

12 April 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 consideration of the responses received following consultation of the draft revision to the Street Trading and Market Policy and for agreement that it be adopted with immediate effect as the Street Trading and Market Policy for the borough.

2. Recommendation

- 2.1 **Members are requested to consider the responses to the consultation on the draft revision to the Street Trading and Market Policy as attached at Appendix A and to resolve that:**
- a) **it be adopted as the Street Trading and Market Policy for this borough in it's current form save for the addition of the alteration requested by Essex County Fire and Rescue as highlighted in paragraph 5.7.**
 - b) **it be adopted as the Street Trading and Market Policy for this borough, to include the alteration requested by Essex County Fire and rescue but amended as outlined in paragraph 5.6.**

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 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.

- 3.4 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.
- 3.5 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.
- 3.6 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. This is because the principles contained within the policy are general principles that would apply to trading anywhere within the borough.
- 3.7 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.
- 3.8 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.
- 3.9 The policy is intended to strike a balance between the trade offered by shops and that offered through Street Trading, to increase footfall to the Town Centre and to complement the trading of the shops.

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 At the end of last year, following a sequence of complaints, it became apparent, that the policy in some areas (namely the paragraphs 3.5, 5.2 and 5.4) was restrictive and difficult for traders to comply fully with and for the Council to effectively enforce. This was because in addressing the complaints it was evident that a literal reading of the restrictions within the policy would disallow almost all types of goods that any trader or market would wish to stock. This 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 retailers and not to provide direct competition to them, it is clear that the policy needs to better clarify items that may or may not be sold in order to assist all parties and to remove any ambiguity. 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 for purpose of transparency and to provide clarity for Members.

5. Reason for Recommendations

- 5.1 Resulting from the consultation there were four responses, as outlined in paragraph 7 (below).
- 5.2 The responses have resulted in two possible scenarios with regard to adoption of the final policy. In both scenarios it is recommended that the observations of the Essex County Fire and Rescue Service (ECFRS) be included as it is recognised that the subject matter of the condition to which their suggested alteration relates (Gas Cylinders) is best understood by them, being the experts in the field. The ECFRS comments are attached as **Appendix B**. The policy has already been amended in the attached draft to reflect this change.
- 5.3 As the other three responses (attached at **Appendix C**) are conflicting there are two options in the recommendations the choice of which is dependent on Members views following consideration of the facts.
- 5.4 It seems reasonable to state following consultation that most of the alterations to the policy have not been challenged. The one area of concern from three out of the four representations relates almost exclusively to paragraph 5 of the policy and in particular paragraph 5.4.

- 5.5 Of the two available options contained within the recommendations the representation from Virgo on behalf of the shop traders (although no other shop traders have responded) would effectively advocate removal or amendment of the phrase '*Designer or recognised brand label clothing, footwear or accessories*' as this leaves the door open to the market being permitted to stock the same items as shops provided that those items are not recognised (i.e. fully licensed) brand/designer labels.
- 5.6 One of the main complaints which lead to bringing forward this review of the Street Trading and Market Policy, was in relation to duplication of the stock sold in local shops by one market trader. It was argued that this was against the policy and this is reflected in the representation from Virgo who advocates adoption of the policy under the terms of option b).
- 5.7 The representations from Jacky's Boutique (a market trader) and Lisa Ford are concerned that the revised policy unduly restricts their ability to sell certain products. However, having discussed the proposed alterations and what is permitted by them, both traders are satisfied with the changes that are proposed in the draft policy as attached to this report and therefore advocate that the policy should be adopted in the form that was consulted without alteration, save for that suggested by ECFRS and therefore seek adoption under the terms of option a).
- 5.8 The Council originally adopted a Street Trading Policy and supported the establishment of a market in order to:
- Support local businesses and retailers by increasing footfall
 - Attract new visitors, residents and shoppers to the High Street
 - Create a welcoming atmosphere
 - Provide an opportunity to trade for local businesses
 - Complement existing retailers and businesses on the High Street
 - Provide a diverse and alternative offer of products to shoppers

This involves striking a balance between supporting shop traders who are vital to the success and attraction of the High Street, whilst ensuring that Street Trading, particularly relating to the market meets these objectives.

- 5.9 In the form as originally adopted, it can be argued that the policy was too restrictive as to some extent, whilst the market has been a success; it has only been able to provide a limited offering. Officers have found the current policy to be restrictive and difficult to enforce, which also means that, through no fault of their own, it is difficult for traders applicants and members of the public to fully understand. It is therefore, believed that option a) provides flexibility for the Council and traders alike, whilst striking the correct balance in restricting the items that would normally be found more in the shops but permitting the market to trade more freely and to better promote the objectives that it was designed to meet.

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 was consulted for 6 weeks from 22 January 2016 to 6 March 2016 to ensure that the views of residents, shop owners, market traders and the market operator and anyone else that may have an interest were taken account of.

- 7.2 Consultees included:

- The Market Operator
- All known Market Traders (Brentwood High Street)
- Brentwood High Street Shops
- Any complainants relating to the current trading issue
- 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 and a further notice placed on the notice board in the Town Hall reception area, making it available for any resident to respond to the policy consultation.

- 7.3 Following consultation there were four representations received. These are from The ECFRS, Virgo, Jacky's Boutique and Lisa Ford and are attached at **appendices 2 and 3** respectively.
- 7.4 Proposals in paragraph 5 and in both recommendation options, advocate substituting section 4.1(k) in the policy with the new paragraph suggested by ECFRS. This change has been made to the policy on the basis that it is advocated that the expertise of the ECFRS should not be ignored. Section 5 of this report also outlines the other three representations and indicates their preferred choice of recommendation.
- 7.5 Paragraph 5.9 of this report advocates that the preferred recommendation would be 2.1(a) as this is believed to provide the best balance in allowing the market a broader product range whilst ensuring that goods that may be generally considered as more suitable to a shop environment remain restricted on any stall or market.

8. Implications

Financial Implications

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- 8.1 There are no financial implications directly arising from this report.

Legal Implications

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- 8.2 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.
- 8.3 It is reasonable for a Council, when permitting markets to operate, to specify reasonable rules and limitations on that operation, such as the days and times, obligations of cleanliness and in the goods that can and cannot be sold. It is reasonable for the Council to retain discretion over the operation of markets so that the stated objectives are met and that Council residents and businesses are no unreasonably disadvantaged. 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.

- 8.4 The exemptions in 3.5, 5.2 and 5.4 of the draft policy 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.
- 8.5 There is no appeal to the Courts relating to adoption of this policy. There is however, the ability for any party to seek a judicial review of the adoption process, although whilst there is no set requirement for adoption of a street trading and market Policy under the Act, the consultation process and adoption procedure have been thorough thus minimising any risk of legal challenge.

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

- 8.6 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

Appendix B - ECFRS observations

Appendix C - Representations from traders

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