

	REPORT TO CABINET TO BE HELD ON 13 DECEMBER 2016
	Key Decision NO Forward Plan Ref No
Corporate Priority All corporate priorities	Cabinet Portfolio Holders: Public Health and Housing Strategic Planning and Transformation

REPORT OF: DIRECTOR (LD) – 16/294

WARDS AFFECTED: ALL

SUBJECT: STREET TRADING – CONSULTATION ON NEW POLICY AND FEES, AND RESOLUTION TO DESIGNATE STREETS AS CONSENT STREETS UNDER SCHEDULE 4 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

RECOMMENDATION (S):

That Cabinet resolves:-

- (i) that notice be given of the Council's intention to pass a resolution, in the form attached at Appendix 1, to designate all streets in the Borough as consent streets; and
- (ii) that the draft Street Trading Policy attached at Appendix 2 be consulted upon during the period 14 December 2016 to 8 February 2016 inclusive, and that following consultation, the Policy, (together with consultation comments), be brought back to Cabinet for recommendation to full Council for formal adoption; and
- (iii) that the action plan outlined at para 7 of this report be approved

REASON FOR RECOMMENDATION (S):

To ensure that the Council has in place a clear framework through which to make decisions to authorise and regulate street trading and is able to take robust enforcement action in respect of unauthorised street trading.

HIGHLIGHTED RISKS:

A failure to establish an effective framework within which to regulate street trading will result in an increased incidence of complaints to the Council, bringing associated reputational risk. Furthermore, road safety may be compromised through the inappropriate siting of street traders across the Borough

1. INTRODUCTION

- 1.1 The Council has powers under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') to regulate street trading by designating streets in its area under one of three statutory designations. Where streets have been so designated, the Council has the ability to authorise trading on those streets on certain terms, and to regulate unauthorised trading.
- 1.2 Individual streets in the Council's area have been designated into each of the three statutory designations in a piecemeal fashion between the years of 1983 and 2001. This has resulted in individual streets within the Borough being designated into each of the designations and some streets having no designation.
- 1.3 The Council historically has not had one single point of contact to manage the process of authorising and regulating street trading, but rather has sought to take a corporate approach, with several service areas seeking to deal with enquiries and complaints from the traders and the public. This has led to inconsistencies in approach and an unsatisfactory enforcement regime.
- 1.4 Complaints have been received from members of the public and existing premises-based traders with regard to the Council's lack of enforcement of unauthorised street trading and the Council has found it difficult to take robust enforcement action given the lack of single point of accountability and inconsistent street designation and approach.
- 1.5 The Council as Licensing Authority is therefore seeking to implement a new Street Trading Policy to bring clarity, transparency, and accountability to the process.
- 1.6 Alongside the adoption of the new Policy it is proposed that all the streets in the Borough be re-designated under the 1982 Act, so that rather than streets being designated into different classifications under the legislation, with different rules applying to each designation, they all are brought together into the same designation, thus allowing for more straightforward regulation and enforcement of the street trading regime.
- 1.7 The Policy will be periodically reviewed and updated, where appropriate, so that it remains current, clear and effective whilst providing street traders and public with a clear understanding of how such services are administered. It will also ensure a consistency in approach by Council officers thus ensuring

fairness, openness and consistency to the trade. It is anticipated a major review of the Policy will be carried out every five years.

2. CORPORATE AIMS/PRIORITIES AND THE COMMUNITY PLAN

- 2.1 Given the economic advantages that the Street Trading Policy will provide to street traders, allied to the introduction of a much fairer and more transparent system of regulating street trading and improved customer service, this report supports all four of the Council's Corporate Priorities.

3. BACKGROUND AND ISSUES

- 3.1 Whilst North Yorkshire County Council is the Highways Authority with responsibility for matters relating to the highway, the 1982 Act gives the Borough Council the power to adopt a legislative provision that allows it to control street trading in its area.
- 3.2 Street trading, for the purposes of the legislation, is defined as 'the selling or exposing or offering for sale of any article (including a living thing) in a street'.
- 3.3 'A street' includes:
- (a) any road, footway beach, or other area to which the public have access without payment, and
 - (b) a service area as defined in section 329 of the Highways Act 1980'
- 3.4 The relevant legislative provision is Schedule 4 of the 1982 Act, which, once adopted, enables the Borough Council to designate streets in its area as either 'prohibited streets', 'consent streets' or 'licence streets'.
- 3.5 On 25 October 1982 the Council's Policy and Resources Committee resolved to adopt Schedule 4 of the 1982 Act, with effect from 1 April 1983.
- 3.6 This permitted the Council to designate streets in its areas as either 'prohibited streets', 'licence streets' or 'consent streets'.
- 3.7 Where a street is designated as a 'prohibited street' it is an offence to engage in trading on that street.
- 3.8 Where a street is designated as a 'licence street' or 'consent street' it is an offence to engage in trading on that street without first having obtained a licence or consent from the Council
- 3.9 The terms on which trading might be permitted are different depending on whether a street is designated as a licence street or a consent street.
- 3.10 Streets which have not been designated as any of the three statutory designations are not within the jurisdiction of the Borough Council. This means that the Borough Council is not able to exert any form of control over

trading in these streets, and matters would fall to the Highways Authority of the County Council to take action under their highways powers, if for example there was an obstruction or danger on a public highway. Instances of unauthorised street trading, are often more problematic for the Borough Council, its residents and businesses, than for the statutory Highways Authority. It would therefore be beneficial for the Borough Council to be in a position to manage street trading on all of the streets in its area.

3.11 It can therefore be seen that, historically, as a result of a lack of current Street Trading Policy, a piecemeal designation of individual streets over a period of over 20 years, and an attempt to manage street trading on a corporate basis across various service areas, there has been an inconsistent approach to street trading across the Borough, which has made effective enforcement problematic.

3.12 In order to resolve this position it is necessary to do the following:-

3.12.1 Provide for a single point of accountability within the Council for the regulation and enforcement of the street trading regime, allowing for a clear point of contact for the public, whether that be for a prospective trader wishing to seek permission to trade lawfully on the Borough's streets, or a member of the public wishing to complain about unauthorised or problematic trading taking place.

3.12.2 Maximise the Council's control over street trading within the Borough by bringing all streets within the Borough into a single statutory designation.

3.12.3 Adopt a new Street Trading Policy to set out a transparent, objective and easily accessible framework, within which robust decisions can be made to authorise or refuse applications to trade on the street, and effective enforcement action can be taken in the event of unauthorised trading being encountered.

3.13 It is therefore proposed that:

3.13.1 The street trading regime is administered by the Licensing Authority in line with other regulatory regimes under the 1982 Act. This has been taken into account in the recent review of the Service.

3.13.2 All streets in the Borough be re-designated from their present designation/lack of designation to become 'consent streets'. This form of designation affords the Council the maximum control, flexibility and discretion over the granting of street trading consents, and will enable straightforward and consistent management of the regime.

3.13.3 A new Street Trading Policy be adopted to provide a framework for decision making in respect of street trading applications and enforcement action in relation to unauthorised street trading within the Borough.

- 3.14 The 1982 Act sets out a statutory process which must be followed in order to change the designation of streets. This requires Cabinet to make a resolution in the form attached as **Appendix 1**.
- 3.15 Officers have sought to run the two distinct processes, i.e. (i) that of implementing the new Policy and (ii) that of re-designating streets in the Borough, in parallel, to come into effect at the same time, as in practical terms one will be ineffective without the other.

4. CONSULTATION

- 4.1 In order to designate a street as a consent street, a statutory process must be followed.
- 4.2 This requires the Council to publish in the local paper a notice of its intention to make a resolution to designate streets as consent streets, and also to send the same notice to the local Police and Highways Authority.
- 4.3 A 28 day period is then permitted to allow objections to the intended resolution to be submitted and considered.
- 4.4 After consideration of any objections Cabinet may make the resolution that the streets be designated with effect from a specified date, which must be at least one month from the date of the resolution. There follows a further requirement for public advertisement of the resolution once it has been made.
- 4.5 Consultation on the resolution to re-designate streets will therefore be effected through the statutory notice procedure.
- 4.6 It is proposed to consult with the following in respect of the draft Policy:
- The general public via an online survey on the Council's website
 - All local "street trading" businesses
 - Local chambers of Commerce
 - North Yorkshire Police
 - North Yorkshire County Council
 - Overview & Scrutiny Board
 - Other interested/affected stakeholders such as SBC's Estates, Property, Legal, Finance, Economic Development and Tourism services
- 4.7 A consultation period of 8 weeks is proposed in respect of the draft Policy, commencing 14 December 2016 until 8 February 2017. All comments and observations will be considered and the Policy amended where necessary.

5. ASSESSMENT

- 5.1 The historic lack of consistency in terms of the designation of the Borough's streets has impacted upon the Council's ability to effectively regulate street

trading across the Borough, as the requirements placed on the Council in relation to the granting and revoking of licences and consents, and terms of trading, are different depending on the particular designation. Consequently the Council has not been in a position to robustly enforce breaches of street trading in the most effective way.

- 5.2 In order to rationalise the Borough's approach to street trading, and to streamline the process to enable more effective enforcement, it is proposed that all streets in the Borough be designated as consent streets under the 1982 Act, making it an offence for any person to trade on any street without the consent of the Council.
- 5.4 A new Street Trading Policy has been prepared, to set out an effective and transparent process through which traders can apply to the Council for a consent to engage in street trading and to set out the factors that will be taken into consideration in the decision making process.
- 5.5 Re-designation of all streets in the Borough as 'consent streets' will give the Council the maximum degree of flexibility and discretion with regard to the issue of consents, thus enabling the Council to ensure that it effectively balances the interests of safety, public health, amenity and the existing premises based business community, with the need to create a vibrant and welcoming street scene, which encourages traders to thrive and enhances the Borough's commercial offer.

6. IMPLICATIONS

6.1 Policy

This is a new Policy recommended for adoption following consultation

6.2 Legal

Legal implications are contained within the body of the report

The failure of the Council to consult on this draft policy and Resolution to re-designate streets in the Borough under the provisions of the 1982 Act, to consider and where necessary, take on board any comments received in proposing and adopting a final policy may result in a Judicial Review being brought against the Council.

6.3 Financial

The 1982 Act permits the Council to charge such fees as it considers reasonable for the grant or renewal of a street trading consents. This provision must be interpreted in accordance with European law which places restrictions on the charges that can be imposed.

The draft Policy sets out the fees proposed to be charged for administering and processing street trading applications. The figures are based on estimated full cost recovery for this service.

The costs involved in implementing the Policy will be met from existing budgets.

6.4 Equalities and Diversity

This report has been prepared in accordance with the Council's Corporate Equalities scheme

6.5 Staffing Implications

The staffing implications of the administration of a new street trading regime in accordance with the draft Policy have been taken in to account in the review of the Environmental Health Service

6.6 Planning Implications

Adoption of the draft Policy will enable Planning considerations to be taken into account in the decision making process when considering the grant of a street trading consent

6.7 Crime and Disorder Implications

Under s.17 of the Crime and Disorder Act 1998 the Council has a duty to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all it can to prevent, crime and disorder in the area.

In addition there are obvious links to community safety in ensuring that street trading activities do not adversely impact on, for example other road users or nearby properties in terms of potential public nuisance from such activities.

6.8 Health and Safety Implications

Adoption of the draft Policy will enable Health and Safety considerations to be taken into account in the decision making process when considering the grant of a street trading consent

6.9 Environmental Implications

Adoption of the draft Policy will enable environmental considerations to be taken into account in the decision making process when considering the grant of a street trading consent

7. ACTION PLAN

7.1 In order to bring forward the re-designation of the Borough's streets as consent streets in parallel with the Council's new Street Trading Policy, the following action plan is proposed:-

- (a) Report to Cabinet on 13 December 2016 to seek approval to consult on draft Policy, street trading consent fees and Resolution to re-designate streets.
- (b) Consultation in respect of the draft Policy and fees to start on 14 December 2016.
- (c) Public notice placed in local newspaper advertising intended Resolution to re-designate streets – 12 January 2017.

- (d) End of consultation period for draft Policy and fees – 8 February 2017.
- (e) Deadline for representations to advertisement proposing Resolution to re-designate streets – 10 February 2017.
- (f) Report to Cabinet to make Resolution to re-designate streets with effect from 9 May 2017– 14 March 2017.
- (g) Public notice place in local newspaper (at least one month before the Resolution to re-designate streets comes into effect) on two consecutive weeks – 23 and 30 March 2017.
- (h) Following the end of consultation on the draft Policy a further report will be submitted to the Licensing Committee and Cabinet on 13 March 2017 and 11 April 2017, respectively. The report will include all comments received during the consultation together with the reasons for their inclusion (or not) in the final proposed Policy and fees.
- (i) Provided the final proposed Policy and fees are recommended by the Licensing Committee and Cabinet, a report will then be submitted to Full Council on 8 May 2017 requesting adoption of the final Street trading Policy and fees.
- (j) Final Street trading Policy, fees and Resolution to re-designate streets become effective – 9 May 2017.



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Background Papers:

None

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT Rebecca Jackson ON 01723 232352, e-mail rebecca.jackson@scarborough.gov.uk

