

WAVERLEY BOROUGH COUNCIL
LICENSING & REGULATORY COMMITTEE
18 SEPTEMBER 2014

EXECUTIVE – 2 DECEMBER 2014

Title:

WAVERLEY BOROUGH COUNCIL – REVIEW OF STREET TRADING POLICY

[Portfolio Holder: Cllr Donal O’Neill]

[Wards Affected: All]

Summary and purpose:

The Council’s existing Street Trading Policy was introduced in 2009. It should be reviewed if major changes occur or after 5 years, whichever is sooner. There have been no major legislative changes affecting this Policy since it came into effect and requests for only minor changes have been received.

The draft revised and amended Policy was considered by the Licensing & Regulatory Committee at its meeting on 18 September 2014 and is attached to this report for approval. A public consultation process has taken place which concluded on Friday 12 September 2014.

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

Environment - Protecting and enhancing Waverley’s unique mix of rural and urban communities is supported by the proposal, which continues to allow community-run events access to local streets previously prohibited by Street Trading designations.

Understanding our Residents’ Needs - 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 and Lives – 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 tiered fee system, according to event size, helps to cover costs involved in maintaining the Street Trading regime without making a surplus. The Council may opt to set fees at a level lower than cost recovery, as is currently the case in Waverley - minimizing the impact on businesses and encouraging variety for customers.

Financial Implications:

Income from licensing and regulation should not, as a general rule, generate a surplus. 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 reviewed street trading policy contains a sliding scale for these fees, designed to reflect the burden according to resources required. Costs incurred through consultation and in the publication of legal notices, if any, will be one-off payments met from existing budgets.

Legal Implications:

Any policy needs to be developed taking into account any relevant government guidance, any other relevant Council policies and by ensuring that any restrictions set by the policy are capable of being properly justified, otherwise the Council would be susceptible to legal challenge by way of Judicial Review. Any such challenge would be to the High Court and therefore the cost implications would be high.

Introduction

1. 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.
2. In September 2009 the Council published the current "Street Trading In Waverley Policy" which covers general guidelines, applications, decision-making, appeals, fees and conditions. It should be reviewed if there are major changes to the street trading regime or after 5 years, whichever is sooner.
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; only Prohibited Streets and Consent Streets.
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 application of conditions attached to a consent. However, current good practice is for Street Trading Policies to include a hearing mechanism and for reasons to be given for any refusal.

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 in a location.
7. A number of community-led locally organised events benefit from the existing regime – there are no proposals to alter this. For example, since 2009, Consents have been granted for events in Castle Street, Farnham, in High Street and Church Street, Godalming, in High Street and West Street, Haslemere and on The Common, Cranleigh.
8. Individuals may also apply for Consents, either for specific occasions or on an annual basis. There is currently one consent granted in Waverley to a sole-trader.
9. The main changes proposed in the draft policy document (Annexe 1) were:
 - To introduce a procedure for varying Consents during their life
 - To clarify the Council's approach to ensuring transparency in dealing with applications
10. Public Consultation took place for a six-week period ending on 12 September 2014. Consultees specifically included agencies and partners already involved in the Street Trading regime (for example, Police, Fire and Rescue, Highways, local chambers of commerce) and was published on the Council's website.
11. Consultees and those accessing the webpage were informed:
 - You do not have to do anything unless you wish to comment on the Policy.
 - If you would like to comment, please review the policy and consider the following questions:
 - Do you agree with the current list of Consent and Prohibited Streets?
 - Do you agree with the current standard conditions?
12. Results of the consultation process were presented to the Licensing & Regulatory Committee for final comments before being reviewed by the Executive and submitted to Council for approval. The amended time-table for this is below.

Item	Details	Notes	Date
1	Consultation approved by Licensing and Regulatory Committee	Included feedback gathered to-date	24/7/14
2	Public Consultation	6 week period	4/8/14 – 12/9/14
3	Feedback to L&R Committee*	Summary of consultation outcomes	18/9/14
4	Recommended Policy to Executive for	Policy approval by L&R	2/12/14

	comment		
5	Final Policy to Council for approval	Policy approval by Executive	9/12/14
6	Publication of revised Street Trading Policy	Website / media release	tbc

*If a council intends to amend its list of Prohibited and Consent Streets a legal procedure entailing publication of Public Notices would be required. This would take a minimum of 3 months.

Licensing & Regulatory Committee

13. The Licensing & Regulatory Committee considered the report and draft policy and the following responses to the consultation:

a) – **response from individual of 11 August 2014**, requesting clarification on procedures for Charitable Street Collections, etc. This topic is not covered by Street Trading legislation – a response was issued on 29 August 2014 detailing the relevant procedures and code of practice. No further action required.

b) – **response from Godalming Town Council of 8 August 2014**, requesting that Bridge Street, Godalming be included in the list of consent streets which for some events would save closing the whole of the High Street as often.

Those received after despatch of the agenda papers.

c) **response from Cranleigh Parish Council of 12 September**, (i) - agreeing that prohibited streets in Cranleigh should be as per Appendix I of the Policy document and (ii) – supporting events that enhance the vibrancy and attractiveness of Cranleigh and therefore that the three consent streets listed should remain.

The Parish Council suggests that for clarity, Horseshoe Lane is included as a prohibited street and that the Bank Buildings and the roadway to the post office frontage are part of the consent designation for High Street.

The Parish Council has received a reply confirming the Old Bank Buildings and Post Office situation (the areas to the front are part of the High Street consent designation) and that Horseshoe Lane is not designated at all, but that parts of it abutting The Common will be part of that designation as consent street.

d) **response from Cranleigh Chamber of Commerce of 12 September**, requesting that the list of consent streets for Cranleigh (High Street, The Common and Rowland Road) be redesignated as prohibited streets.

This was replied to on 16 September, asking if the Chamber of Commerce wanted to submit supporting comments. Further details were received on 17 September and are summarised below:

“The chamber actively supports the businesses in Cranleigh who have permanent places of business and pay their rates and contribute to the life of the village that is uniquely Cranleigh. It has a history and a conservation area that is highly unique and we wish to protect our members from occasional traders who set up in competition on the streets and around the common, subject to agreement we realise, but they do not contribute effectively or financially to the life of Cranleigh-some of them actually contribute noise, pollution, litter and anti social behaviour directly or indirectly from their trading practices so we would recommend the change to prohibition in the remaining streets in Cranleigh to ensure our members have an unencumbered and level playing field to trade within.

Certainly the area around the common actively affects the residents and we are mindful of their opinions of businesses which could again affect our relationship with them.”

14. The Committee considered those responses which related to the designation of streets and noted this had not formed part of the previous policy. The Committee agreed that the designation of streets be kept as a separate issue in order that amendments could be made at any time without the need to go through a policy amendment procedure. Officers were therefore asked to instigate a review of the street trading designations in response to the representations received as part of the consultation. This is underway.
15. The Licensing & Regulatory Committee agreed the recommendation set out below.

Recommendation

It is recommended that the Street Trading Policy be recommended to the Council for adoption prior to implementation.

Background Papers

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

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