

**19 January 2016**

**Planning and Licensing Committee**

**Street Trading and Market Policy Review**

**Report of:** *Gordon Glenday – Head of Planning and Environmental Health*

**Wards Affected:** *All*

**This report is :** *Public*

**1. Executive Summary**

- 1.1 This report seeks Members agreement in principle on the review to the Street Trading and Market Policy and for the same to be released for consultation prior consideration of any representations and full adoption in April 2016.

**2. Recommendation**

- 2.1 **Members are requested to agree in principle the Street Trading and Market Policy as attached at Appendix A and to release it for consultation prior to reconsideration and final adoption in April 2016.**

**3. Introduction and Background**

- 3.1 Street Trading is governed under provision of the Local Government (Miscellaneous Provisions) Act 1982 (the Act).
- 3.2 Section 2(1) of the Act provides that a district Council may by resolution designate any street in their district as either a prohibited street, a consent street or a licence street. Designation as either a licence or a consent street is necessary in order to undertake any licensing or enforcement of stalls or markets.
- 3.3 Where any street is owned by a relevant corporation and/or is maintained by the Highways authority, their consent is required prior to the passing of any resolution along with notification to the Chief Officer of the Police and advertisement of the intention in a local newspaper.

- 3.4 The High street in Brentwood was designated as a licence street in August 2011. Since that time it has operated a successful weekly market, which has recently expanded from Saturday only trading to operating on both Friday and Saturday weekly.
- 3.5 In order to support the licensing of street trading the Council produced a Street Trading and Market Policy (the Policy), which outlines how the Council will carry out its functions with regard to street trading. It further sets out the expectations with regard to running a successful market, including the requirements of the Council on applicants and licence holders and contains certain protections for residents and other traders.
- 3.6 Currently, Brentwood High Street is the only area adopted as a 'licence' street in the borough. This adoption took place in the main to facilitate the market, which has the purpose (amongst other things) of increasing footfall to the Town Centre in order to support the local economy.
- 3.7 Whilst the policy only applies at this time to the High Street, it would equally apply to any other area of the borough, were it to be designated under the Act as a 'licence or 'consent' street.
- 3.8 Essex Farmers Markets (EFM) has been contracted to run the weekly market on both Friday and Saturday. EFM has full responsibility for setting up and dismantling the market, provision of the stalls, who may or may not trade at any given time (in line with requirements of the policy) and are the first line of control with regard to compliance with policy and licence conditions.
- 3.9 Where an applicant wishes to trade outside of the terms of the Council's policy or where an existing trader breaches policy or conditions of licence, this is a matter to be addressed by the Council and would normally be determined by a licensing sub committee, although some matters are delegated to officers.
- 3.10 Whilst the policy covers many aspects relating to the licensing of street trading, sections 3.5, 5.2. and 5.4 identify matters that would not normally be considered for a licence to trade.

#### **4. Issues Options and Analysis of Options**

- 4.1 The policy has been in place since 2012 and has served the Council well in so far as the market has operated successfully since its introduction to the High Street.
- 4.2 Notwithstanding the above, a policy should be updated from time to time to ensure that it remains current and fit for purpose and to reflect any changes to legislation or government guidance.
- 4.3 It has become apparent, given recent events that the policy in some areas (namely the paragraphs 3.5, 5.2 and 5.4) is restrictive to the point that a literal reading would disallow almost all types of goods that the market would wish to stock. This has led officers to interpret the policy broadly so as to allow a particular class of goods whilst restricting exact duplication i.e. in this example to allow clothing but to restrict any clothing that is sold by local shop traders.
- 4.4 Whilst one of the objectives of the policy is to complement existing retailer and not therefore to provide direct completion to them, it is evident that the policy needs to better clarify items that may or may not be sold. It has therefore been updated to provide this clarification and to reflect some other changes to guidance. The revised policy is attached at **Appendix A** and has been reproduced with tracked changes shown in order to provide clarity for Members.

#### **5. Reason for Recommendations**

- 5.1 The policy is some almost 4 years old and requires updating. As previously outlined there is certain clarification required and this has led to a need to update the policy to ensure that it is more easily understood and interpreted by all parties, including officers.
- 5.2 The policy must retain some flexibility in law to ensure that matters are always considered on merit. In other words the Council must not fetter its discretion in any individual case. For this reason, the exemptions in 3.5, 5.2 and 5.4 have been clarified. However, whilst these form the normal process of the Council, it is essential that there is flexibility for Members to divert from policy if evidenced that it is appropriate to do so.

#### **6. References to Corporate Plan**

- 6.1 The proposals contained within this report link directly to the following priorities of the corporate plan:

***A prosperous Borough –***

*“Safeguarding public safety through a risk based regulation and licensing service.”*

***Street Scene and Environment –***

*“Develop effective partnership arrangements so all issues affecting neighbourhoods are delivered in a timely and efficient way”*

***Localism –***

*Encourage local businesses to invest directly in Brentwood’s communities”*

**7. Consultation**

7.1 Members are requested only to agree the policy in principle at this time. Following agreement in principle, the policy will be consulted for 6 weeks to ensure that the views of residents, shop owners, market traders and the market operator and anyone else that may have an interest are taken account of.

7.2 Consultees will include:

- The Market Operator
- All known Market Traders (Brentwood High street)
- Brentwood High Street Shops (from Wilsons Corner up to and including both sides of the road to the Old Church ruins)
- Any complainants relating to the current trading issue (and any other complainants as may be identified prior to consultation)
- Essex County Council Highways authority
- The Chief Officer of Police
- Essex Fire and Rescue Service
- All Brentwood Borough Councillors

In addition a notice will be published on the Council website making it available for any resident to respond to the policy consultation.

7.3 Following consultation, the policy will be re-presented to members of this Committee on 12 April 2016, for consideration of any responses received with a view to final adoption.

## **8. Implications**

### **Financial Implications**

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8.1 None directly arising from this report.

### **Legal Implications**

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8.2 This report seeks a reconsideration of the Council's Street Trading and Markets Policy; the first such reconsideration since its adoption in 2012. In response to recent events, the Council's Licensing department resolved to revise this policy and make the restrictions on goods that can and should be sold more certain, while retaining overall discretion for the Council on a case by case basis. The updated policy also mentions and considers recent (October 2014) Guidance from the Department for Business Innovation and Skills in setting reasonable conditions for Markets within the Borough to fall under.

**Other Implications** (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

8.3 There are no significant implications arising from agreement to the recommendations of this report.

## **9. Appendices to this report**

Appendix A – Revised Street Trading and Market Policy

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