

**General Licensing and Registration
Committee**

11 July 2019



**Request for the re-designation of
streets in Barnard Castle for street
trading purposes**

Ordinary Decision

**Report of Joanne Waller, Head of Environment, Health and
Consumer Protection**

**Ian Thompson, Corporate Director of Regeneration and Local
Services**

**Councillor Brian Stephens, Cabinet Portfolio Holder for
Neighbourhoods and Local Services**

Electoral division(s) affected: Barnard Castle

Purpose of the Report

- 1 This report seeks consideration of a proposal to change the designation of several streets in Barnard Castle from 'prohibited' to 'consent streets' to allow for street trading at these locations subject to legal and policy controls.

Executive summary

- 2 Barnard Castle Town Council requested a change in the designation of the 'prohibited' streets in Barnard Castle to 'consent' streets to enable street trading to take place in what are currently prohibited areas of the town.
- 3 Pre-statutory consultation yielded general support for this proposal but with certain reservations from one DCC respondent in relation to some of the streets. The statutory consultation on the proposals resulted in one further response that was broadly in opposition to the proposal.

- 4 Further consultation with DCC Highways indicates that concerns raised by the DCC Principal Projects Officer and by the respondent following statutory consultation may be satisfactorily addressed and catered for by the application of a suitable authorisation process, should the changes in designation be approved by the Licensing Committee.

Recommendation(s)

- 5 The General Licensing and Registration Committee consider the proposals from Barnard Castle Town Council and the comments received following the consultations.
- 6 The Committee gives support to the proposals made by Barnard Castle Town Council and make a resolution, to be advertised in the local newspaper, announcing the decision and setting the date on which the new or altered designation would come into effect. This date not to be less than one month from the date of the advertised resolution.

Background

- 7 The former District of Teesdale had adopted Section 3, Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 relating to street trading and had designated certain streets (or parts of streets) within Barnard Castle as 'prohibited' streets. A full list of current street designations within the former District of Teesdale is shown in Appendix 2.
- 8 The effect of the former District Council's adoption of these designations is that trading in certain locations in the town is not permitted. However, street trading in other parts of Barnard Castle and the rest of the former Teesdale district is not controlled by street trading legislation. Any person found trading in the prohibited streets (except as part of the established market) will be guilty of an offence and liable on summary conviction to a fine.
- 9 In December 2011 Durham County Council resolved to adopt the powers to regulate street trading throughout the County provided by Part III Local Government (Miscellaneous Provisions) Act 1982, section 3. The purpose being to allow street trading across the County to be reviewed where necessary and harmonised, to help create a consistent approach and allow a degree of control should it be necessary.
- 10 To achieve this the Council has adopted a street trading policy that is applied to control and manage street trading activities in designated areas throughout County Durham. The aim of the policy being to aid harmonisation, to promote the Council's rational for street trading and help to ensure consistency and uniformity of approach.

- 11 Street trading means selling, exposing or offering for sale any article in a street. The term 'street' includes any road, footway, beach or other area to which the public have access without payment. Street trading activities may include e.g. hot and cold food vendors, vendors of non-food products who trade on static pitches or fixed locations from any vehicle, a stall, barrow, trailer, or any other moveable construction. As the definition of "street" includes any land to which the public have access without payment, private land to which the public has free access may also be included. Street trading law and associated policy therefore can extend to events off the highway that are conducted on private premises.

The requests and proposals

- 12 EHCP has received a request for changes to existing street trading designations in Barnard Castle from Barnard Castle Town Council. This request is shown in appendix 3.
- 13 Barnard Castle Town Council has asked that the change from prohibited streets to consent streets be considered for all prohibited streets. *"At its meeting on 17 December 2018, under delegated powers, the town council's Services Committee resolved to formally request that Durham County Council considers moving street trading in Barnard Castle from 'Prohibited Streets' to 'Consent Streets'."* ...
Michael King, Clerk, Barnard Castle Town Council.
- 14 The following areas within Barnard Castle are currently designated as prohibited streets:
- Marshall Street / Baliol Street / King Street / Flatts Road / Scar Top / Horsemarket & Market Place (including side road) / The Bank / Newgate / Galgate (including side roads) from its junction with John Street & Montalbo Road to its junction with Horsemarket & Flatts Road / Vere Road (from Flatts Road to Marwood Cottage) / Access road to Galgate Car Park
- 15 The agreed process following the receipt of requests to designate and re-designate streets within the County is as follows:
- Liaison between Licensing Services and the applicant to establish the nature and extent of the applicant's proposal, to ensure enough information of a satisfactory nature has been provided to enable proper consideration of the proposal. This has been conducted
 - Liaison/pre-statutory consultation with several 'responsible authorities' and some DCC 'interested parties'. (This has been

conducted and the responses received are reproduced in appendix 4)

- SMT report produced detailing exact nature of request together with relevant background information, requesting on behalf of applicant DCC commencement of the statutory consultation process under the adopted provisions of LG (MP) Act 1982
- Subject to senior management agreement (which was given), EHCP/Licensing Services would advertise the proposal in accordance with the Act and would formally consult and liaise with the public and both internal and external partner organisations including Highways, police, planning, local Members and other identified interested parties. The consultation period would be 28 days allowing members of the public or relevant authorities to submit any written representations either in support of or in opposition to the proposal
- Following the end of the statutory 28-day consultation period, any objections or other supporting information received would then be reported to the General Licensing and Registration Committee. The Committee may support or reject the proposal at this stage. If no representations were received, the Council would publish another notice stating when the change to the current designation would come into effect
- If the proposal is supported, a further advertisement would be taken in the press announcing the decision and setting the date on which the new or altered designation would come into effect

- 16 Prior to the statutory consultation on the proposal it was not possible with any degree of certainty to predict whether the application would find support or opposition amongst all likely respondents.
- 17 The adopted street trading policy includes some restrictive measures described in Chapter 9.0 General Presumptions. These measures were included in the policy following consultation with colleagues based on public health considerations and comments from Regeneration and Economic Development (now REaL) in relation to the protection of certain areas in the County with historic and cultural significance.
- 18 In-line with adopted policy, should these streets be re-designated to allow street trading it is possible to apply a general presumption as stated in the policy that we will normally only allow street trading in these areas of Barnard Castle, if the trading is part of an organised event which is supported by the County Council. This is because under the policy there is a general presumption that we will normally refuse

street trading consents for *'individual applications for street trading consents in Durham City Centre and some market town locations on non-market days unless the trading forms part of an organised event. Such locations have special historic, cultural and public interest and the Council considers that they require a greater level of protection and control'*.

- 19 As street trading can contribute to the success of events, the Policy allows for operators of events and non-established markets to submit a single application for multiple traders. The purpose of this inclusion was to simplify and speed up the application process, benefitting events such as the Bishop Seaham Carnival, Bishop Auckland Food Festival, Lumiere and other trading that takes place in other historic and culturally important consent areas for example Durham Market place.
- 20 Three responses were received following the stage one, pre-statutory consultation (see appendix 4). Police Traffic Management and one local councillor offered no objections. Jackie Donnelly Principal Projects Officer was concerned about parking provision in the Town and the possible effect of uncontrolled or unmanaged street trading, especially during events held in the town. She also commented in connection with Marshall Street, Balliol Street, Montebello Road and King Street, residential streets and located away from the main retail core of the town. She considered that trading activity in this area would have little economic benefit, effectively diluting the retail offer and drawing custom away from the retail core. She advised that these areas remain prohibited.
- 21 The street parking and other highway related concerns raised may be addressed by ensuring that any authorised street trading activities are properly managed and effectively controlled within the context of any organised event supported by the County Council. This can be achieved by the application of the consent process in conjunction with the adopted street trading policy. Prior to the grant of any consent, liaison would take place with officers from DCC Highways section.
- 22 The concerns regarding economic benefit and the potential effects on the existing retail offer are not matters that are taken into consideration by the street trading policy. Such factors may be legitimate matters for consideration by officers involved in economic regeneration etc. however, they reside outside street trading policy and are not the subject of the street trading control process. Presumably, this is not an issue that is a cause of concern to the local Town Council as it is not mentioned in their correspondence.
- 23 **Statutory consultation** - On 13th March 2019 the statutory advert was placed in the Teesdale Mercury and the proposals were advertised for

the prescribed period. See copy advertisement in Appendix 5. One response was received during the prescribed period of 28 days. This response is shown in appendix 6. The respondent opposes the proposed changes on the following grounds:

- I. Protection of the integrity of residential streets / roads adjacent to the town centre shopping area from incompatible / intrusive trading and commercial activity
- II. Protection of designated sedentary green areas within the distinguished Barnard Castle Conservation Area
- III. Consideration for concerns voiced by permanent retailers incurring business rates, tenancy lease or rental charges and other overheads. Permitted casual directly competitive street trading was considered unfair
- IV. Recognition of the traffic Management and congestion issues prevalent in the residential streets.

- 24 The first of the grounds raised may be partially addressed through the consent process as trading would only take place as part of an event supported by the County Council. Such events by their very nature would be temporary and short-lived. However, should trading occur in and around the residential streets, even as part of an official, supported event, it would not be possible to guarantee the absence of some degree of intrusion/disturbance.
- 25 The second of the grounds has not been raised by DCC Planning/Development Control. Any consent application for trading as part of a supported/official event would result in consultation with DCC Planning/Development Control and any safeguards proposed could be incorporated into the conditions of the consent and/or the management of the event.
- 26 The third of the grounds for opposition, matters of trade competition and any financial obligations associated with fixed retailers are not relevant matters for consideration for the grant of authorisations under street trading legislation. If the consent designation was granted, the grounds raised in point III would not be taken into consideration within the decision-making process.
- 27 The fourth of the grounds for opposition, matters associated with traffic management etc. may be satisfactorily addressed by the event management and consent application process. The DCC Highways Traffic Management Section Manager has commented as follows: *'Having read the very comprehensive objection from Mr Robson he has accurately described the situation with regard to traffic issues in Barnard*

Castle. Given that any trading application would need to be approved by us, I do not believe that changing the trading designation would have any ongoing detrimental impact to traffic flow and/or parking in the area. If anything, it could be beneficial if there was a desire to hold an event such as the food festival in Bishop’.

Options

- 25 Committee may give support to the proposals as they have been presented and agree to make a resolution to bring in the new designations – that decision would then be advertised and would take effect no earlier than one month from the date of the advertised resolution.
- 26 Committee may give support to some of the proposals and reject others. Members may modify the proposal e.g. change the list of streets to be subject to an alteration in street trading status and then agree to make a resolution to bring in the new designations – that decision would be advertised and would take effect no earlier than one month from the date of the advertised resolution.
- 27 Committee may reject the proposal in full.

Main implications

- 28 Supporting the proposals in full. This will allow the process to continue and the changes in designation to come into effect.
- 29 Supporting the process in part. This will enable some of the streets to be considered under stage two of the process and will require an explanation in connection with the less-than-full support being offered.
- 30 Rejection of the proposal. This will require an explanation of the committee’s decision to withhold support for the Town Council’s proposals/request.

Conclusion

- 31 Following the adoption of the legislation and street trading policy, all responsible authorities and interested parties are enabled to engage with the process and help shape the future of street trading within County as a whole.
- 32 The proposals made by Barnard Castle Town Council, if supported, would enable controlled street trading activities to take place in previously restricted locations. Should the General Licensing and Registration Committee reject the application based on the information it receives, the existing prohibition on street trading in the designated streets will continue.

Background papers

- Local Government (Miscellaneous Provisions) Act 1982
- Durham County Council's Street Trading Policy

Other useful documents

- None

Contact:	Joanne Waller	Tel: 03000 260923
	Owen Cleugh	Tel: 03000 260925
	Craig Rudman	Tel: 03000 260090

Appendix 1: Implications

Legal Implications

The adoption of street trading powers is contained in Part III LG(MP)A 1982, section 3. A district council or unitary authority may resolve that Schedule 4 to this Act shall apply to their district and, if a council does this, Schedule 4 (known as the 'street trading code') shall come into force in their district on such day as may be specified in the resolution. The statutory process for the designation of streets under this legislation includes the following steps:

(a) The intention to designate a street must be advertised for two consecutive weeks in a locally distributed newspaper. Notice published via local press and served on Police, Highways and Network Rail giving 28 days for written representations;

(b) The Council (Licensing Committee) is under a duty to consider any representations received. Consideration of any objections and formal resolution designating streets passed;

(c) If the decision is then made to designate the street, a further public notice must be published at least 28 days before the resolution takes place. Notice of resolution published via local press in two successive weeks (the first notice appearing a minimum of 28 days before resolution takes effect);

(d) Controls come into effect on the date specified in the resolution.

Legal and Democratic Services were consulted and contributed to the adopted policy

Finance

There are statutory advertising costs associated with this process

Consultation

Prior to the designation of any streets as prohibited, licence or consent, a consultation process will have to take place which could influence the final decision.

Equality and Diversity / Public Sector Equality Duty

There are no equality or diversity implications

Human Rights

There are no human rights implications

Crime and Disorder

There are no crime and disorder implications

Staffing

There are no staffing implications

Accommodation

There are no accommodation implications.

Risk

Failure to follow the statutory process could result in challenge and reputational damage.

Procurement

There are no procurement implications

Appendix 2: Former District of Teesdale Street Trading – current designations under the Local Government (Miscellaneous Provisions) Act 1982

Extract from Street Trading Application Form:

TEESDALE AREA

You do not need to apply for a street trading consent/licence to trade in the Teesdale area however the following areas within Barnard Castle are prohibited which means all street trading is prohibited:

Marshall Street / Baliol Street / King Street / Flatts Road / Scar Top / Horsemarket & Market Place (including side road) / The Bank / Newgate / Galgate (including side roads) from its junction with John Street & Montalbo Road to its junction with Horsemarket & Flatts Road / Vere Road (from Flatts Road to Marwood Cottage) / Access road to Galgate Car Park

Appendix 3: Request from Barnard Castle Town Council

See attached letter to Mr Owen Cleugh, Consumer Protection Manager from Mr Michael King Town Clerk, Barnard Castle Town Council dated 20th December 2018.

**Appendix 4 Pre-statutory consultation/liaison responses received
from responsible authorities and County Councillors
representing Barnard Castle**

a. Email from Licensing Manager to Responsible Authorities and Local Councillors

From: Craig Rudman [<mailto:craig.rudman@durham.gov.uk>]
Sent: 10 January 2019 15:44
To: Maxine Stubbs <Maxine.Stubbs@durham.pnn.police.uk>; Dave Lewin <dave.lewin@durham.gov.uk>; Laura Cloney <Laura.Cloney@durham.gov.uk>; Helen Johnson - Licensing Team Leader (N'hoods) <Helen.Johnson2@durham.gov.uk>; Yvonne Raine <Yvonne.Raine@durham.gov.uk>; Karen Robson <Karen.Robson2@durham.gov.uk>; Keith Jameson <keith.jameson@durham.gov.uk>; Wendy Benson <Wendy.Benson@durham.gov.uk>; Jackie Donnelly <Jackie.Donnelly@durham.gov.uk>; Paul Emerson <Paul.Emerson@durham.pnn.police.uk>; Dean Haythornthwaite <dean.haythornthwaite@durham.pnn.police.uk>; Cllr George Richardson <george.richardson@durham.gov.uk>; Cllr James Rowlandson <james.rowlandson@durham.gov.uk>; Cllr Richard Bell <Richard.Bell@durham.gov.uk>; Cllr Ted Henderson <Ted.Henderson@durham.gov.uk>; Stephen Ragg <Stephen.Ragg@durham.gov.uk>
Cc: Owen Cleugh <owen.cleugh@durham.gov.uk>
Subject: Street Trading in Barnard Castle

Dear Members, Officers and colleagues,

DCC/EHCP/Licensing Services have received a request from Barnard Castle Town Council to consider changing the current designation of the listed prohibited streets in Barnard Castle. This request is for a re-designation from a 'prohibited street' (where no street trading is allowed) to a 'consent street' (where street trading could take place, subject to the grant of a consent from the Council). Please see attached request. The prohibited streets in Barnard Castle are listed below.

The first stage of any designation or re-designation process is a pre-consultation. This will then lead on to a senior management report and, if agreed, this will be followed by an advert in the local newspaper formally inviting comments and observations from anyone in relation to the proposal/request made by the BC Town Council. If the process is supported

by senior management, the matter would eventually be decided on by DCC Members sitting as the General Licensing and Registration Committee.

In advance of reporting to senior management and any statutory public consultation, I would be grateful if you would consider this request and if possible provide me with your opinions, any concerns or other comments on the proposal. These may be in support of or in opposition to the proposal. If you do have any adverse comments to make I would be grateful for as much information as possible so that any matters raised of e.g. of a technical nature, might be fully understood and if appropriate, addressed in some manner to try to overcome any problems identified.

Thank you in anticipation of your responses. Should you require any further information please do not hesitate to contact me. I would be grateful if you could respond within 28 days from your receipt of this email. Please feel free to forward this email on to any other DCC section or officer or to any 'responsible authority' you feel may have an interest in this matter. If you do not respond I will assume that you have no adverse comments to make in relation to this proposal.

The following areas within Barnard Castle are prohibited which means all street trading is prohibited:

Marshall Street / Baliol Street / King Street / Flatts Road / Scar Top / Horsemarket & Market Place (*including side road*) / The Bank / Newgate / Galgate (*including side roads*) from its junction with John Street & Montalbo Road to its junction with Horsemarket & Flatts Road / Vere Road (*from Flatts Road to Marwood Cottage*) / Access road to Galgate Car Park

Best regards

Craig

Craig Rudman

Licensing Manager

Regeneration and Local Services

T: 03000 260090

E: craig.rudman@durham.gov.uk

Web www.durham.gov.uk

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www.durham.gov.uk/dataprivacy

b. Email from Paul Emerson Durham Constabulary Traffic Management

Craig

Following discussions with local officers there are no objections from the Police in respect of this matter

Regards

Paul Emerson

Paul Emerson

Traffic Management Officer

Cleveland & Durham Specialist Operations Unit

Wesleyan Road

Spennymoor

Co. Durham

DL16 6FB

01325 742745

07764 203014

paul.emerson@durham.pnn.police.uk



c. Emails from Jackie Donnelly Principle Projects Officer REaL

Hi Craig

With regard to the request from BCTC to consider changing the current designation prohibited streets in Barnard Castle to consent streets the CED Team have the following comments for consideration;

Agree that Galgate, a limited area on Flatts Road (that links to Scar Top), Scar Top itself, Horse Market the Market Place and The Bank have the potential to become consent streets. However as the majority of these areas provide most of the on street parking opportunities in the town centre this will have to be carefully considered / managed out especially of the street trading is linked to local events.

With regard to Marshall Street, Balliol Street, Montebello Road and King Street, these are residential streets and located away from the main retail core of the town. Any trading activity in this area would have little economic benefit, effectively diluting the retail offer and drawing custom away from the retail core. I would therefore advise these areas remain prohibited.

Happy to discuss further if required

Many thanks

Jackie

d. Email from Cllr Richard Bell cc'd Cllr Ted Henderson

fine with me.

PUBLIC NOTICE

Schedule 4 paragraph (2) of the Local Government (Miscellaneous Provisions) Act 1982 - Durham County Council intends to change the designation of streets in Barnard Castle from 'prohibited streets' to 'consent streets' for street trading control purposes.

Notice is hereby given to inform all interested parties that Durham County Council intends to change the designation of Marshall Street / Baliol Street / King Street / Flatts Road / Scar Top / Horsemarket & Market Place (including side road) / The Bank / Newgate / Galgate (including side roads) from its junction with John Street & Montalbo Road to its junction with Horsemarket & Flatts Road / Vere Road (from Flatts Road to Marwood Cottage) / Access road to Galgate Car Park from their current designation of Prohibited Streets to Consent Streets in accordance with the provisions of Schedule 4 paragraph (2) of the Local Government (Miscellaneous Provisions) Act 1982.

This statutory notice is published following the Regeneration and Local Services Management Team's decision on Thursday 21st February 2019 to support a request from Barnard Castle Town Council to change the existing designation of all prohibited streets in Barnard Castle to Consent Streets.

Any representations for or against this intention must be made in writing to the County Council within 28 days of the publication of this notice. Any objections or support received within the 28-day representation period will be fully considered by the Council's General Licensing and Registration Committee prior to any resolution being made in respect of any re-designation of the streets detailed above.

Written representations should be sent to the Licensing Manager, Environment, Health and Consumer Protection, Durham County Council, PO Box 617, Durham DH1 9HZ within 28 days of the date of publication of this notice.

Dated 13th March 2019

Joanne Waller

**Head of Environment, Health and Consumer Protection
Durham County Council, Annand House
John Street North, Meadowfield**

Durham, DH7 8RS

Appendix 6 Response from Statutory Consultation

See attached correspondence from Mr J R Watson Freeman of Barnard Castle and Honorary Alderman of the District of Teesdale.