

10 March 2016

Economic Development Committee

Street Trading and Market Policy Update

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

Wards Affected: *All*

This report is : *Public document*

1. Executive Summary

- 1.1 This report provides an update on the review to the Street Trading and Market Policy and consultation process agreed by the Planning and Licensing Committee on 19 January 2016 prior to consideration of any representations and full adoption on 12 April 2016.

2. Recommendation

- 2.1 **Members are requested to note the progress on the Street Trading and Market Policy as attached at Appendix A and 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). Section 2(1) of the Act provides that a district Council may by resolution designate any street in their district as 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.
- 3.2 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.
- 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. 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.

- 3.6 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.
- 3.7 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 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 a duplicate of that sold by local shop traders.
- 4.4 Whilst one of the objectives of the policy is to complement existing retailers and not therefore to provide direct competition 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.
- 4.5 The policy is 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, such as retailers and stall holders and including officers when looking to enforce licence terms and conditions.
- 4.6 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.

5. Reason for Recommendations

- 5.1 Members are requested to note the progress relating to the policy revision on the basis that whilst relevant in terms of the work of this Committee and a matter of importance to the borough and its residents, delegation of all functions relating to licensing and licensing policy decision making sits with Planning and Licensing Committee.
- 5.2 The updated policy continues to promote the interests of local shops whilst providing better clarity for market traders. It also gives greater flexibility over goods that market traders may sell, for example, they are restricted by the new policy from selling known brand label goods, which would normally be expected to be sold by shops. However, this allows market traders the freedom to sell most other types of goods subject to some minor exclusions, whether these are duplications or not.

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 The policy has been consulted for 6 weeks from 22 January to 6 March 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 included:

- The Market Operator
- All known Market Traders (Brentwood High street)
- Brentwood High Street Shops
- All previous complainants relating to the current trading issue (and any other complainants 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 was published on the Council website making it available for any resident to respond to the policy consultation.

7.3 The policy will now be re-presented to members of the Planning and Licensing Committee on 12 April 2016, for consideration of any responses received with a view to final adoption from 13 April if agreed at committee.

8. Implications

Financial Implications

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None directly arising from this report

Legal Implications – Monitoring Officer Comment

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In response to recent events, the Council's licensing department resolved to revise this policy and make the restrictions on goods that can and cannot be sold more certain, while retaining overall discretion for the Council on a case by case basis. The updated policy also mentions and considers relatively 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.

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

9. Background Papers (include their location and identity whether any are exempt or protected by copyright)

9.1 None

10. Appendices to this report

Appendix A – Street Trading and Market Policy

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