	REPORT TO SERVICE PERFORMANCE OVERVIEW & SCRUTINY COMMITTEE TO BE HELD ON 26 JANUARY 2011
	Topic Street Trading Task Group (if applicable) Street Trading
Corporate Aims Creating healthy and vibrant communities Developing safer and stronger communities	Cabinet Portfolio Holder Cllr Andrew Backhouse Cabinet Member for Technical Services, Highways and Transport, Environment, Projects Management and Coastal and Flood Defences

**REVISED FINAL REPORT OF THE STREET TRADING TASK GROUP
SCR/11/01**

WARDS AFFECTED: All

REASON REPORT REQUESTED: The Task Group's original report was referred back to the Committee by the Cabinet to investigate further the implications of the recommendation that the Continental Market and other street trading pitches be relocated in the vicinity of the Market Hall to create a market quarter. This report is the result of these further investigations and which have also raised other significant issues for consideration.

PURPOSE OF REPORT: To present the Service Performance Overview and Scrutiny Committee with the revised findings and recommendations of the Street Trading Task Group

STATUS OF REPORT: This report is the work of the Street Trading Task Group, on behalf of the Service Performance Overview and Scrutiny Committee, and where opinions are expressed it should be pointed out that they are not necessarily those of Scarborough Borough Council.

While we have sought to draw on this review to make recommendations and suggestions that are helpful to the Council, our work has been designed solely for the purpose of discharging our terms of reference agreed by the parent committee. Accordingly, our work cannot be relied upon to identify every area of strength, weakness or opportunity for improvement.

1. INTRODUCTION

- 1.1 In response to Members' growing concerns about illegal street trading in the town centre and seafront areas, the Central Urban Area Committee received a report on 28 May 2009 which outlined the legal framework around peddling and street trading, and referred to Town Centre Management's increasing difficulties in managing this issue (in conjunction with North Yorkshire Police).
- 1.2 In the event, the Central Urban Area Committee referred the matter of peddling to the scrutiny function to become part of a much broader review of the Council's policies to manage and enforce commercial activity on the public highway. Peddling was only one of a number of concerns which included the sale of motor vehicles, and other unauthorised encroachments on the highway such as 'A' boards, display stands and tables and chairs. The review was also extended to cover busking.
- 1.3 Established on 25 November 2009, the Task Group chaired by Cllr James Preston submitted its final report to this Committee on 29 September 2010. The recommendations in the original report largely reflected the Task Group's aspiration to establish a clearer and more stringent, and if possible, single system of regulation in the Scarborough urban area which both supported the Council's regeneration aims and provided 'local colour', whilst at the same time being on a manageable scale with minimal inconvenience to the user of the public highway. The Task Group also noted the changes surrounding the management and development of the Market Hall, and wished to support these changes by going one step farther and advocating the creation of a 'market quarter' centred around the Market Hall. It was this particular recommendation which concerned the Cabinet; however there are also a number of other important emerging issues which have affected the conclusions of this report.
- 1.4 The Task Group was re-convened at the meeting of the Service Performance Overview and Scrutiny Committee on 24 November 2010 with the following membership: Cllr James Preston (Chair), Cllr Rosalyn Fox, Cllr Lucy Haycock, and Cllr Cecil Ridley. The Task Group interviewed the Council's Investment Manager, Nick Taylor, the Head of Regeneration and Planning, Pauline Elliott

and the Head of Environmental Services, Andy Skelton at a meeting on 5 January 2011. Information obtained from these interviews, advice from the Council's Senior Solicitor, David Kitson, and further desktop research derived from other local authorities have all contributed to this revised report.

2. SUMMARY

- 2.1 In light of advice received that café amenities may not be managed under the Local Government (Miscellaneous Provisions) Act 1982 (LGMPA), and the County Council's newly stated wish, as the Highway Authority, to take over the administration of café amenities scheme in the Scarborough urban area in April 2011, this revised report instead now focuses on how the Borough Council can best make use of the LGMPA across the Borough both to help regulate and promote street trading as appropriate. The report also reflects and welcomes the Investment Manager's work to regenerate Scarborough Market Hall and recommends that steps be taken to provide a traffic regulation order that would, in the event, support the use of Market Street and St Helen's Square for an on-street market.

3. BACKGROUND

- 3.1 In 1993, the Council introduced a scheme for the issue of highway amenity permissions under Section 115 of the Highways Act 1980. This scheme was primarily intended to encourage a 'café culture' in certain areas, subject to certain criteria being met. It did not permit conventional trading on the amenity sites. That activity was catered for in a separate managed street trading scheme for the town centre introduced in 2001.
- 3.2 For some parts of the Borough conventional street trading is regulated under an Order created many years ago using powers in the Local Government (Miscellaneous Provisions) Act 1982 (LGMPA).
- 3.3 Unfortunately in recent years there has developed marked abuse of the law in relation to trading on the highways. The report in 2009 to the Central Urban Area Committee highlighted the problem with pedlars.
- 3.4 There are a number of ways that traders seek to use the space provided by public highways to carry on trading activities. These activities range from the sale of larger objects such as cars, to sale of food and fancy goods. Some of the activities are lawful in that they are carried out with a formal permission from the Council, or under a street trading licence. Other activities are illegal, and it is a basic concept of highway law that all such activities are illegal unless specifically authorised.
- 3.5 An aspect of these activities that is often not fully appreciated is that any sizeable trading activity is likely to be causing an obstruction to users of the highway. In such cases, if an accident to a pedestrian was to occur, the

County Council as Highway Authority may be liable for damages or other legal action.

- 3.6 This Task Group set out to review the effectiveness of the Council's policies to deal with these issues, while at the same time assessing how well these policies support the wider corporate aims and initiatives such as Urban Renaissance, and the developing role of Town Centre Management
- 3.7 Secondly, the review investigated those activities that are illegal or may be considered unacceptable within the established vision, and examined ways in which those activities could be eliminated or reduced.
- 3.8 An issue for this review from the outset was any implications arising out of the planned transfer of highways agency powers in the Scarborough urban area to North Yorkshire County Council in April 2011. That Scarborough Borough Council still had delegated powers to deal with highways matters in the Scarborough urban area, determined the Task Group's primary focus on the town of Scarborough where the Borough Council managed both the highways amenities scheme and the street trading scheme. Scarborough town was also the area where most of the problems with peddling and highway obstructions had been reported. Here was an opportunity the Task Group felt to get a unified policy and scheme established in Scarborough town before transfer, at the same time enabling the Borough Council to clarify its vision for the streetscape in this area, with the possibility of the County Council adopting that vision and then extending it to other towns/areas of the Borough in consultation with town and Parish Councils.
- 3.9 In our original report, the Task Group favoured extending the use of the Local Government (Miscellaneous) Provisions Act 1982 (LGMPA) to manage all commercial activity on the highway, effectively replacing the Highways Act 1980 for dealing with café amenity licences. The former legislation was seen as more effective by:
 - (i) giving more flexibility to the Borough Council to control the use or provision of features on a licensed area;
 - (ii) providing a right of appeal to the applicant in the event a licence is refused;
 - (iii) providing for the Borough Council to terminate a licence in cases where the licensee does not pay the fee;
 - (iv) allowing the Borough Council to make a reasonable charge for use of the highway, with licences being renewable annually;
- 3.10 But crucially, application of the LGMPA would enable the Borough Council to retain control of café amenity licences after April 2011, bringing all trading on the highway in the Scarborough urban area under a single, comprehensive, well-resourced and more stringent regime of control. Such a scheme we felt would meet the aspirations of the Police, Town Centre Management, Councillors and the trading representatives we interviewed, who all supported clearer, stricter and more enforceable controls of commercial activity on the public highway.

- 3.11 At the time of submitting our original report, advice from Legal Services on the legality of this usage of the LGMPA still had not been confirmed; but there were also three other related questions which had not been properly resolved and would impact on the conclusions of this review:
- (i) if café amenities are to continue to be regulated under the Highways Act 1980, which authority will administer the scheme including in Scarborough town from April 2011?
 - (ii) how much can the Borough Council charge for street trading pitches and to what use can this revenue be put?
 - (iii) what is the most effective way for the Borough Council to manage street trading – not just in Scarborough town but across the wider Borough?
- 3.12 Through the Task Group's further investigations, we have made some progress in finding answers to these questions and these are included in the next section of the report.

4. FINDINGS

- 4.1 In an advice note dated 21 December 2010, the Council's Senior Solicitor, David Kitson confirmed with reference to Paragraphs 1(2)(e)(ii) and 1(2)(h) of Schedule 4 of the LGMPA that neither trading carried out in the street adjoining premises as part of the business of the premises, nor the operation of facilities for recreation or refreshment may be classed as street trading for the purposes of the LGMPA.
- 4.2 Furthermore the County Council has now decided to take over the management of the Borough Council's current café amenity permissions on 1 April 2011. The County Council as the Highway Authority will now receive fee income from, and will determine and supervise these amenities.
- 4.3 This advice now establishes a clear demarcation of responsibility between the County Council as the highway Authority to deal with café amenities and other highway-related issues, and the Borough Council to manage street trading pitches. However, we believe both authorities should work together to tackle some of the problems identified in this review such as illegal street trading by premises such as some shops and amusement arcades.
- 4.4 This advice also has meant that the primary focus of the review has shifted from what can be achieved in the Scarborough urban area under a single regulatory system to how the Borough Council should designate and implement a Borough-wide street trading regime in the clearest and most effective way – and with adequate resources.

Street trading in Scarborough town centre precinct and the Market Hall

- 4.5 Since the Task Group gathered evidence last summer, the management of Scarborough town centre precinct and the Market Hall has transferred to the Planning and Regeneration Service and Nick Taylor, Investment Manager, as part of the management restructure of Regeneration and Planning. Mr Taylor not only has responsibility for managing street trading but also for working

with existing businesses to promote the town centre and to attract more businesses and inward investment in Scarborough and the wider Borough. Street trading is an important part of the picture of town centre regeneration, providing opportunities to diversify the town's retail offer and to allow new businesses to 'get off the ground'. These opportunities are not limited to Scarborough, but also extend to other parts of the Borough.

- 4.6 Mr Taylor shares the Task Group's (and some traders') support for regenerating the Market Hall by the creation of an outdoor market in the vicinity of the building. He is examining the potential for a food market such as a farmers market which would sell and promote local produce. The organisers of the Continental Market are interested in coming back to Scarborough, but with current developments at the Market Hall, the time is not yet propitious for their return. There may well be opportunities in the future for the Continental Market to be located closer to the Market Hall, if such a trading area proves successful. The Task Group welcomes Mr Taylor's work to revive the Market Hall and supports the idea of an outdoor market. However, the Task Group recognises Mr Taylor's reliance on income from the trading pitches in the town centre, and that the development of a market quarter with a distinct identity is best suited to the incremental approach he is adopting. The Task Group does not wish to make any recommendations in respect of the Market Hall, Continental Market or the precise location of future street trading pitches, save to suggest that a report be prepared on the provision of a traffic regulation order that would support the use of Market Street, Market Way and St Helen's Square for an on-street market.

Income from street trading pitches

- 4.7 Mr Taylor's reliance on income from street trading pitches to support the management of Scarborough town centre brings us to another of the key issues of this review:
- How much can the Council charge for street trading pitches?
- 4.8 Our research has shown us that there is a wide variation in charges across the country. For example, City of York Council under the LGMPA levies street traders between £4K and £9K per year dependent on the activity and the location. One reason why the Task Group preferred the LGMPA to the Highways Act 1980 was the ability the former legislation gives to charge a commercially based fee. Such income would not only support proper enforcement of the regime but also the wider promotion of the town centre. However, the Senior Solicitor's advice dated 21 December 2010 also takes into account the European Directive on Services in the Internal Market (2006/123/EC) which applies to street trading licences and consents. A key requirement of these regulations is that licence fees must be reasonable and proportionate to the cost of the authorisation procedures and formalities under the scheme and must not exceed the cost of these procedures and formalities. The legal advice given to the Group is that, whilst applying this rule to street trading might be seen to be unfair and discriminatory towards permanent traders (who pay business rates, property charges etc)

nevertheless the rule is clear and mandatory. The Solicitor's view is that fees for street trading cannot be set at a level which will produce an income for the Council in addition to that needed to cover the administrative cost of producing the licence.

4.9 However, it is noted that in the formal guidance on the impact of the European Services Directive, paragraph 3.3 identifies cost elements that may be included in the proposed fee. These are:

- administration
- initial site assessment
- third party inputs
- management costs
- local democracy costs
- additional monitoring costs
- enforcement costs including protection from unregulated competition and advice to businesses

4.10 The Task Group note that the costs of resourcing the above are likely to be significant and may well result in a fee that is greater than that currently charged by Town Centre Management. On the specific issue of the constituent parts of the fee, the Senior Solicitor has suggested that costs associated with activities directly related to but ancillary to the street trading activity may also be recovered through the fee; for example, the promotional aspects of Town Centre Management's work.

4.11 The ability to charge an adequate fee for street trading pitches is pivotal to the main aim of this revised report to identify a clearer and more stringent system of regulation for street trading in the Borough which both supports the Council's regeneration aims and provides local colour, whilst at the same time being on a manageable scale with minimal inconvenience to the user of the public highway, such a charging regime will need to be developed using a transparent and objective set of 'rules' .

Pedlars

4.12 Last year the Government's Department for Business, Innovation and Skills undertook a consultation on improving the pedlary regulatory regime which included proposals to transfer powers from the Police to local authorities and providing additional enforcement options. The Task Group, Council officers and the local Police all support these proposals. Direct action seems to be the most effective way to tackle pedlars by the Police moving them on and disrupting their activities. If the new regulations give local authorities the power to seize pedlars' goods, then this will be a much more swift and potent tool. In the meantime, under the proposals in this report (see paragraphs 4.21 and 4.22) Licensing Officers will have sufficient resources through revenue from street trading consents to take enforcement action as necessary.

4.13 When the Task Group spoke to Inspector Tony Quinn of North Yorkshire Police's Scarborough Team at the end of April 2010, he seemed content with

the Police's proactive approach to tackling pedlars in direct response to public concerns, with Inspector Quinn himself taking charge for issuing pedlars certificates thereby ensuring a consistent approach across the Borough. A number of applications had been refused for selling food, remaining stationary and so on. The Police threatened one persistent individual with arrest which resolved the problem. Until the law is changed, there is little the Council can do to regulate pedlary in the town. The street trading legislation does not apply to pedlars. The problem of abuse of peddling resurfaced again last summer in Scarborough town centre. For this reason, we feel the Council should liaise further with the Police to improve detection of, and dealing with this problem. In addition, if further opportunities arise, the Council should continue to press Government for changes in the law.

Buskers

- 4.14 Another on-street activity which was examined by the Task Group was busking. However, there appears to be little that can be done to effectively control this type of activity. Environmental Services have powers under the Environmental Protection Act 1990 to deal with "noise from equipment" used on the street and this can include amplification equipment and indeed musical instruments used by buskers. These powers have been used on occasion but the position remains that there are no effective controls on where busking takes place. Happily, Inspector Quinn reported very few complaints about busking in Scarborough. As at 28 April 2010, there had been five since the beginning of 2009. The Police did not therefore view busking as a current cause for concern.

Trading outside, and in connection with shops and amusement arcades

- 4.15 The two councillors we interviewed in the first phase of the review – Cllr Mrs Fox and Cllr Watson - and trading representatives all acknowledged problems with obstructions on the public highway caused by illegal street trading by shops and amusement arcades directly outside the retail outlets' premises. The Task Group agree that street trading activity should not be permitted outside, and in connection with shops and amusement arcades. The position with retail outlets is clarified in any case within the schedule set out in the LGMPA, which stipulates that trading activity associated directly with a shop is not street trading. Such activity would instead fall to be dealt with under planning rules and highway law relating to obstruction.
- 4.16 The issue with amusement arcades occurs mainly on the seafront, and arises principally from the placing of children's rides out on the public highway. These are a clear physical obstruction of the highway and the risk to pedestrians is further increased in that the machines are electrically powered with supply cables running across the footway. Although the arcades form part of the traditional view of the seafront, wilful obstruction cannot be acceptable – the Task Group note that in some cases pedestrians are walking in the road to get past the obstructions, which cannot be regarded as de minimus. In the past the Borough Council has been able to deal with highway

encroachments under the scheme set up some years ago. Unfortunately the funding for that scheme was removed three years ago as part of the savings cuts. From April the County Council as highway authority will be the primary body to deal with such matters, and has powers to act in cases of highway obstruction. However, we understand that the County Council will continue to seek the support of the Borough Council to tackle this problem, not least because in certain cases it may be possible also to take action under street trading legislation as well as highway rules.

Trading outside cafés and public houses

- 4.17 Conversely, there was strong support among our witnesses for café culture, provided the areas outside the cafés and restaurants can be better managed and controlled by the appropriate authority. Traders would also like the café amenities scheme to be relaxed to allow for minor features improving the appearance of sites such as plants and flowers, and to allow better information about facilities.
- 4.18 The position with public houses is more subtle. Many of these provide meals/snacks as well as sale of alcohol products. To that extent it could be argued that they resemble cafes/restaurants. However, there was no support for such activity outside public houses. Strong concerns were expressed about the ability of public houses to control effectively their customers' activity outside on-street, and it was also accepted that most of the use of such areas would undoubtedly be for drinking and smoking. Present Council policy presumes against allowing pubs use of the street and the definition is set by the designated planning use for the premises. Taking into account all the potential risks and the need to create and maintain a family-friendly, visually acceptable street scene, the Task Group recommends that the Highway Authority maintain this policy in the Scarborough urban area after April 2011.

Sale of cars on the highway

- 4.19 Councillor Watson raised the issue of the illegal sale of cars on the public highway which occurs at various locations in the town and Borough of Scarborough. The current legislation – the Clean Neighbourhoods and Environment Act 2005 - allows the practice for private individuals, and in the case of motor dealers, provided that if there is more than one car, the cars are no closer together than 500 metres. A broader geographical application of the LGMPA could provide a more effective tool for controlling this activity, which is currently prohibited for only certain roads and public open spaces within the Borough.

A new street trading regime for the Borough

- 4.20 Although Regeneration and Planning (Town Centre Management) currently run street trading pitches in Scarborough town centre, our investigations have shown us that the most effective, transparent and fairest way to operate street trading through the LGMPA across the Borough would be through both Licensing Services and Town Centre Management. We have already referred

to the importance of street trading to our towns' prosperity and regeneration. There could well be potential to set up similar schemes in Whitby and Filey.

- 4.21 We believe it is for the Investment Manager to explore these opportunities and to continue to promote our town centres through events and attractions. But the administration and regulation of what is essentially a licence should fall to the Council's Licensing Unit.
- 4.22 The Task Group has taken note of further research carried out into the type of trading controls available and used in other authorities. By far the most widely used control is that of 'Consent' street in which street trading is prohibited unless consent is given by the Council. This designation is more flexible than that of 'Licensed' street, which has a number of disadvantages for the Council not least the creation of a right for street traders to set up pitches. We therefore recommend that all streets/areas that are to be included in a revised designation order should be classed as 'Consent' streets. Following the example of City of York, we suggest that all public highways in the Borough be designated as 'Consent', with the addition of those other areas such as beaches and footways to which the public have access without payment.
- 4.23 The removal of the Borough Council's delegated highways powers will entail amendments to the current Technical Services executive portfolio. Similarly, the role and functions of the Licensing Committee and Sub-Committee will require amendment, should they assume responsibilities under the LGMPA in respect of street trading. We would expect these changes to be included in a future report to the Cabinet outlining amendments to the Constitution.
- 4.24 Consequently, we believe that a fee structure should be devised that recognises the input that may be given by both Regeneration and Environmental Services.

5 RECOMMENDATIONS

5.1 To the Cabinet

That

- i. the current schedule of controlled streets be revised to include all public highways within the Borough;
- ii. the revised schedule also include those roads, footways, beaches or other areas to which the public have access without payment;
- iii. the designation of all the areas/streets listed in the schedule be 'Consent' streets;
- iv. the formal process to make the necessary designation order be commenced as soon as possible, with a view to having the order approved before the summer season;

- v. based on the necessary involvement of both Licensing and Regeneration, officers consider the most appropriate way of administering the Borough-wide designation of 'Consent' streets and areas and advise Members in due course;
- vi. officers review the fee structure for street trading consents taking account of the findings of the Task Group and report back to Members with a recommended fee structure;
- vii. the fee structure include cover for the administrative costs of the scheme, site supervision, management of pitches and support for Council activities ancillary to the street trading activities (e.g. promotional events);
- viii. the Borough Council continue to press the Government for changes to the law on peddling and continue to work with the Police to improve existing controls; and
- ix. the transfer of the highway amenities function completely to the County Council on 1 April 2011 be noted;

5.2 To the Cabinet Member for Technical Services, Highways and Transport, Environment, Projects Management and Coastal and Flood Defences

That

- i approval be given to the advertisement of a traffic regulation order that would support the use of Market Street, Market Way and St Helen's Square for an on-street market;

5.3 To the County Council

That:

- i the Highway Authority work with the Borough Council to consider enhancing the café amenities scheme in respect of flowers, plants and information boards, as suggested by traders; and
- ii the Highway Authority consider and support maintaining the Borough Council's policy in respect of public houses in the Scarborough urban area from April 2011.

6 IMPLICATIONS

Policy and Legal

- 6.1 The Borough Council's policy would be amended if the recommendations in this report are pursued. The Borough Council has powers under the LGMPA and the County Council under the Highways Act as indicated in the report.

Financial

- 6.2 An important aspect of the Task Group's proposals in respect of street trading is that they are self-financing.

Equalities and diversity

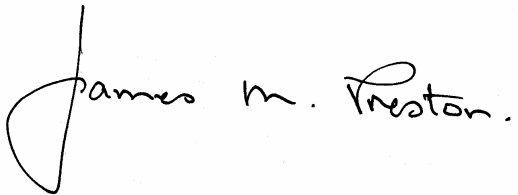
6.3 None identified.

Planning

6.4 Highway amenities may need planning consent; applicants should be so advised.

Staffing, health and safety, crime and disorder and environment

6.5 These proposals seek to improve the street environment.

A handwritten signature in black ink that reads "James M. Preston." The signature is written in a cursive style with a large initial 'J'.

Councillor Jim Preston
Chair of the Street Trading Task Group

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT, PLEASE CONTACT BRUCE BEDFORD, TECHNICAL SERVICES MANAGER ON 01723 232452 e-mail bruce.bedford@scarborough.gov.uk OR ST JOHN HARRIS, OVERVIEW AND SCRUTINY MANAGER ON 01723 383556 e-mail stjohn.harris@scarborough.gov.uk