

APPENDIX C



Agenda Item 10

Part I

Item No: 10

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Executive Member: Roger Trigg

Ward: All

WELWYN HATFIELD BOROUGH COUNCIL
ENVIRONMENTAL OVERVIEW AND SCRUTINY COMMITTEE – 20 JULY 2017
REPORT OF THE EXECUTIVE DIRECTOR PUBLIC PROTECTION, PLANNING AND
GOVERNANCE

CONSIDERATION OF ADDING A NEW CONDITION TO ALL STREET TRADING CONSENTS

1 Executive Summary

- 1.1 This report sets out the current arrangements for street trading consents and asks Members to consider the introduction of a new condition. The proposed condition would prevent additional name(s) being added to an existing consent.
- 1.2 Welwyn Hatfield Borough Council ("The Council") (through the Licensing Team) have recently received requests from street traders who wish to add family members to their current consents. It is then possible to transfer the consent to the other named persons, rather than it being surrendered once the original party has no further use for the consent. This will bypass any existing waiting list.
- 1.3 The Local Government (Miscellaneous Provisions) Act 1982 ("the Act") allows the Council to attach such conditions as they consider reasonably necessary and at any time vary the conditions of a consent.
- 1.4 Section 7(4) of Schedule 4 of the Act states "*When granting or renewing a street trading consent the Council may attach such conditions as they consider reasonably necessary*".
- 1.5 Section 7 (6) of Schedule 4 of the Act provides that "*The Council may at any time vary the conditions of a street trading consent*".
- 1.6 Section 7(10) of Schedule 4 of the Act states that "*A street trading consent may be granted for any period not exceeding 12 months but may be revoked at any time*".

2 Recommendation(s)

- 2.1 Members are asked to consider the introduction of a new condition for all street trading consents preventing the name of a second person being added to the consent.

3 Explanation

- 3.1 The Council regulates street trading under the Act and has adopted a "prohibited and consent street" method of regulation. As the name implies, street trading may be carried out in a designated "consent streets" provided the consent of the Council has been given through the Public Health and Protection Team. Street trading is prohibited in a "prohibited street." In this context the words "street" and "street trading" have specific legal meanings and there are exemptions along with an interface with peddler licensing and markets legislation.

- 3.2 The original policy for street trading was set in 1982, revised in 1992 and reviewed again in 1995. There are currently five street trading pitches (within the consent streets) in the Borough and a waiting list is kept for those requiring a street trading consent. There are currently sixteen people who have registered an interest in obtaining a pitch but these pitches very rarely become vacant. All pitches currently trade in fast food.
- 3.3 All existing street traders apply to renew their licence each year in accordance with Section 3 of and Schedule 4 to the Act. Where a renewal application has been made and the trader is compliant with all the criteria for assessment (there have been no substantiated complaints, no enforcement issues and the relevant fee has been paid) the consent will be renewed. The consent can last a maximum of 12 months but can be revoked at any time.
- 3.4 The Act currently allows the holder of a street trading consent to employ any other person to assist him in his trading without a further consent being applied for. A second name has not previously been added to a consent as it was considered unnecessary for the purposes of a consent holder being able to call in assistance when necessary, due to workload, illness or other emergency.
- 3.5 If a consent holder surrenders their licence for whatever reason the next person on the waiting list is contacted to enquire whether they are still interested in obtaining a consent. Often people have moved away from the address on the Council's list or are no longer interested, in which case we would move down the list until a suitable applicant is found.
- 3.6 Currently there have been three enquiries from consent holders who may be considering surrendering their consents for a variety of reasons but instead are asking to add an additional family member to the consent. It is presumed that at some point in the future the renewal will be applied for in the new person's name only thus effectively transferring the consent to a person of their choice.
- 3.7 In addition a street trading working party report in March 2000 recommended that two sites were restricted to the current holders only, after which time they would lapse. However, it is worth noting that this may be the subject of a further report in the future to establish the continuation or cessation of these particular street trading consents and a review of the street trading policy.
- 3.8 The current street trading policy is attached as Appendix A.
- 3.9 The conditions attached to the consents are attached as Appendix B.

4 Legal Implication(s)

- 4.1 The Council is able to grant street trading consents under the Act.
- 4.2 The Council is able to attach conditions to street trading consents and these can be used to help ensure trading is carried out in a consistent manner and in accordance with the requirements of the Council.
- 4.3 It is important that the Committee considers the Human Rights Act 1998 in particular to consider the following Articles when making its decisions:-

Article 1 of the First Protocol which sets out the right to enjoyment of possessions.
"Every natural or legal person is entitled to the peaceful enjoyment of his possessions"

No one shall be deprived of his possession except in the public interest and subject to conditions provided for by law.

5 Financial implication(s)

- 5.1 The Act provides the mechanism to charge an appropriate fee for street trading consents. However, the fees cannot be set in order to generate a profit.
- 5.2 The fees and charges for street trading consents were reassessed in 2013 as part of the budget review process.
- 5.3 In respect of this report the addition of a new condition to the consent does not have any financial implications.

6 Risk Management Implications

- 6.1 Some of our consent holders have operated their businesses for a number of years and wish to pass the business on to family members. This is something that many other small business owners do. If the proposal outlined in this report is agreed then a reputational risk may arise if the business owner feels aggrieved by the decision.
- 6.2 However, it is also worth mentioning that the Council can revoke these consents at any time, so the opportunity to hand over a consent may not always exist.

7 Security & Terrorism Implication(s)

None directly arising from this report.

8 Procurement Implication(s)

- 8.1 None directly arising from this report.

9 Climate Change Implications

- 9.1 None directly arising from this report.

10 Link to Corporate Priorities

- 10.1 The subject of this report is linked to the Council's Corporate Priority "maintain a safe and healthy community" and "help build a strong local economy"

11 Equality and Diversity

- 11.1 This report relates to an amendment to the existing policy and is not a complete review of the current policy. The criteria for obtaining a street trading consent will not change in light of the recommendations outlined in this report and as such a full Equality Impact assessment has not taken place.
- 11.2 The introduction of the additional condition will ensure greater consistency and fairness in the allocation of street trading consents.

Report author

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Appendices

Appendix A - Current Street Trading Policy

Appendix B - List of current Street Trading Consent conditions

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Minute of item 8 Environment Overview and Scrutiny Committee held on Thursday 20th July 2017.

8. CONSIDERATION OF ADDING A NEW CONDITION TO ALL STREET TRADING CONSENTS:

Report of the Executive Director (Public Protection, Planning and Governance) sought approval of an introduction of a new condition which would prevent additional name(s) being added to an existing street trading consent.

Members expressed concerns that a trader, who having grown their business and wished to pass it on to a family member, would be unable to do so due to the conditions of the policy.

Officers explained that the Council was responsible to promote consistency and fairness towards the street trading applications and consents. Currently the Council held a waiting list of 16 people who would only have an opportunity of a pitch when one became vacant. There was already very little movement in the waiting list as traders did not tend to give up their pitches. Should a second name be added to a consent the effect would be to dramatically reduce the chances of those on the waiting list being offered a pitch. This was quite unlike shops when the lease ran out or a property was sold.

Officers went on to explain that the number of available pitches had reduced since the policy had last been reviewed. The current number of available pitches was five as opposed to the 15 as stated. This was due to a number of reasons including advice received from Highways, the location of the pitch or the suitability of the site.

Members expressed the view that the Environment Overview and Scrutiny Committee should be fully involved with the process when the policy came under review.

Officers further advised that the pitch holders were made fully aware that the consent would be non-transferable when making an application for a new pitch and each subsequent year when applying to renew their consent. There was the potential to create extra space or pitches however this would be dependent on the Members of the Council amending the policy and increasing the number of streets or pitches available. Members would be consulted at the appropriate stage when a firm steer or robust approach would be welcomed.

Officers reported that burger vans were very popular and did very well as a family run business. The Council did not want to ruin businesses but it was imperative that whatever policy was in place was applied fairly, openly and transparently and where a need or issue was identified that Officers took the necessary action to rectify these gaps. It would be difficult to apply the principles of openness and transparency should each application to add a second name be matter be dealt with on a case by case basis.

Members noted that trading from a pub car park was outside the scope of the policy and different rules applied and that food hygiene regulations applied to all pitches.

In summary, Members acknowledged that it was important to find a balance to protect those applicants who had been legitimately on the waiting list for some time with those who which to pass-on or handover their pitch of their business. Members accepted that this was the nature of this sector and concurred that the introduction of a new condition would prevent an

additional name to be added to an existing consent and the pitch being passed on by-passing the waiting list and would be much fairer all round.

RESOLVED:

(1) That the proposal to add a new condition to the Street Trading consent policy be agreed and recommended to Council for adoption.

(2) Environment Overview and Scrutiny Committee be involved with the review of the Street Trading Consent policy.