

## **DURHAM COUNTY COUNCIL**

At a Meeting of **General Licensing and Registration Committee** held in Committee Room 2, County Hall, Durham on **Thursday 15 January 2015 at 10.00 am**

### **Present:**

**Councillor E Bell (Chairman)**

### **Members of the Committee:**

Councillors A Batey, D Bell, J Blakey, B Glass, O Gunn, C Hampson, J Hart, A Hopgood, K Hopper, I Jewell, T Nearney, J Maitland, A Surtees and A Willis

### **Also Present:**

C Rudman – Licensing Manager  
H Johnson – Licensing Team Leader  
C Greenlay - Principal Solicitor (Litigation)  
K Jameson – Traffic and Community Manager

### **1 Apologies for Absence**

Apologies for absence were received from Councillors C Carr, J Bell, I Geldard, B Graham, D Hicks, J Lee, L Marshall and P May.

### **2 Declarations of Interest**

There were no declarations of interest.

### **3 Minutes**

The Minutes of the meeting held on 9 October 2014 were agreed as a correct record and were signed by the Chairman.

Members agreed to amend the order of business on the Agenda to allow the proposal for the removal of the current street trading designation at Collier Wood lay-by, A68, Crook to be considered first as the applicant was in attendance.

### **4 A Proposal for the Removal of the Current Street Trading Designation - Collier Wood Lay-by, A68, Crook**

Consideration was given to the report of the Corporate Director, Neighbourhood Services which asked Members to give consideration to a proposal for the removal of the current street trading designation for the Collier Wood Lay-by on the A68 near Crook (for copy see file of Minutes).

Members were advised that the request had been made by Mr C Pounder who currently held a street trading licence to trade from the lay-by and if this was supported by the Committee a statutory consultation process would commence, details of which were set out in the report.

K Jameson, Neighbourhood Services Traffic Asset Manager outlined the objections to the request from the Highways Authority. He explained that the A68 formed a principle route through the County which was subject to the national speed limit and was a designated safety camera area. The road was also subject to adverse weather conditions in the winter months.

The road was busy and the lay-by was well-used with limited visibility on the bend. There was no protected right-turn and a junction was situated opposite the lay-by which led to a picnic area, with a minor road located to the rear. The street trading designation had been in existence for 20 years and if this was removed may encourage other street traders to the lay-by, potentially exacerbating the road safety issues. There had been one recorded accident in the last 12 years involving a vehicle exiting the lay-by.

Mr Pounder, the applicant addressed the Committee. He was of the view that this was a quiet stretch of road at present and the lay-by was only used because he traded from it. The picnic area was closed and therefore the junction opposite was unused. His Solicitor had advised that the designation was illegal under Section 147A of the Highways Act 1980; the area was not a lay-by but formed part of Roddymoor Lane. He had taken on the pitch as he believed that all other traders from lay-bys paid a licence fee.

Mr Pounder then referred to the comments of K Jameson detailed in pages 43 and 44 of the papers and was informed that these were in response to proposals for a Street Trading Policy and were not relevant. The matter for determination was whether public consultation should be carried out.

In response to Mr Pounder's comments about Section 147A of the Highways Act 1980, K Jameson explained that the lay-by was adopted and maintained by the Council, although this was disputed by Mr Pounder who stated that he maintained and litter-picked the area. The Officer advised that this Section of the Highways Act prevented trading from a lay-by near a principal road, however this was outweighed by the street trading designation.

In response to Councillor Gunn, C Rudman, Licensing Manager explained why the Licensing Authority was against the removal of the designation. The Officer advised that the lay-by had been designated by the former Wear Valley District Council and if removed would attract more traders which would bring about traffic safety issues and the potential for environmental harm.

Licensing Officers also had concerns about public safety. Mr Pounder was deemed to be a suitable person to hold a licence. If the designation was removed any trader would be able to use the lay-by at any time without any licensing controls. Part of the application process was about vetting applicants and this provided protection for the public in a lay-by that was in an isolated location.

Existing street trading designations were to be examined, however this would not be for some time, and it was felt therefore that consideration should be given to the application on its individual merits now.

Councillor Glass stated that he used the road frequently. He noted that if the designation was removed this may encourage other traders to use the lay-by resulting in competition for Mr Pounder. He was concerned about the potential for road safety problems and that there would be no controls over unlicensed traders. He understood that this lay-by was a well-used HGV stop and increased trade would reduce available parking space.

Councillor Batey concurred with these views and asked if traders would be allowed to leave vehicles in the lay-by overnight. The Member was advised that this would constitute an obstruction of the public highway.

Councillor Gunn noted that there were only two designated lay-bys across the County and was informed that these locations had been identified by the former Wear Valley District Council because of road safety concerns. With the exception of Durham City Council, which had introduced street trading consents for all lay-bys in the City, no other former District Councils had adopted the legislation.

Following questions from Members, C Greenlay, Principal Solicitor (Litigation) clarified that adoption of the Street Trading Policy did not change the existing street trading designations. This would be subject to a lengthy consultation and decision-making process, and therefore Members should decide whether it would be reasonable to delay consideration of Mr Pounder's request.

Having considered all the comments made, Councillor Hopgood was of the view that the application should go out to consultation to allow parties to have the opportunity to present their arguments for or against the removal of the designation. The consultation process would also give any interested members of the public the opportunity to comment. This would be an open and transparent way of considering the matter.

Having heard the representations made by Mr Pounder, Highways and Licensing Officers, together with the advice of the Principal Solicitor, Councillor Gunn considered that the request should not go out to consultation. This was agreed by Councillor Jewell.

As local Member Councillor Hart had concerns that lifting the designation would encourage other traders to use the lay-by but agreed with Councillor Hopgood that the matter should go out to consultation.

Following a vote being taken it was **Resolved:**

That the Council does not go out to public consultation to remove the current street trading designation for the Collier Wood Lay-by on the A68 near Crook

## **5 The Adoption of a Street Trading Policy**

Consideration was given to the report of the Corporate Director, Neighbourhood Services regarding the adoption of a Street Trading Policy (for copy see file of Minutes).

C Rudman, Licensing Manager reported that the proposal to introduce a Street Trading Policy was not statutory but would regulate the current ad-hoc situation, following the Council's adoption of powers to regulate street trading throughout the County. The proposed Policy was attached at Appendix 2 of the report and was a framework within which the Council would exercise its control of street trading. He referred to slight amendments to the document, namely that the reference in paragraph 3 of the foreword should state that the Council adopted legislation for the control of street trading in County Durham in December 2011. Under Section 9 'General Presumptions' the Policy should state that street trading consents would normally be refused for 'individual applications in the City of Durham and in some market town locations on non-market days unless the trading forms part of an organised event.'

A consultation exercise had been undertaken and the responses were set out in Appendix 3.

The Officer summarised the main aims of the Policy which would ensure that applications were dealt with in a fair and proportionate way and would protect public health and safety. Consideration had been given to certain locations where there were significant cultural or heritage reasons to protect them, and also in locations where certain types of trading would be detrimental. For example, Public Health had requested that the Policy include a statement that an application for fast food in close proximity to schools would not normally be acceded to.

The Policy did not deal with street trading designations which was a separate issue and would be considered at a later date.

Councillor Blakey endorsed the proposals to discourage fast food trades in close proximity to schools and Councillor Glass welcomed the proposed Policy which would harmonise the current situation. The Member also asked about the application process and was advised that if a consultee did not respond within the specified time period of 14 working days it would be assumed that there were no adverse comments.

Councillor Nearney also offered his support to the proposals which would ensure consistency and avoid disparity. In response to a question from the Member, C Rudman explained that the Council could impose charges in addition to the licence fee for cleansing, refuse collection etc. These charges were dependent upon location and were based on cost recovery.

C Rudman continued that Councillor Carr had expressed concern about the selling of legal highs and asked Members to consider if a statement should be included in the Policy to discourage this activity.

Members discussed this at length and noted the Council's responsibility for Public Health. In response to questions and comments, C Greenlay, Principal Solicitor (Litigation) advised that each application had to be considered on its own merits and it would not be possible to prohibit the selling of legal highs. However a statement could be included in the Policy under 'General Presumptions' that street trading consents for these substances would normally be refused. This would reinforce the Council's responsibility for Public Health and help an applicant make an informed decision about making application. The term New Psychoactive Substances (NPS) would be appropriate and was sufficient to reflect any new legal substances that may come onto the market in the future.

Following discussion it was **Resolved:**

That

- (i) The adoption of the proposed Street Trading Policy by the Council be supported;
- (ii) a further report be submitted to Council seeking approval for the adoption of the proposed Street Trading Policy, subject to the minor amendments referred to by the Licensing Manager, and to the inclusion of an additional statement in Section 9 'General Presumptions' that street trading consents for the sale of NPS would not normally be acceded to;
- (iii) a schedule of fees be devised for approval by the Director of Neighbourhood Services.