the Head of Environmental Development of the name and address of that person. An administration fee will be payable.”

”16 Anyone who operates a stall/vehicle other than the Consent Holder must be authorised by the Head of Environmental Development and failure to do so will be a breach of condition.”

”17 A Consent Holder may terminate a Street Trading Consent by written notice to the Head of Environmental Development. A refund of the portion of the fee equal to the remaining full months will be payable, less £50 which the Council will retain to cover administrative costs.”

- 44 A new condition be added to Annex 2 of the draft policy

”All staff involved in the preparation of food shall hold a current Level 2 food safety certificate, that is accredited by the Chartered Institute of Environmental Health, or the Royal Society of Health, or the Royal institute of Public Health and Hygiene.”

- 45 Where appropriate, references to Oxford City Council shall be amended to “*Head of Environmental Development*”, for example “... shall notify Oxford City Council.

Proposals by Councillor Morton for Cowley Road / Dawson Street

- 46 Councillor Morton has submitted a proposal to open up street trading sites in the lower end of Cowley Road, Dawson Street, and Circus Street with a review to creating a weekend market. Committee is requested to consider this proposal which is included in appendix 4 and decide whether to ask the Head of Environmental Health to assess the proposal in detail and report back to Committee at a future meeting.

Legal Issues

- 47 Should 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.
- 48 Legal opinion was sought prior to moving three street traders to temporary locations to accommodate the Bonn Square redevelopment. This 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 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). 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 any decision about specific site.

Financial Issues

- 49 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:

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