

County Council

1 April 2015

The adoption of a street trading policy



Report of Terry Collins, Corporate Director Neighbourhood Services

Councillor Brian Stephens, Portfolio Holder for Neighbourhoods and Local Partnerships

Purpose of the Report

- 1 The purpose of this report is to recommend the adoption of a Council policy on street trading.

Background

- 2 Prior to LGR some of the former district councils had adopted street trading legislation and others hadn't. This meant that controls existed in some areas of the County but not in others. This caused difficulty in regulating street trading activities as no restrictions were in place in those areas which remained undesignated.
- 3 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 of this was to allow this situation to be harmonised in order to create a consistent approach and allow a degree of control should it be necessary.

Street Trading Policy

- 4 Where the legislation is adopted it is considered good practice for a Council to have a 'street trading code' or policy. The Council therefore agreed that a street trading policy should be produced so that a common approach to street trading activities could be applied across County Durham. The aim of the policy being to aid harmonisation and to promote the Council's rational for street trading, ensuring greater consistency and uniformity of approach.
5. The proposed Street Trading Policy is attached as Appendix 2. This was presented at a Meeting of General Licensing and Registration Committee held on Thursday 15 January 2015. This committee resolved that the adoption of the proposed Street Trading Policy by the Council be supported subject to certain minor amendments which included the inclusion of an additional statement in Section 9 'General Presumptions' that street trading consents for the sale of 'New Psycho-active Substances' (so called legal highs) would not

normally be agreed. These required changes have been made to the proposed policy.

6. A harmonised schedule of fees for street trading authorisations has been devised and approved by the Director of Neighbourhood Services.
7. The proposed policy provides advice to both current and prospective street traders and to the public on the Council's overall position with regards to the authorisation of street trading activities under the Act. It also provides a decision-making framework for the Council via its Officers and Licensing Committee to exercise its quasi-judicial functions.
8. The policy aims to balance the legitimate needs of businesses with local controls and community interests. It also details the licensing authority's role for administering and enforcing the regime in accordance with the law. Failure to achieve the correct balance could lead to a policy being overly prescriptive and open to challenge, or ineffective in the protection of the public.
9. The policy will ensure that any street trading applications received are considered on their own individual merits and it will ensure that the grant of consents and licences are dealt with in a consistent, fair, reasoned and proportionate way. The policy will be used in conjunction with the applied legislation and sets out the framework within which the Council will exercise its control of street trading.
10. The adoption of such a policy is not mandatory. It is however considered invaluable for the administration and promotion of an open and transparent licensing process.
11. Street trading was included in the public consultation exercise concerning the growth and enhancement of County Durham's street markets, which led to the adoption of the Market Strategy in January 2013. Consultation and liaison with relevant Council departments and with Durham Constabulary has also taken place in connection with the development of the proposed policy. All consultation responses are attached as Appendix 3.

Legal Considerations

12. In October 2012 the Government began a consultation on Street Trading and Pedlar law reform to bring the UK systems in line with the European Services Directive. This consultation period ended in March 2013. The results were published in October 2014.
13. There are certain aspects of UK street trading legislation that are not wholly consistent with European legislation. The Provision of Services directive allows for free and market forces to prevail however, for example, UK legislation allows for the restriction of goods sold via street trading if they conflict with nearby retailers. Non-conforming elements of current UK legislation such as this have not been included in the proposed policy. It has

been designed to be consistent with recently proposed amendments to Schedule 4 of the Local Government Miscellaneous Provisions Act (LGMPA) to ensure compliance with the E U Services Directive.

14. The need to make these changes followed the consensus reached by EU Member States in 2010 that the retail sale of goods is generally a service activity which falls within the scope of the Services Directive. Previously, such activities were not considered to be in scope and this change in interpretation was described in the Government response to the 2009 consultation on reform of the street trading regime which was published in March 2011.
15. The Policy does have some restrictive measures for controlling street trading in consent areas which are described as General Presumptions. These measures have been included following consultation with colleagues based on public health considerations and comments from Regeneration and Economic Development in relation to the protection of historic and cultural significance of certain areas in the County. They also include the controls required by the General Licensing and Registration Committee as detailed in paragraph 5. Such general presumptions could not be readily applied to any areas of the County designated as 'Licensed Streets'. The Provision of Services Regulations and the guidance will be taking account of when determining our policy and processes for dealing with applications for consents.
16. As street trading can contribute to the success of events, the Policy allows for operators of events or non-established markets to submit a single application for multiple traders. The purpose of this inclusion is to simplify and speed up the application process and would benefit such events as the Bishop Auckland Food Festival, Lumiere and other trading that takes place in, for example, Durham Market place.

Conclusion

17. Following the adoption of the legislation, it was agreed that a street trading policy would be produced that would enable all responsible authorities and interested parties to engage with the process and help shape the future of street trading within the County.

Recommendations

18. It is recommended that:
 - i) Members agree the adoption of the proposed street trading policy by Council

Background Papers

Local Government (Miscellaneous Provisions) Act 1982

Contact: Joanne Waller Tel: 03000 260924

Appendix 1: Implications

Finance

There are no Finance implications

Staffing

There are no human resource implications.

Equality and Diversity

There are no equality and diversity implications. The Policy has been subject to an Equalities and Diversity screening assessment. This is included as Appendix 4

Accommodation

There are no accommodation implications.

Crime and disorder

There are no crime and disorder implications

Human Rights

There are no human rights implications

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.

Procurement

There are no procurement implications

Disability Discrimination Act

There are no Disability Discrimination Act 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.

Certain forms of street trading are outside the legal controls of the Council. There are a number of lawful exemptions removing certain activities from the need to obtain a street trading licence or consent including any person who holds a Pedlars Certificate under the Pedlars Act 1871 **and** is acting as a pedlar. It is an offence to act as a pedlar without a certificate. Pedlars Certificates are issued and regulated by the Police.

Clare Greenlay in Legal and Democratic Services has been consulted and has contributed to this draft policy.