

APPENDIX G

WAVERLEY BOROUGH COUNCIL

LICENSING AND REGULATORY COMMITTEE – 27 JULY 2009

EXECUTIVE - 1 SEPTEMBER 2009

Title:

**COMMUNITY EVENTS AND STREET TRADING –
REVIEW OF STREET DESIGNATIONS**

Wards Affected: All

Summary and purpose:

The Licensing and Regulatory Committee had agreed that there is a need to provide a street trading solution that will enable community and council-run events to take place in key locations in the Borough. A light touch review of Street Trading Controls was agreed to determine a policy which would encourage such events occasionally, but not encourage individual traders in mobile vehicles. This Committee, 8 June 2009, resolved to support this process and the statutory Notices were published on 19 June.

To achieve these changes, two separate procedures - which are running concurrently - needed to be followed:

- The Council must review the current designations of 'prohibited' and 'consent' streets and resolve to make changes where necessary, and
- The Council should create and publish a Street Trading Policy

This report, which was considered by the Licensing and Regulatory Committee at its meeting on 27 July, reports on the first of these requirements, while a separate report addresses the second.

How this report relates to the Council's Corporate Priorities:

Four of the Council's corporate priorities are impacted upon in a positive way:

Environment - Protecting and enhancing Waverley's unique mix of rural and urban communities is supported by the proposal, which allows community-run events access to local streets currently prohibited by Street Trading designations

Improving lives - Improving the quality of life for all, particularly the more vulnerable within our society. Gains anticipated here are based upon the increased diversity of locally run events and improved access to specialised products not otherwise locally available and therefore otherwise difficult to access by some vulnerable groups

Leisure – The increased access to community-run events in people's local areas will improve and support opportunities for all in recreational and cultural activities

Value for money – The introduction of a tiered fee system according to event size will help reduce enforcement and management costs for the Council, whilst minimizing the impact on businesses and encouraging variety for customers

Equality and Diversity Implications:

Community-run events, those of a similar nature to any run by the Council and certain charitable activities add to the diversity and well-being of the local scene. Affordable goods may be available to the benefit of people on limited income. Market stalls are often operated by minority ethnic groups and can be their main source of income. Policy should encourage and support events organised by, or planned for, members of any disadvantaged group and such applications would normally be looked on favourably.

Resource/Value for Money implications:

The Council's Economic Development & Partnerships service reports that some events and activities that will need consent may not happen if a commercial level of consent fee were applicable.

The Environmental Health service currently manages and enforces Street Trading legislation in Waverley. The anticipated increase in demands to ensure public safety at such events should be met within existing resources.

Income from licensing and regulation should not, as a general rule, generate income for the Council. It is normal practice for administering authorities to cover the costs of providing a licensing and registration service by means of set fees which are periodically reviewed. The proposed street trading policy contains a sliding scale for these fees, designed to ensure the burden is spread fairly among the organisations and businesses that will benefit from the change in Street Trading controls. Costs incurred through consultation and in the publication of legal notices will be one-off payments met from existing budgets.

Legal Implications:

Section 3 and Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 allow a local authority to control street trading by designating streets within its area as 'prohibited', 'consent' or 'licence' streets. In order to exercise such control, a local authority must resolve to adopt these legislative powers. The Council adopted these powers on 22 October 1991 (Council Minute 44 – 22/10/91), and at the same meeting designated a number of streets in the Borough under the above designations. Those designations were amended on 24 November 2003, and were further amended on 1 December 2006.

Paragraph 2 of Schedule 4 of the 1982 Act sets out the process for passing a resolution designating the Borough's streets, which would need to be followed throughout any review. Failure to follow the correct procedure could lead to a challenge by way of Judicial Review. The process is contained in the report at paragraph 13.

There is no statutory right of appeal against the Council's decision, except for any Judicial Review application referred to above. If the correct procedure were followed the risk of such an application would be low.

Introduction

1. Much of this report is as documented at this Committee on 8 June 2009. The current version reports on the progress of the consultation brought about by the publication of the statutory notices.
2. Street Trading is defined as the selling or exposing or offering for sale of any article (or living thing) in a street. Such activity may cause nuisance and may be controlled by local authorities. In 1991, Waverley Borough Council adopted powers under the Local Government (Miscellaneous Provisions) Act 1982, to control Street Trading by the designation of 'prohibited', 'licensed' and 'consent' streets.
3. A 'Prohibited' street means a street in which street trading is prohibited. A 'Licensed' street means a street in which street trading is prohibited unless a licence has been granted by the Council. A 'Consent' street means a street in which street trading is prohibited unless the Council has given consent.
4. A licensed street designation is appropriate for the more formalised, market type of trading in a street where the strict control of a limited amount of space is required. Currently there are no licensed street designations in Waverley.
5. Designation of a street as a consent street covers a more infrequent type of trading. The Council is under no duty to grant consent to trade on a street which has been designated as a consent street. Neither is the Council required to specify grounds for refusal. Similarly, there is no right of appeal against the refusal of consent or the attaching of conditions to a consent. However, current good practice is for Street Trading Policies to include a local appeals mechanism.
6. The consent designation of a street is appropriate where it is necessary to limit the numbers and types of traders, their location along a street, their hours of operation and the measures they employ to remove their waste. These can all be specified as conditions to the consent to trade in a location.
7. The separate report proposing a Street Trading Policy covers these issues. This report is to ensure legal procedures, as contained in the legal implications section, are followed in any changes to Waverley's existing street trading designations.
8. The Council's Economic Development & Partnerships Service facilitates many community- and Council-run events each year. A number of such events would benefit from access to streets in Waverley which are currently defined as prohibited streets with regard to street trading consents. Such consents are a means of controlling whether traders, including market operators, are

permitted to set up in the Borough's public places. They are administered and enforced by the Council's Environmental Health Service.

9. Although there is no current need identified for large numbers of market stalls on a regular basis, and demand for this is presently low, the ability to hold specific events in identified places within defined limits and according to pre-determined guidance would benefit local communities, businesses, the wider population and Waverley Borough Council. Godalming and Farnham Town Councils have raised this issue specifically for events they run. A request from Farnham Town Council for an event in October on a prohibited street has been received.
10. The Council's Economic Development & Partnerships service have suggested a number of streets for inclusion; Town and Parish Councils' opinions have also been sought during the representation period. This is an open, public consultation which includes Members, partner agencies and other stakeholders.
11. Streets currently proposed for a change of designation from prohibited to consent are:

In Farnham - Castle Street; The Borough; Downing Street; Longbridge
In Godalming – High Street; Church Street; Great George Street; Moss Lane
In Cranleigh – High Street; Knowle Lane*, Rowland Road; The Common
(*subsequently deleted by the Licensing Committee)
12. The above list can be amended by the Committee having taken into account the representations received, although it will not be possible to include additional streets that have not been included within the proposed resolution included in the statutory notice.
13. In detail the process is as follows:
 - Publish in a local newspaper a notice of the intention to pass a resolution (and serve a copy on the Police and Highways Authority). The resolution would need to be approved by the Licensing & Regulatory Committee, as this power is not delegated to officers. These notices were published on 19 June 2009.
 - The notice must contain a draft of the resolution, and state that representations should be made in writing not less than 28 days following publication.
 - Consider any representations as soon as practicable after expiry of the 28-day period – 17 July 2009.
 - Having considered the representations, the Council may, if it thinks fit, pass the resolution (amended if considered appropriate).
 - Publish a second notice stating that the resolution has been passed – to be published in the local newspaper on two consecutive weeks.
 - The first publication must be no later than 28 days before the day on which the revised designations are to come into effect.

14. At the time of writing, the consultation period remains open. A summary of the responses received, detailing their origin and comments, will be made available before the Committee meets.

Conclusion

15. In effect the above process requires:
 - the Licensing and Regulatory Committee to resolve to publish the notice of intention – this was achieved at Committee on 8 June 2009.
 - officers then to report on the consultation process - consideration will need to be given to any representations
 - the Licensing and Regulatory Committee will then, if appropriate, resolve to pass the resolution (amended if necessary)
 - the Council to approve the above decision and formally pass the resolution
 - the publication of a second notice confirming any changes at least 28 days prior to them coming into effect
16. The changes in designation proposed support four of the Council's corporate priorities: Environment, Improving Lives, Leisure and Value for Money. They will enable community-run and similar events to occur in a controlled manner, at specific sites and be time-limited. Public safety will be protected and existing controls over individual street trading (such as for fast food outlets) will remain in place. In order for these changes to go ahead, and to minimise the risk of Judicial Review, the above process should be followed.

Licensing and Regulatory Committee

17. The Committee had previously received a report on this matter and had agreed that there was a need to provide a street trading solution that would enable community and council-run events to take place in key locations in the Borough. A light touch review of Street Trading Controls had been agreed to determine a policy that would encourage such events occasionally, but not encourage individual traders in mobile vehicles. On 8 June 2009 the Committee had resolved to support this process and the statutory Notices were published on 19 June. Responses to the public consultation had been received and circulated to the Committee.
18. The Committee had some concerns that the policy might result in unrestricted trading on those street designated as consent. However, officers confirmed that permission would still need to be granted by the Council to trade on a consent street.
19. The Committee discussed the list of street proposed for a change of designation from prohibited to consent and agreed that Knowle Lane, Cranleigh was not suitable for any type of street trading and to delete it from the list.

Recommendation

That the Executive endorse the proposal to publish notice(s) confirming the changes to the re-designation of streets.

Background Papers

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

CONTACT OFFICER:

Name: Colin Giddings

Telephone: 01483 523434

E-mail: colin.giddings@waverley.gov.uk