

**WAVERLEY BOROUGH COUNCIL**

**LICENSING COMMITTEE**

**29 JUNE 2020**

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**Title:**

**Street Trading Review**

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**Portfolio Holder: Cllr. Nick Palmer Portfolio Holder for Operational and Enforcement Services**

**Head of Service: Richard Homewood, Head of Environmental & Regulatory Services**

**Key decision: Yes**

**Access: Public**

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**1. Purpose and summary**

1.1 The Policy on Licensing of Street Trading is a matter for the Licensing Committee its implementation and enforcement is a matter for the Environmental Health Team. There have been a number of issues recently as more businesses diversify into street trading to sustain their businesses during the Covid restrictions. We are therefore proposing to proceed with the review of our street trading policy as set out in the Environmental Services, Service Plan and seek the support of the Licensing Committee to proceed with the review as proposed.

**2. Recommendation**

2.1 It is recommended that the Licensing Committee supports the proposed review of street trading and exploration of the proposal to designate all streets and public open areas in Waverley as Consent Streets' with the exception of those already designated as 'Prohibited Streets' which would remain as 'Prohibited Streets'.

**3. Reason for the recommendation**

3.1 The council has been receiving an increasing number of complaints regarding the impact of street trading activities on local communities. There needs to be a balance struck between the demand for street trading from residents and businesses alike and the impact on the community at large. The introduction of these street trading controls would enable the council to control street trading effectively by imposing conditions on Consents issued.

#### **4. Background**

- 4.1 The Act governing street trading within the Waverley area is the Local Government (Miscellaneous Provisions) Act 1982, Schedule 4. Further detail on the legislation is provided in Annexe A.
- 4.2 The current Street Trading Policy was adopted in August 2015, [https://www.waverley.gov.uk/downloads/file/4857/street\\_trading\\_policy\\_2015](https://www.waverley.gov.uk/downloads/file/4857/street_trading_policy_2015). It is now due to be reviewed in line with the Policy,
- 4.3 Councils usually control street trading so that they can decide where to allow this and to properly manage the environmental and safety implications that street trading creates. It allows the impact to be managed in terms of the local economy and impact on and benefit to the community. The control of street trading can also have benefit for traders as it provides security over their trading activities and location.
- 4.4 The Policy has historically worked well with some streets having been determined 'consent' or 'prohibited' streets. This means that anyone who wishes to trade on a designated consent street (which includes a road, footway or other area to which the public have access without payment) must hold a street trading consent. The aim of the Policy is to prevent obstruction of streets, ensure public safety, recognise the importance of the local economy and community events, and prevent nuisance or annoyance to people the area.
- 4.4 Appendix 1 of the Policy gives a list of those streets currently designated as prohibited and consent streets in Waverley. They have also been mapped on the Council's web site, [https://www.waverley.gov.uk/info/200188/street\\_trading/2224/street\\_trading\\_locations\\_in\\_waverley](https://www.waverley.gov.uk/info/200188/street_trading/2224/street_trading_locations_in_waverley)
- 4.5 More recently there are a number of other undesignated streets where street trading is having an adverse impact on the community and giving rise to complaints about noise, smells and general nuisance form customers and where there are no controls to enable the council to mitigate the impact. We are, therefore, now being asked to designate these streets as 'Consent Streets' or 'Prohibited Streets' to enable effective control of street trading activities and mitigate the impact on the community. Whilst this can be done on an individual basis, it is likely that further requests for additional streets to be designated will follow.
- 4.6 The process for review is lengthy and expensive and it may therefore be preferable to designate all streets in the Borough as Consent Streets and either remove or retain the existing 'Prohibited' Streets. Other local authorities such as Elmbridge have taken this approach, <https://www.elmbridge.gov.uk/licensing/street-trading/>
- 4.7 Alternatively consideration can be given to making further resolution(s) to designate particular streets that may be proposed by Members, Town and Parish Councils, other agencies and the Public. Other parts of the Policy (including fees) will also be

reviewed, but no significant changes are anticipated at this stage.

### **Process for review of policy and designations**

4.8 There is a detailed legal process in order to properly designate streets as consent streets under Schedule 4 of the Local Government (Miscellaneous Provisions Act) 1982. In summary this involves:

- The Council publishing notice of its intention to pass a resolution to designate streets as consent streets
- Minimum of 28 days given for representations to be made relating to this intention (also served on the Surrey Police, Surrey County Council Highways and other relevant bodies seeking their views and the notice will contain a draft of the resolution –which should be published in local newspapers and on the Council website.
- Any representations received are brought back to Committee to be considered
- After consideration, if they consider fit, Council passes a resolution to designate street(s) as consent street(s)
- Notices published to advertise the making of the resolution (at least 28 days before resolution takes effect) in local newspaper and on the Council website.
- Resolution takes effect

4.9 It will be important to engage with Waverley Borough and Waverley County Members, town and Parish Councils and the community and the Police, Fire Service and Surrey County Council Highways in advance of this formal process, to obtain feedback on any proposal before the formal notice is published. A detailed programme for the consultation process is set out in Annexe B.

## **5. Relationship to the Corporate Strategy and Service Plan**

5.1 Effective control of street trading will contribute to the strategic aim of supporting local businesses and employment whilst also protecting and supporting Waverley's communities from any potential adverse impacts arising from it.

## **6. Implications of decision**

### **6.1 Resource (Finance, procurement, staffing, IT)**

6.1.1 The review of Street Trading is in the Service Plan for 2020/21 and will be conducted within existing resources.

6.1.2 There will be advertising costs for the publication of the required notices.

6.1.3 Adopting a policy of designating all streets consent or prohibited streets could result in an increased number of applications initially but this will level off in due course. There would be an increase in fee income accompanying the increase in number of applications.

## **6.2 Risk management**

- 6.2.1 If the policy is not reviewed complaints about the adverse impact of street trading are likely to continue and potentially increase which will place additional demands on the service.

## **6.3 Legal**

Details of the consultation process and legal procedure are set out within the body of the report.

## **6.4 Equality, diversity and inclusion**

There are no direct equality, diversity or inclusion implications in this report. Equality impact assessments are carried out when necessary across the council to ensure service delivery meets the requirements of the Public Sector Equality Duty under the Equality Act 2010.

## **6.5 Climate emergency declaration**

Effective control of street trading activities will assist in mitigating their impact on the local environment and the community.

## **7. Consultation and engagement**

- 7.1 Waverley Borough and Waverley County Members and Town and Parishes will be consulted electronically as well as statutory consultees.
- 7.2 Public consultation will be undertaken via the councils web site and social media, to include our existing operators and local business community organisations.

## **8. Other options considered**

- 8.1 The existing Street Trading Policy does not appear to address some of the issues being raised by the community about adverse impact of street trading activity. Doing nothing is not an option. The Council would seek to provide a clear consistent licensing service for service users as well as protecting the safety of highway users and to prevent nuisance or annoyance.

## **9. Governance journey**

- 9.1 Licensing Committee – report on proposals seeking permission to consult informally  
Licensing Committee – report of responses to informal consultation and proposed resolution.  
Licensing Committee – report on feedback from notice of formal resolution  
Council – makes resolution

Notice published in local newspaper and on web site  
Resolution takes effect.

**Annexes:**

Annexe A – Street Trading Legislation

Annexe B – Process for reviewing the Street Trading Policy

**Background Papers**

Street Trading Policy

[https://www.waverley.gov.uk/downloads/file/4857/street\\_trading\\_policy\\_2015](https://www.waverley.gov.uk/downloads/file/4857/street_trading_policy_2015)

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Agreed and signed off by:

Legal Services: 4.6.20

Head of Finance: date

Strategic Director: date

Portfolio Holder: date

## Street Trading Legislation

### **The Act governing street trading within the Waverley area is the Local Government (Miscellaneous Provisions) Act 1982 (LG(MP)A 1982)**

Street trading is defined as 'Selling or exposing or offering for sale of any articles (including a living thing) in a street' – para 1(1) of Schedule 4 of the Act. Street has an extended definition to include any road footway beach or other area to which the public have access without payment and a service area.

Certain activities are specifically excluded from the definition of street trading – by virtue of para 1(2) of Sched 4, some of which are:

- Trading by a pedlar under a pedlar's certificate
- Trading by some news vendors
- Trading on a street adjoining a shop and as part of the business of the shop
- Trading at a petrol filling station

Paragraph 2 of Schedule 4 LG (MP) A 1982 states that a district council may by resolution designate any street in their district as—

- (a) a prohibited street; which means a street in which street trading is prohibited.
- (b) a licence street; which means a street in which street trading is prohibited without a licence granted by the district council.
- (c) a consent street. means a street in which street trading is prohibited without the consent of the district council.

## **Procedure for Review of Street Trading**

In order to consult properly and comply with the legislation the following steps to review policy are necessary. Initial timescales are also given.

### **Stage 1 – Initial informal consultation with Members, Town and Parish Councils Police, Highways etc. (weeks 1 to 7?)**

To ask for informal views on the current policy, including prohibited and consent streets, with feedback on the following:

- 1) Any suggested changes to the Policy
- 2) Any suggested changes to prohibited or consent streets
  - 2.1 No change needed
  - 2.2 Slight amendments to prohibited/consent streets, with suggestions
  - 2.3 More fundamental review of prohibited/consent streets making all streets in a particular area consent streets (other than prohibited streets)

It is anticipated an email will be sent to all Members and Town and Parish Councils asking them for their views, with the Chair and Vice Chair of Licensing Committee and the Portfolio Holder being briefed about the informal consultation. It is suggested we ask for feedback within 6 weeks to allow for discussion at Town/Parish Committee Meetings.

### **Stage 2 – Review feedback and agree proposals (weeks 8 -14?)**

- Review feedback from informal consultation.
- Brief Chair and Vice Chair of Licensing Committee and the Portfolio Holder.
- Redraft the Policy and review suggested fees
- Create a map for consultation on the web of proposed prohibited and consent streets.
- Draft a resolution to designate prohibited and consent streets
- Draft a report for Licensing Committee

It is anticipated that this work will take 8 weeks to complete

### **Stage 3 – Report to Licensing Committee with recommendations for an amended policy, fees, and a draft resolution (weeks 15-16?)**

- Gain formal agreement for amendments to the Policy and a draft resolution to designate new/amended prohibited and consent streets.
- Prepare for public consultation on the web.

It is anticipated that his work will take 2 weeks to complete

### **Stage 4 – Public consultation (weeks 17 to 22?)**

- Publish a notice (including the draft resolution and the fact the people can made representations within not less than 28 days) in the local newspaper circulating in the area of WBC's intention to pass a resolution to designate new/amended prohibited and consent streets.
- Serve a copy of the notice on the Police and on any Highway Authority responsible for the street (to gain their consent for the designation)
- Make the consultation live on the web, including a map for consultation on the web of proposed prohibited and consent streets
- Brief Chair and Vice Chair of Licensing Committee and the Portfolio Holder
- Draft Report to Licensing Committee

It is anticipated this consultation and work will take approximately 6 weeks.

**Stage 5 – Review feedback and draft Committee Report (weeks 23 to 26?)**

- Review feedback from the formal consultation as soon as possible after the end of the consultation period.
- Draft report for Licencing Committee and Executive Briefing for options on whether to agree draft resolution and Policy, or the need for further amendments (and consultation).
- Brief Chair and Vice Chair of Licensing Committee and the Portfolio Holder

It is anticipated that this work will take approximately 3 weeks

**Stage 6 – Report to Licensing Committee on the Policy to pass draft resolution, or for changes to the resolution (with further consultation needed) (weeks 26 to 28?)**

It is hoped the further draft resolutions will not be needed given initial informal consultation with Members, Town and Parish Councils.

**Stage 7 – Publish a Notice in a local Newspaper (weeks 29 to 30?)**

- The Council must publish a notice that they have passed a resolution in two consecutive weeks in a local newspaper circulating in the area
- The first publication must not be later than 28 days before the date specified in the resolution for the coming into force of the designation.
- Update the website, and forms etc.
- Brief the Portfolio Holder

**Stage 8 – New Policy (and designated streets come into force) (week 33?)**