

BRECKLAND COUNCIL

Report of: Assistant Director (Commissioning)

To: General Purposes Committee

(Author: Fiona Inston – Licensing and Business Support Manager)

Subject: Street Trading

Purpose: This report provides an update on the outcome of the recent statutory consultation process and recommends a revision of existing street trading provisions and an extension of a street trading consent scheme to the whole district.

Recommendation(s):

It is recommended that Members:

- (1) Approve in principle the designation of all streets in Breckland as ‘Consent Streets’ for the purposes of Street Trading.**
- (2) Agree the Street Trading Standard Conditions as set out in Appendix 2 of this report**
- (3) Agree an annual fee of £408 for the initial grant or renewal of a Street Trading Consent (Subject to annual review)**
- (4) Authorise the Executive Member for Planning & Environmental Services to vary the fee structure as appropriate**
- (5) Authorise the Licensing and Business Support Manager in consultation with the Executive Member for Planning & Environmental Services to agree a fee of £0 for the grant or renewal of a Street Trading Consent for local charitable fund raising activities, as defined in section 3.1.4 of this report**
- (5) Recommend to Full Council that existing street trading restrictions in Thetford and Watton be rescinded as at 28 February 2013 and all streets in Breckland be designated as Consent Streets in accordance with section 3 and Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 with effect from 1 March 2013**
- (7) A further report be brought for consideration by Members in the event of problems being identified following the introduction of the revised scheme.**

1. BACKGROUND

- 1.1 At the July 2012 meeting of the General Purposes Committee Members considered a proposal to amend existing street trading provisions and extend the Consent Street scheme to the whole district. (Agenda item 10 Minute 47/12 refers).
- 1.2 Powers to regulate such activities are contained in the Local Government (Miscellaneous Provisions) Act 1982 and are available for adoption by local authorities. Once adopted, a local authority may designate all or parts of streets as either:
 - ‘Prohibited Streets’ in which street trading is not allowed;
 - ‘Licence Streets’ in which licences to trade are required;
 - ‘Consent Streets’ where prior consent requirements operate

The intention of the legislation is to minimise the potential for obstruction, danger, nuisance or annoyance arising from street trading activities.

- 1.3 Breckland Council adopted the general provisions of this legislation in 1982 and has so far designated the following streets in the district:
- Consent Street - King Street, Thetford
 - Licensed Street – High Street and part of Middle Street, Watton for the purposes of Watton Farmers Market.
- 1.4 More recently, officers have seen an increasing number of mobile food vendors appearing in roadside lay-bys and on industrial estates. These often have a competitive advantage over other traders, having low overhead costs, pay no 'business rates' and requiring no prior approval to operate. Standards are often variable, with a significant proportion requiring either informal or formal enforcement action by Environmental Health staff in order to protect public health.
- 1.5 After consideration of the proposals, Members agreed the following recommendations:
- To approve in principle the designation of all streets in Breckland as 'Consent Streets' for the purposes of Street Trading
 - Agree the public consultation process as set out in paragraphs 3.1 and 6.10 of the July report
 - Agree the draft Street Trading Standard Conditions as set out in Appendix 1 of the report as a basis for public consultation
 - Agree in principle an initial fee of £412.18 for a Street Trading Consent, with an annual renewal fee of £404.45 (subject to annual review)
 - Agree in principle that existing street trading restrictions in Thetford and Watton be rescinded should all streets in Breckland be designated as 'Consent Streets' for the purposes of Street Trading at a future meeting of the Council
 - Agree that all markets registered in accordance with Regulation (EC) No: 852/2004 be exempted from the need to obtain a Street Trading Consent
 - A further report be brought for consideration by Members following the completion of the formal public consultation process
- 1.6 This report updates Members on the formal consultation processes and proposes the extension of the Consent Street provisions to all streets in the district.

2 Consultation

- 2.1 In accordance with statutory requirements a public notice was placed in the Eastern Daily Press on 3 August 2012 advising of the Council's intention to adopt a revised street trading consent scheme and inviting comments within 28 days. Copies of this notice were also served on the Chief Constable, The Director of Planning & Transportation at Norfolk County Council and the Highways Agency for information.
- 2.2 In view of the timing of the notice and the wish to involve as many additional interested parties as possible, it was decided to consult a wider range of people than specified in legislation, with details also sent to:
- All Members of Breckland Council
 - The Clerks to all Town/Parish Councils
 - All known mobile traders operating in the Breckland area (ie: those most likely to be affected)
 - The Federation of Small Business (representing small traders in the area)
 - Chambers of Commerce (representing small traders in the area)

Full details were also posted on the Licensing pages of the Council's website.

- 2.3 Where Town/Parish Councils indicated that further time was required in order to consult their Members it was agreed that comments would be accepted after the formal closing date and, where necessary, reported orally to this committee.

2.4 A summary of comments received is set out in Appendix 1 to this report

3 Issues

3.1 The consultation process identified the following concerns:

3.1.1 Timing of consultation

Concerns have been expressed by two Town/Parish Councils about the inappropriate timing of the consultation period. While this did coincide with the school holidays, responses have been received from statutory consultees.

The consultation process is prescribed in legislation and summarised in section 2.1 above. However, (as explained in section 2.2) officers decided to consult a wider group of people to ensure that the matter was brought to the attention of all those directly and indirectly affected. In addition, a flexible approach has been adopted to the consultation period, with any comments received after the deadline being accepted and reported orally to this committee as appropriate.

3.1.2 Markets

Concerns have been expressed that the inclusion of farmers markets, charity markets and car boot sales within the definition of 'market' for the purposes of exempting them from the need to obtain a Street Trading Consent might impact on the legal rights of Charter Markets. It was further suggested that an additional consultation process should be included within the final scheme for applications falling within a six and two thirds mile radius of each Charter Market Town (the regulated distance prescribed under market rights legislation).

This proposal was included in the consultation document to simplify working arrangements by using a more general definition of the term 'market'. As markets are specifically exempt from the street trading provisions, the proposed new scheme will have little impact on market rights, which are enforced by the holder of the rights (usually the Town Council).

The proposed draft conditions included the following condition:

'4: The grant of a Street Trading Consent does not convey any other approvals that may be necessary under food hygiene, planning or any other appropriate legislation. It also does not convey any rights to trade on privately owned property'

To aid market rights holders it is proposed that this condition is reworded in the final document to highlight this concern.

3.1.3 Fees

At the July meeting of the Committee officers were asked to simplify and round up the proposed fee. Following a review of actual costs, it is proposed that a single fee of £408 (subject to annual review) be introduced for both the initial application and annual renewals. This will simplify administrative procedures and on-line payments.

3.1.4 Charity fund raising stalls

Technically the street trading provisions may apply to charitable fund raising activities carried out in the street by churches, scout groups or similar community organisations. As these activities may also require a Street Collection Permit which is issued at no charge to them, it is proposed that a similar fee be applied for Street Trading Consent to ensure that such groups are not financially disadvantaged.

3.1.5 King Street, Thetford

Discussions with Thetford Town Council have highlighted concerns about the potential for an influx of street traders into this currently regulated street. It is suggested that officers continue to work with the Town Council to monitor any street trading problems that may arise and present a further report to this Committee where the adoption of additional powers is considered appropriate.

3.1.6 Draft Conditions

No concerns about the draft conditions have been identified during the public consultation exercise. The original consultation document has been further reviewed and a final version is attached as Appendix 2 for consideration.

4. **Conclusion**

The public consultation process has not identified any causes for concern that will prevent the implementation of the proposal to designate all streets in Breckland as 'Consent Street'. Officers believe that most issues raised by consultees can be addressed by making minor changes to the standard conditions attached to any consent. However, it is considered prudent to carefully monitor the scheme once introduced and to report any problems that might arise to Members for further consideration.

5. **Extending the scheme**

5.1 It is proposed that street trading provisions in Breckland are amended by rescinding existing arrangements in Thetford and Watton and designating all streets in the district as 'Consent Streets'.

5.2 The Local Government (Miscellaneous Provisions) Act 1982 sets out the process to be followed when introducing or amending a scheme. This includes the following actions:

- As soon as practicable after the expiry of the consultation period specified in the public notice the Council shall consider any representations
- The Council to pass a resolution designating any streets in their district
- Publishing a notice that such a resolution has been passed for two consecutive weeks in a local newspaper. (The first publication shall be no later than 28 days before the proposed new scheme comes into operation).

5.3 It is proposed that a 3 month transition period be adopted during which time all street traders are required to apply for a Street Trading Consent. All such traders will be required to have this in place by 1 March 2013.

5.4 To ensure the smooth implementation of the revised scheme it is proposed that letters are also sent to all Town and Parish Councils and registered mobile food operators. Details will also be posted on the Council's website.

6. **OPTIONS**

6.1 The preferred option is to recommend the extension of a street trading consent scheme to all roads in the district. This will address the issue of many street traders being located outside town centres, often in lay-bys on trunk roads, or on industrial estates. It would also give a simpler scheme, with greater clarity to existing and prospective traders about where conditions apply.

6.2 Members may choose not to change existing arrangements. Current conditions would prevail, with street traders setting up operations at will, in any location, with minimal regulation. This would result in possible additional costs to the Council when dealing with unregulated street traders.

- 6.3 Members may choose to extend the existing scheme to a few defined streets. This would enable greater control in these areas, but may result in a concentration of traders in other areas, where they would be unregulated. This option may also lead to confusion and uncertainty about which areas are regulated; with a possible need for greater enforcement action should traders without the necessary consent start trading in a regulated area.
- 6.4 Members may wish to consider using licensing provisions to control which traders can operate in a defined street or location. This may be appropriate for further consideration in locations such as King Street, Thetford, or other locations where problems are identified. Licensing is not considered appropriate for widespread application because many traders tend to move locations to find the best trading position; this might be seen as a restriction of trading activity in the district.
- 6.5 Members may wish to prohibit street trading in defined areas. This may result in complaints from street traders of restricting trading activity. Any decision would need to be based on complaints from residents or other traders and evidence of obstruction, danger, nuisance or annoyance arising from street trading activities. This is not currently considered to be a major problem in the district, but would be included in any future reviews of the operation of the scheme.

7. REASONS FOR RECOMMENDATIONS

- 7.1 The proposed recommendation gives greater clarity of the standards expected of all street traders operating or intending to operate in the Breckland area, without causing undue restriction or inflexibility of where trading may occur.

8. IMPLICATIONS

8.1 Carbon Footprint & Environmental Issues

The proposed conditions attached to any consent will help reduce the environmental impact of street traders, particularly reducing the risk of obstruction or danger and preventing nuisance or annoyance.

8.2 Constitution & Legal

The request to designate streets as 'Consent Streets' is made under powers the Council has through adoption of Part 3 (Schedule 4) of the Local Government (Miscellaneous Provisions) Act 1982.

8.3 Contracts

None

8.4 Corporate Plan

This proposal supports the following corporate priorities:

- To have pride in Breckland
- To support our local economy

8.5 Crime and Disorder

None

8.6 Equality and Diversity & Human Rights

There are no direct equality or diversity implications arising from this report. The proposal addresses an identified inequality between street traders and those operating from fixed premises.

8.7 Financial

The anticipated net income based on the numbers of street traders and fee levels indicated is:

| | Year 1 | Year 2 | Subsequent Years |
|---------------------------|-------------------|--------------------|--------------------|
| Costs | | | |
| Implementation | £15,000.00 | £0.00 | £0.00 |
| Income | | | |
| New Street Traders Income | -£20,400.00 | -£816.00 | -£816.00 |
| Renewal Income | £0.00 | -£20,400.00 | -£20,400.00 |
| Misc Charges Income | -£96.00 | -£106.54 | -£106.54 |
| Total (Net Income) | -£5,496.00 | -£21,322.54 | -£21,322.54 |

This has been determined on a full cost recovery basis, covering both administration and operating costs. Set up costs will be funded as part of the Council's efficiency initiative.

8.8 Risk Management

The proposal has been developed to ensure greater regulation of street traders. Although the public consultation process described in section 2 above was designed to seek comments from all those potentially affected, it is possible that some existing street traders may still complain about the introduction of the greater regulation of their activities.

In the event of additional street trading problems being identified at a later date in specific parts of the district, it might be appropriate to consider the adoption of further powers. Should this need arise then a further report will be brought back to Members for consideration.

8.9 Staffing

None. The scheme will be operated using existing staff resources.

8.10 Stakeholders / Consultation

Details of the public consultation exercise undertaken are set out in section 2 of this report. In addition, a number of telephone and e-mail enquiries were received to clarify aspects of the proposal, and meetings were held with representatives of Thetford and Dereham Town Councils. Any significant comments have been included in Appendix 2.

Further discussions will take place with Town/Parish Councils to monitor the effectiveness of the scheme and to address any identified problems.

8.11 Other

None

9. WARDS/COMMUNITIES AFFECTED

All

Background papers:-

Report considered by General Purposes Committee on 25 July 2012 (Agenda item 10, minute: 47/12: Street Trading)

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Appendices attached to this report:

Appendix 1: Summary of Consultation Responses

Appendix 2: Guidance and Standard Conditions

Appendix 1: Summary of Consultation Responses

| Respondent | Comment | Officer Response |
|---------------------------------------|---|--|
| Statutory Consultees | | |
| Police | No objections. Mentioned that provisions exist under market rights for traders who are operating within a certain distance to the market but do not form part of the market | Conditions amended to clarify market rights restrictions |
| Highways Dept | No objections | |
| Highways Agency | No objections to proposed scheme, provided concessionaire at picnic site on A11 at Roudham not affected | Approved traders in designated highway picnic areas are exempt from the street trading provisions |
| Traders/ Trade Representatives | | |
| Caterer | Will the fee apply to each mobile? If so, concerned that may put out of business. 2 units trade on highway and remainder used on private land. | Fee relates to each mobile unit, but only where trading on 'the street'. Mobile units that only operate on private land are outside the scope of the scheme. |
| Mobile trader | Will she be affected as a market trader? | Markets are exempt from the street trading provisions. |
| Ice cream sales | An excellent idea, which will deal with the many unregistered vans operating in the district. | This reinforces the need for the scheme. |
| Wayland Chamber of Commerce | Will the proposal affect the Saturday market in Watton? | Markets are exempt from the street trading provisions. |
| Mobile trader | Considers the annual fee to be the final straw that might make the business cease trading. | |
| Sandwich van | Will the proposals affect a sandwich delivery service visiting specific addresses in the area? | Roundsman are exempt from street trading provisions |
| Fish & Chip mobile | May not be able to afford the fee and may have to stop trading. | |
| Fish & Chip mobile | May not be able to afford the fee and may have to stop trading. | |
| Burger van | Supports proposal as will control unregulated traders | This reinforces the need for the scheme. |
| Fish & Chip mobile | May not be able to afford the fee and may have to stop trading. | |

| | | |
|--------------------------------------|---|--|
| Town/Parish Councils | | |
| Dereham Town Council | How will proposals affect existing markets and fairs, car boot sales, garage sales, roadside sales of home grown plants/produce/eggs? | <p>Markets and fairs are exempt from the street trading provisions. Car boot sales are usually held on private land, where they are exempt. Car boot sales on public car parks etc are technically within the scope of the scheme, but officers would like to treat them in the same way as markets.</p> <p>The sale of home grown produce is frequently from stalls on private land, rather than on the street or pavement. As such they would be exempt from the scheme.</p> |
| Harling Parish Council | Please define 'street trading' and 'street trader' | Full consultation document with definitions sent. |
| Caston Parish Council | Does street trading include: car boot sales, people selling fruit and veg from their front gardens, or if a resident puts up a notice pointing to a stall in their front garden? | As Dereham Town Council. Signs would not be covered by this legislation. |
| Swaffham Town Council | Requested an extension of time in order to consult Council Members. Concerned about the implications for Charter markets | Agreed to emphasis in the conditions that the grant of a Street Trading Consent does not convey any other approval under other legislation or market charter |
| Weasenham Saint Peter Parish Council | Asked for it to be put on record that the Council does not consider this to be a proper method of public consultation allowing just one calendar month, during the height of school holidays. | See section 2 of the main report. |
| Shipdham Parish Council | Can the consultation period be extended until 11 September to enable Parish Councillors to be consulted | Agreed. Any comments will be reported orally to Committee. |
| Thetford Town Council | Concerned about the possible implications for King Street and Thetford town centre + administrative procedure for charity stalls | To monitor situation and seek further controls if necessary. To investigate alternative administrative process for charity stalls. |
| District Councillors | | |
| Councillor | Supportive comment | |