

**AGENDA ITEM NO. 5**

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**TITLE: LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 – DRAFT STREET TRADING POLICY AND DRAFT RESOLUTION**

**COMMITTEE: LICENSING COMMITTEE**

**DATE: 18 NOVEMBER 2015**

**AUTHOR: SENIOR LICENSING OFFICER**

[Q108]

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1.0 ISSUE

- 1.1 To approve the draft revised version of the Council's Street Trading Policy for consultation.
- 1.2 To approve the wording of a resolution to designate and re-designate streets within the district.

2.0 RECOMMENDATION(S)

- 2.1 That Members approve the draft version of the Street Trading Policy at **Appendix 1**.
- 2.2 That Members agree to a public consultation taking place on the draft Street Trading Policy from 23 November 2015 to 15 February 2015.
- 2.3 That Members approve the notice of intention to pass the resolution at the Licensing Committee meeting scheduled for 20 January 2016 (**Appendix 2**), and authorise Officers to publish it in accordance with the 1982 Act.

3.0 BACKGROUND

- 3.1 The Local Government (Miscellaneous Provisions) Act 1982 ("1982 Act") allows local authorities to control street trading activities within their areas by designating streets as either consent streets, licence streets or prohibited streets. Where streets have been designated as consent or licence streets, a person wishing to trade in those streets can apply to the local authority for the necessary consent or licence (as appropriate). The local authority can place conditions on the grant of a licence or consent. Where a street has been designated as a prohibited street, then no street trading is permitted at any time.
- 3.2 The powers to control street trading given to Councils by virtue of the 1982 Act are adoptive. This means that they can only be used once the local authority has resolved to adopt them. East Cambridgeshire District Council adopted the street trading provisions of the 1982 Act in January 1984, and they came into force on 1 March 1984.

- 3.3 In the years following this adoption Council has passed various resolutions to designate streets in the district as licensed, consent or prohibited streets. Table 1 below shows the current designated streets.

Table 1

<b>Consent Streets</b>
Jubilee Gardens, Ely
<b>Licensed Streets (Licensed for one trader per street)</b>
The Cloisters, Ely Barton Street, Ely Ely Downham Road, Ely (to A10 roundabout) Market Place (including Dolphin Lane, formerly Market Place West)/Market Street, Ely (considered as a single street) Waterside, Ely West Fen Road, Ely
All 'A' Class roads in the District excluding the A10 and A11.
<b>Prohibited Streets</b>
Ely - Brays Lane Butchers Row Buttermarket (except for fairs, the market and up to two charity stalls on a Saturday) Chequer Lane Forehill The Gallery (except for horse drawn carriages) High Street Minster Place Newnham Street Palace Green (except for horse-drawn carriages on the main carriageway, but not on open space) Quayside Ship Lane Silver Street St Mary's Green Willow Walk
All of the streets which comprise the line of the whole of the former A10, namely commencing at the junction of the Trunk Road A10 South of Ely with Cambridge Road-Ely, St Mary's Street-Ely, Lynn Road-Ely, Lynn Road-Chettisham, Ely Road-Littleport, High Street- Littleport, Crown Road-Littleport, Wellington Street-Littleport
Trunk Road A10 within the District Trunk Road A11 within the District
Street Trading is also prohibited in all car parks covered by East Cambridgeshire (Off Street Parking Places) Order 2008

- 3.4 In 2008 Council adopted the current Street Trading policy to ensure a consistent approach could be applied to the receipt, processing and approving or rejecting of applications for consent street trading. **(Appendix 3).**

- 3.5 Power to determine an application is delegated to the Environmental Services Manager where no consultee objections are received, but is retained by the Licensing Committee where objections are received.
- 3.6 Individuals are free to trade within the district on any street that has not been designated as a licensed, consent or prohibited street, subject only to any restrictions that may be applicable from other legislation, such as planning.
- 3.7 The Council currently issues the following permissions:
- Market Place, Ely – Ice-cream vendor (1 April to 30 September)  
 Waterside, Ely – Ice-cream vendor (All year round)  
 Soham Bypass, Soham – Burger van (All year round)
- 3.8 There are some activities that are not considered to be street trading due to exemptions within the 1982 Act. Section 1(2)(a) of schedule 4 states, “Anything done in a market or a fair, the right to hold which was acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of an enactment or order are not considered to be street trading”. The following markets are considered exempt due to this:
- i) Thursday – granted by virtue of a Royal Charter
  - ii) Christmas Sunday Flower, Food and Craft Market – granted by virtue of the Food Act 1984.
  - iii) Christmas Market Special – granted by virtue of the Food Act 1984
  - iv) Sunday Markets – granted by virtue of the Food Act 1984
  - v) Saturday Markets – granted by virtue of the Food Act 1984

#### 4.0 SUMMARY

- 4.1 The existing approach to the licensing of street trading has not been reviewed since 2008, when the current policy was approved. The current street designations have been in place for over 20 years. Officers believe that the current arrangements are inappropriate, overly restrictive, administratively burdensome, and confusing to traders, and community groups wishing to promote events within the district. This report seeks approval from Members to start the process of overhauling the current street trading regime at East Cambridgeshire District Council with the intention of introducing a clear, transparent, and robust scheme that promotes the district and brings trade into the district whilst ensuring that the activities do not cause nuisance or annoyance to the people living and working in the area.
- 4.2 The 1982 Act does not require a Council to produce a policy, but it is considered best practice for a policy to be in place in order to ensure that a consistent approach is applied to the receipt, processing and approving or rejecting of applications for consent street trading.

- 4.3 The 1982 Act permits a Council to charge a reasonable fee, and determine different fees for different types of licence or consent, and may also determine differing fees according to:
- a) the duration of the licence or consent,
  - b) the street in which it authorises trading; and
  - c) the descriptions of articles in which the holder is authorised to trade.
- 4.4 The current fee is £740 per annum, per stall for a licence or consent. All licence and permit holders must share the total cost of running the licensing service. This is calculated by working out the proportionate amount of time spent dealing with this area of licensing. A recent cost analysis showed that due to the low number of licences issued, this fee does not currently cover the proportionate costs of the service.
- 4.5 The 1982 Act stipulates a procedure for designating streets. In accordance with these procedures, a Council must pass a resolution. It must also advertise both its intention to pass this resolution, as well as advertising the resolution passed before the resolution can come into force.
- 4.6 The current resolution restricts Officers and Members to only permit one licence per licensed street, and includes instructions regarding exemptions within the prohibited streets section that are not lawful, and therefore, cannot be applied.
- 5.0 CONCLUSION
- 5.1 The Council's current designation of streets is very much Ely centric, with only A roads, car parks, and the A10 and A11 trunk roads being restricted outside of Ely. This leaves large areas of the district with no control measures in place.
- 5.2 The current restriction of issuing one licence per licensed street means that popular streets with enough space for many other traders to be present cannot be used by anyone else, at any time. This means that two of the busiest parts of the district namely Market Place, Ely and Waterside, Ely cannot be used for any other purposes which are controlled by the street trading provisions of the 1982 Act because they already have a licence issued, see paragraph 3.7 above.
- 5.3 Due to the restriction mentioned in 5.2 above the Licensing Authority has had to turn away applications from individuals, and has concerns that some activities occurring in this area which are being promoted by the Council itself are being held unlawfully.
- 5.4 Designating a street as a prohibited street means that it is always a prohibited street, and any activity falling within the definition of street trading is not permitted at any time. A Council is not permitted to place exemptions on when this designation does and does not apply. The current list of prohibited streets

includes areas of Ely where a number of events are now held which in the opinion of Officers fall within the definition of street trading, and as such should not be permitted. One such example is the Apple Festival on Palace Green.

- 5.5 A number of Council's have reviewed their street trading policies in recent years, and a large number of them have opted to make all streets (as defined by the 1982 Act) in their district consent streets, with the exception of those streets where in the opinion of the Council safety issues require them to be prohibited. Examples of where a safety issue may require a street to be designated as a prohibited street would be where the speed limit of the road is above 60mph. A number of Councils have also introduced price lists determined by the location or goods being sold.
- 5.6 By adopting the same approach within the East Cambridgeshire district, the Council would provide Officers with the ability to move nuisance or potential rogue traders on without relying on other Authorities such as Cambridgeshire County Council or the Police, and by introducing a pricing list based on potential footfall amongst other factors the Council could help promote trade in less busy areas of the district, whilst at the same time enabling the service to become cost neutral and cheaper for each individual trader.
- 5.7 The proposed policy (**Appendix 1**) contains maps and a pricing schedule based on a cost recovery system.
- 5.8 The following table illustrates the steps required to re-designate streets, and adopt a policy to govern street trading in the East Cambridgeshire district area.

Policy	Resolution
18 Nov – 1 <sup>st</sup> Cttee hearing	18 Nov – Cttee agree to publish notice
23 Nov to 15 Feb – Consultation	25 Nov – Notice of intent published
	24 Dec – End date for objections
	20 Jan 16 – Cttee consider objections
	25 Jan 16 – 1 <sup>st</sup> advert (if resolution passed)
9 Mar 16 – 2 <sup>nd</sup> Cttee hearing	1 Feb 16 – 2 <sup>nd</sup> advert (if resolution passed)
1 April 16 – New policy live	1 April 16 – Resolution live

- 5.9 The following wording would be required on the resolution:

“That all streets (as defined by section 1(1) of schedule 4 of the Local Government (Miscellaneous Provision) Act 1982) within the East Cambridgeshire district be designated as consent streets with the exception of the A10, A11 and A14 trunk roads which shall be designated as prohibited streets whilst within the district boundary with effect from 1 April 2016.

## 6.0 IMPLICATIONS

- 6.1 Re-designating the licensed streets in the district as consent streets is permitted, but when a street is re-designated all existing permissions cease to exist. A licence is considered a possession under the Human Rights Act, and as such the holder has the right to the peaceful enjoyment of it. Therefore, Members must have regard to the implications of a policy change on those who already hold permissions. As stated in paragraph 3.7 above the Council has issued licences to three traders that will be affected by the recommendations of this report. The existence of such licence holders should not be reason alone for opting against change, but should Members agree the recommendations, you may wish to provide assurances to these existing traders that consent to trade will be issued providing a licence would have been issued if the changes hadn't been brought in.
- 6.2 The recommendations of this report could also affect commercial traders that are currently trading in the district lawfully from locations not classified as designated streets, as well as charitable events, and low yield community events. Officers are not aware of any commercial traders at the time of writing this report that may be affected, and although charitable and low yield community events may be drawn into the definition of street trading due to the recommendations of this report, it is possible to offer them a significantly reduced fee. It is anticipated that the required advertising will result in comments from all who may be affected.
- 6.3 Unless a market or fair can be considered exempt by virtue of s1(2)(a) of schedule 4 of the 1982 Act (see paragraph 3.8) it will be caught by the recommendations of this report. However, it is worth noting that if a market cannot be exempted by the above section, it would be unlawful to hold one on Market Place, Ely under the current arrangement, as there is already one licence issued on this street.
- 6.4 By permitting Officers to issue a larger number of permissions, the recommendations also have the potential to lower the fee payable for every permission issued by the Council, whilst at the same time enabling the licensing authority to break even on the administrative and compliance costs associated with street trading.

## 7.0 FINANCIAL IMPLICATIONS

- 7.1 The proposed changes will require a total of three adverts to be placed in a local newspaper, and will require committee time in January, February, and March. It is envisaged that a large number of comments will be received from the consultation and the re-designation of streets notice. The costs will come out of the licensing budget.
- 7.2 An Equality Impact Assessment (EIA) has been completed showing there is no adverse impact on the community if Members follow the Officer recommendations.

8.0 APPENDICES

- 8.1 Appendix 1 Draft Street Trading Policy
- 8.2 Appendix 2 Resolution Notice
- 8.3 Appendix 3 Existing Street Trading Policy
- 8.4 Appendix 4 Equality Impact Assessment (EIA)

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**Background Documents**

**Location**

**Contact Officer**

Local Government  
(Miscellaneous Provisions)  
Act 1982

Room SF208  
The Grange,  
Ely

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Food Act 1984

The Law of Street Trading