

# **Cherwell District Council**

## **Licensing Committee**

**7 September 2016**

### **Draft Street Trading Policy**

#### **Report of Public Protection Manager**

This report is public

#### **Purpose of report**

To approve in principle a draft revised Street Trading Policy prior to consultation (including the principle of a new fee structure) and subject to consultation to recommend that Council designate all streets within the boundary of Cherwell District Council as Consent Streets from 3 January 2017

#### **1.0 Recommendations**

Members are asked to:

- (i) to note and reaffirm the council's adoption of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 for the purpose of street trading.
- (ii) subject to rescinding the current Prohibited Streets Designation (Appendix A), to agree in principle to the draft street trading policy and Consent Streets Designation (Appendix B) thereby designating all of the streets within the Cherwell District Council trading boundary as Consent Streets for the purpose of street trading with effect from 3 January 2017.
- (iii) to delegate authority to the Public Protection Manager in consultation with the Chairman of the Licensing Committee to approve the final street trading policy and Consent Streets Designation, following the consideration of any consultation responses.

#### **2.0 Introduction**

- 2.1 The policy has been drafted to simplify and update the existing street trading policy for the issue of street trading consents and pavement (table and chairs) licences in the district. The draft policy is attached as Appendix C.
- 2.2 A fair, clear and consistent Street Trading Policy ensures that the local authority can put in place controls to protect the public and provides a level playing field for traders.

- 2.3 It allows the local authority to attach conditions in relation to food hygiene and making sure that the licence holder keeps the licensed sites clean.

### **3.0 Report Details**

- 3.1 The Local Government (Miscellaneous Provisions) Act 1982, Schedule 4, requires any individual that sells, exposes or offers for sale any article in a street, to obtain a licence or consent from the local authority. The local authority can charge reasonable fees for the issue of street trading licences or consents.
- 3.2 Street trading applies to a person who wishes to sell goods or articles, which includes food and living things, from a mobile unit e.g. ice cream vans, fruit and vegetable vans, hot and cold food and drinks, butty/sandwich trailers, flower sellers etc.
- 3.3 Local authorities can opt to control street trading by designating streets or parts of streets as one of the following:
- Prohibited streets in which street trading is not allowed
  - Licence streets in which licences to trade are required
  - Consent streets where consent requirements operate
- 3.4 Designations maybe rescinded or changed from one type to another at any time by following the legal process.
- 3.5 Cherwell District Council currently has 7 designated “consent street/roads, 54 designated “prohibited” streets/roads and some minor restrictions on the villages of Adderbury and Cropredy as listed in Appendix D & E.
- 3.6 In order to combat the nuisance caused by unregulated sale of used cars by traders on public highways the Council designated specific arterial roads and laybys in Banbury as prohibited streets in 2009. If this new recommendation is supported the streets will become designated consent streets.
- 3.7 There is no control over street trading activities anywhere else in the district or any ability to recover local authority costs associated with such activities. Mobile traders can operate without any consent. On occasions the position of a trader and its activities has caused nuisance to residents and has required officer attendance. By extending consent to trade to the entire district the local authority will be able to control trading and will be able to recover costs.
- 3.8 The council currently issues street trading consents to specified pitches in Banbury, Bicester and Kidlington. It also issues licences to premises wishing to place tables and chairs (also known as pavement licences) outside for al fresco dining. The Council charges for consents and for pavement licences. A review of existing provision and pitch sites will be carried out as the policy is implemented

- 3.9 Several streets and roads have been subject of road layout alterations which require revision of the existing schedules. This provides an opportunity to update the designated areas.
- 3.10 Street trading can contribute to town centre vitality (for example street food and café culture) and economic growth. A more vibrant street trading and café culture can attract visitors to our towns. By designating streets as Consent Streets, rather than a blanket Prohibition, each case can be considered on its own merits (subject to police and highways consultation).
- 3.11 Several of our markets are currently covered by street trading consents. The application of street trading consent to market traders provision will also be reviewed as this policy is implemented.

### 3.12 **Consent and Prohibition**

- 3.13 Several areas in the district are “prohibited” streets. This means that no street trading can take place in these areas at all. By changing the designation of prohibited streets to consent streets there may be some concern that there will be less control over nuisance trading.
- 3.14 Under the Local Government (Miscellaneous Provisions) Act 1982 Section 10, it is an offence:

- to engage in street trading in a prohibited street or
- to engage in street trading in a licence street or a consent street without being authorised to do so under the schedule

The offence of trading without consent, or trading in an area which is prohibited therefore, carries the same penalty. The onus of proof to demonstrate legality of the activity remains with the trader.

- 3.15 If the Council investigates a complaint of illegal trading it will investigate whether the trader has consent in the same way that it would previously have investigated whether the trader operated in a prohibited area.
- 3.16 This will make street trading controls in Cherwell transparent for all who seek to trade in the district; and for officers who are required to enforce the law.
- 3.17 In summary the new policy will:
- provide a simpler and clearer regime which will be easier for applicants to understand;
  - help to remove any ambiguity for officers who administer street trading consents and pavement licences
  - ensure that there is a level playing field for all street trading businesses throughout the district.
  - at the moment the Council receive no fees in relation to street trading, other than those at fixed town pitches. By extending designated Consent Streets to the whole of the district and introducing a fee it will ensure that we can recover costs associated with all of our street traders.
  - As consent also means that we can attach conditions there will be greater control of safety , waste disposal, noise and (for food vendor), hygiene for all street traders in the district irrespective of location

3.18 This report is only the first part of the consultation process under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982. The Council cannot pass a resolution in relation to street trading unless: -

- (i) they have published notice of their intention to pass such resolution in a local newspaper circulating in their area
- (ii) they have served a copy of the notice: -
  - (a) on the chief officer of Police for the area in which the street to be designated by the resolution is situated
  - (b) on any highway authority responsible for the street

The Council will now consult on the above and invite written representations.

3.19 As soon as practicable the Council shall consider any representations relating to the proposed resolution. After the Council has considered those representations, they may, if they think fit, pass such a resolution

3.20 The Council must then publish a notice that they have passed such a resolution in two consecutive weeks in a local newspaper circulating in their area. The first publication shall not be later than 28 days before the date specified in the resolution for the coming into force of the designation.

## **4.0 Conclusion and Reasons for Recommendations**

4.1 Members are recommended to:-

- (i) to note and reaffirm the council's adoption of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 for the purpose of street trading
- (ii) subject to rescinding the current Prohibited Streets Designation, to agree in principle to the draft street trading policy and Consent Streets Designation thereby designating all of the streets within the Cherwell District Council trading boundary as Consent Streets for the purpose of street trading with effect from 3 January 2017
- (iii) to delegate authority to the Public Protection Manager in consultation with the Chairman of the Licensing Committee to approve the final street trading policy and Consent Streets Designation following the consideration of any consultation responses.

## **5.0 Consultation**

5.1 A consultation will be carried out with stakeholders, the public and relevant agencies.

## **6.0 Alternative Options and Reasons for Rejection**

### **6.1 The committee could reject the recommendations.**

By doing so, officers would be restricted in their powers to inspect and enforce the provisions of the legislation consistently throughout the district and would not be able to recover costs, nor would they be able to deal effectively with complaints about unlicensed street traders, illegal siting of tables and chairs.

As a result of road layout alterations in the district the existing policy does not align to the position of trading pitches and is not fit for purpose. If the committee reject the recommendations there will be a missed opportunity to address the matter.

Those street traders who pay a fee to trade could challenge the inequity as other traders in the district do not pay a fee.

## **7.0 Implications**

### **Financial and Resource Implications**

#### **7.1 There are no financial implications arising directly from this report.** Comments checked by Kelly Wheeler, Principal Accountant for Operations and Delivery, 01327 322230, [kelly.wheeler@cherwellandsouthnorthants.gov.uk](mailto:kelly.wheeler@cherwellandsouthnorthants.gov.uk)

#### **7.2 Legal Implications**

There is no requirement pursuant to Part III Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 for the council to adopt a Street Trading Policy, or to undertake a consultation of any such policy the council proposes to adopt.

The council has adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (the Act) for the purpose of street trading. Accordingly, the rescinding of the current Prohibited Streets Designation and resolution of the proposed Consent Streets Designation, including public consultation, is subject to the requirements of the Act

Comments checked by  
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#### **7.3 Risk Management**

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#### **7.4 None**

## 8.0 Decision Information

### Wards Affected

All Cherwell wards

### Links to Corporate Plan and Policy Framework

Not applicable

### Lead Councillor

Councillor Tony Ilott

## Document Information

Appendix No	Title
Appendix A	Prohibited Streets Designation
Appendix B	Consent Streets Designation
Appendix C	Street Trading Policy
Appendix D	Prohibited Streets
Appendix E	Existing Consent Street Trading areas
Background Papers	
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