

General Licensing and Registration Committee



14th March 2016

Proposal for the re-designation of Framwellgate and Elvet Bridges for street trading; post consultation report.

**Report of Terry Collins, Corporate Director Neighbourhood
Services**

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

Purpose of the Report

1. This is a second post-consultation report on Durham Business Improvement District's (BID) proposal on changes to the designation of Framwellgate and Elvet Bridges in Durham City from 'prohibited' to 'consent streets'. This would permit street trading at these locations subject to legislation and adopted policy controls. Committee is asked to consider the responses to the statutory consultation and in support of the proposal, make a resolution to designate these two bridges as consent streets.

Background

2. In May 2015 DCC Environment, Health and Consumer Protection (EHCP) received a request from Mr. Adam Deathe, Business Engagement Manager acting on behalf of the Durham BID. This request is shown as appendix 2. The BID asked the council to remove the current designations of prohibited street for Framwellgate and Elvet Bridges in Durham City and re-designate these locations as consent streets to allow street trading to take place (subject to agreed conditions and adopted policy controls).
3. The agreed process following the receipt of requests to designate and re-designate streets within the County was that EHCP/Licensing Services would advertise the proposal to consult the public and liaise with internal and external partner organisations including Highways, Police, planning, local Members and any 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.
4. The BID's proposal was advertised in the Northern Echo on Wednesday 3rd September and the 28 day consultation period ended on the 29th September 2015. 'Internal' consultation with the Council and Police partners was also undertaken.

5. On Thursday 14th January the Committee considered the proposal made by the BID and the responses received from consultees as outlined in the report following the non-statutory consultation process and Members agreed to support the proposal. Members ordered the publication of a second (statutory) notice stating the council's intention to alter the present designations of prohibited streets and to re-designate the streets at these locations as consent streets.

The statutory consultation responses

6. In accordance with statutory requirements the notice of intent was published in The Northern Echo on Thursday 21st January and Thursday 28th January and the notice was sent to DCC Highways, Durham Constabulary and Virgin East Coast Railways (Network Rail). A copy of the notice is attached as appendix 2.
7. Three responses to the statutory consultation were received within the prescribed consultation period and no responses were received outside this time frame. None of the respondents objected to the proposal and broadly the proposal was supported in the received correspondences. The responses are shown in appendix 3.
8. Responses received during the preliminary non-statutory consultation from the Council's Strategic Traffic Management, the City Centre Manager, the Traffic Management Officer, Cleveland and Durham Specialist Operations Unit, Training & Risk section of County Durham and Darlington Fire and Rescue Service and from Regeneration Manager – Durham City, Economic Development & Regeneration have already been considered by Members. These previously received responses are shown in Appendix 4.
9. To reiterate, none of the consultees who responded have objected to the proposal in principal although respondents have made relevant comments, observations and recommendations that should be taken into consideration. The Police and Fire Service have expressed certain concerns and made it clear that due account must be given to the potential safety aspects associated with the proposed re-designations. The main issues highlighted by respondents relate to safe access, egress and the prevention of obstructions on the bridges and the safety and integrity of any structures that may be placed on the bridges.
10. Durham Market Company (DMC) in their response requested that the Council consult with them over any applications for street trading at these proposed locations which may constitute rival markets in common law prior to any consent being granted. The street trading policy adopted by the Council does not include consultation with private individuals or organisations in relation to market rights issues. Such matters are not part of the consent process and exist outside statutory processes.
11. Should Members accept the recommendations of this report and make a formal resolution re-designating streets as consent streets, a street trading application process would be adopted which includes the provision of

information to applicants on market rights issues and that recommends prior liaison and communication between the applicants and DMC prior to the submission to DCC of the completed application if any potential market rights issues exist. The Council would therefore not refuse to grant consent purely on the basis of a likely conflict over market rights. It would be the responsibility of DMC to exercise any rights against the street traders should they consider their market rights have been infringed by any street trading collective.

Street trading policy and consent conditions

12. The adopted Street Trading Policy includes some restrictive measures described as General Presumptions. These measures were included following consultation with colleagues based on public health considerations and comments from RED in relation to the protection of historic and cultural significance of certain areas in the County.
13. 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 Auckland Food Festival, Lumiere and other trading that takes place in other consent areas for example Durham Market place.
14. The designation of a street as a 'consent street' prohibits street trading in such a street without the consent of the Council. This system of control gives the Council more extensive, discretionary powers than is the case for street trading licences. The grant of a street trading consent is a matter that falls within our discretion.
15. The consent process enables authorised street trading activities to be controlled in the interest of public safety. In contrast to the provisions of regulation the grant of licences, there are fewer limitations on the grounds on which we may refuse an application and we are entitled to have regard to matters that we consider relevant, subject only to the requirement that we must act reasonably.
16. We may attach such conditions to the street trading consent as we consider necessary and in particular, conditions designed to prevent obstruction of the street, danger to those using it, crime and disorder and nuisance or annoyance. In relation to the prevention of annoyance, conditions may address any effects of street trading on the neighbourhood that might fall short of a nuisance in law. No right of appeal to the criminal courts exists in respect of a refusal, revocation or variation of a street trading consent.
17. Members had previously requested that the areas that would be designated for street trading could be clearly defined by way of a map. In response, DCC Strategic Traffic Management have produced a map for each bridge to show where trading would be permitted. Applications would have to be accompanied by a plan showing where trading would occur and a risk assessment would be required for proposed events at these locations to ensure that the bridges could be safely crossed during trading events. The

map produced by DCC Strategic Traffic Management for this purpose is shown in appendix 5.

Next steps

18. Members are now asked to consider the BID's request in light of all comments and responses received. The Committee may support or reject the proposal at this stage. If Members of the committee support the proposal they should order the publication of a third statutory notice announcing the resolution to alter the present designation and stating the date on which the re-designation comes into operation.

Conclusion

19. The application/proposal made by the BID would, if supported, enable controlled street trading activities to take place on occasion from Framwellgate and Elvet Bridges. Should Committee reject the application based on the information it receives there will continue to be a prohibition on both bridges with trading being prohibited.

Recommendations

20. That Committee considers the proposal made by the BID and the responses received from consultees as outlined in this report and either rejects or supports the proposal.
21. If Members of the committee support the proposal they should order the publication of a third statutory notice stating the resolution to alter the present designation. This final advertisement would be published in the press to announce the Committee's decision and will also set the date on which the new/altered designations would come into effect. In accordance with statutory requirements, the notice of resolution would be published via local press in two successive weeks with the first notice appearing a minimum of 28 days before resolution takes effect.

Background Papers

Local Government (Miscellaneous Provisions) Act 1982

Durham County Council's Street Trading Policy

Previous General Licensing and Registration Committee report

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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 3

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.

Clare Pattinson in Legal and Democratic Services was originally consulted and had contributed to the draft street trading policy