

LICENSING COMMITTEE (Non Licensing Act 2003 Functions)

Agenda Item 17

Brighton & Hove City Council

Subject: Street trading
Date of Meeting: 27 November 2008
Report of: Assistant Director Public Safety
Contact Officer: Name: Jean Cranford Tel: 292550
E-mail: jean.cranford@brighton-hove.gov.uk
Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 Following the creation of the Unitary Authority in 1997, Brighton & Hove City Council introduced a street trading policy on 2 April 1998. The policy was an amalgamation of policies from Brighton Borough Council and Hove Borough Council adopted under the provisions of the Local Government (Miscellaneous Provisions) Act 1982 and sought to integrate the two existing policies into a workable, enforceable document.
- 1.2 Brighton & Hove has streets in which street trading is prohibited, it has areas where consent is granted for street trading (e.g. East Street) and there are 5 pitches for street trading in the city centre. The Seafront area including Grand Junction Road and Kings Road is designated a consent street but is outside the trading policy established by the Council and control of that area is the responsibility of the Seafront Office.
- 1.3 The amalgamation of the two Borough's policies has resulted in some lack of clarity in respect of status of streets and conditions some of which are unenforceable, imprecise or inappropriate.
- 1.4 A consultation on the street market in Upper Gardener Street was undertaken during 2006 and 2007 but officers would like to undertake consultation to review the entire cities street trading designations and policy and thereafter report back to committee with a view to re-setting council policy.

2. RECOMMENDATIONS:

- 2.1 (1) To ask the committee for permission to go out to consultation on street trading in Brighton & Hove.

(2) To seek steerage from licensing councillors of preferred outcomes.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

Current Process

- 3.1 There are currently 5 designated pitches for street trading in the city centre (Castle Street, Clarence Square, Dean Street, Crown Street and Marlborough Street). All pitches are let and there is a waiting list for traders who would like to take over a pitch if one becomes vacant.
- 3.2 A street market is held each Saturday in Upper Gardener Street between the hours of 07.00 and 17.00.
- 3.3 There are designated areas (zone B) where traders can request a permit for street trading. These are the residential areas outside the city centre.
- 3.4 Permits for 3.1 – 3.3 above are issued by officers in Environmental Health and Licensing. Any appeals against officers decisions are heard by the Licensing Committee (Non-Licensing Act 2003).
- 3.5 There are areas throughout the city in which street trading is prohibited. These areas are generally main thoroughfares or areas in the city centre.

Commentary on street trading policy

- 3.6 Our current policy, set by the relevant sub-committees on 2 April 1998 is appended (Appendix 1).
- 3.7 Street trading is selling articles on the street, including exposing or offering articles for sale. It does not include provision of services, like henna tattooing, hair braiding, tarot reading etc.

The following activities are not subject to street trading controls:

- Pedlars, with a pedlars certificate issued by the Police under the Pedlars Act 1871. These are itinerant traders.
- Markets covered by enactment or order (ancient – none in Brighton & Hove)
- Trunk road picnic areas (none in Brighton & Hove)
- News vending
- Trading at petrol filling station
- Trading on the street adjoining a shop as part of the business of the shop
- Selling things on a round like milk doorstep delivery
- Objects on a highway licensed under highways legislation, like tables and chairs or A boards

- Recreation or refreshment facilities licensed under highways legislation
- Charitable street collections which are subject to separate permissions

Controls only apply to the street or other public places.

3.8 Issues in recent years include:

- The current street trading consents conditions restricting goods that may be sold and requiring the presence of the consent holder at the stall.
- One secondary school's objection to a regular trader.
- The approach to be taken to streets around the proposed community stadium.
- Uncertainty over the status of some streets (prohibited, consent or undesignated).
- The numerous exemptions for provision of goods, pedlars, ancillary activities to shops.
- Recent reports to Committee about Upper Gardener Street market.
- New Road which is currently designated as a prohibited street.
- Popular markets like farmers markets and French markets.
- Traditional activities like sale of chestnuts at Christmas and street artists in the summer.
- Setting fees at a legally justified level.
- Joint consents (held in more than one name).

3.9 Historically, parks have remained undesignated to allow Leisure officers flexibility permitting outdoor events. The Seafront has been a consent street managed on a day to day basis by Seafront officers. Economic development members and officers are considering corporate market policies.

Recommended Process

3.10 Officers request that the committee approve officers request to undertake a consultation on street trading in Brighton & Hove with a view to the results from that consultation informing a revised Street Trading Policy and a separate designation of streets.

3.11 A full and measured consultation will involve residents (including the citizens panel) and businesses (including individual street traders) in Brighton & Hove, Police and Highway Authority, Economic Development and Regeneration regarding the corporate markets policy, Events Office, Seafront Office (including Seafront Trader Association), Trading Standards, Children's Trust, City Clean, Legal, Finance, Ward Councillors, City Centre and Hove Business Fora, Trader Associations including North Laines Traders Association, Upper Gardener Street Traders Association, and Community Associations including the North Laines Community Association.

4. CONSULTATION

4.1 None

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

Revenue: Street Trading fees are set at a level that officers reasonably believe will cover the costs of administrating the service. Licensing functions should neither be subsidised by the general fund nor raise revenue. The costs of undertaking the aforementioned consultation will be met within existing Licensing budgets.

Capital: There are no capital implications.

Finance Officer Consulted: Karen Brookshaw

Date: 17/09/08

5.2 Legal Implications:

Section 3 of the Local Government (Miscellaneous Provisions) Act 1982 enables a district council in England and Wales to adopt a code for the regulation and control of street trading within its area. Once Sch 4 to the Act is adopted, a district council may choose to designate any street within its area as a prohibited, licence, or consent street.

A licence street designation is appropriate for the more formalised market type of trading in a street where the strict control of a limited amount of space is required. Designation of a street as a consent street can cover the more itinerant and infrequent type of trading and provides a district council with a more flexible system of control.

Schedule 4 to the Act contains provisions which distinguish between the issuing of a licence and the issuing of a consent, and the main differences between the two types of street designation are as follows:

Licence	Consent
1) District council obliged to grant a licence unless the application ought to be refused on one or more of the grounds specified in the Act.	District council under no duty to grant a street trading consent and need not specify statutory grounds for refusal.
2) District council may only revoke or refuse to renew a licence on the statutory grounds.	No statutory limitation on a district council's power to revoke or refuse to renew a street trading consent.
3) Before a district council may vary a principal term of a street trading licence, or before it may refuse to grant or renew or revoke a street trading licence, it	No notice requirements apply to a street trading consent.

<p>must first invite the applicant/licence-holder to make representations and then afford that person a reasonable opportunity to make those representations.</p>	
<p>4) Statutory grounds of appeal against the refusal, revocation or variation of a principal term of a street trading licence are contained in the Schedule.</p>	<p>There is no right of appeal against the refusal to grant or renew a consent or against the revocation or variation of a consent.</p>
<p>5) A licence holder may be prosecuted for a breach of the “principal terms” which relate to the street in which, the days and times upon which, and the articles in which the holder trades.</p>	<p>A street trading consent holder may only be prosecuted for a breach of a condition where he trades from a stationary van, cart, barrow, vehicle or from a portable stall in a place or at a time not included in the consent, or for breach of a condition relating to the positions and times in which he may trade but not for a breach of a condition relating to the type of article to be sold.</p>
<p>6) A district may recover from a licence-holder such reasonable charges as they may determine for the collection of refuse and the cleansing of streets etc.</p>	<p>A district council may not charge the holder of a street trading consent for the collection of refuse and cleansing of streets etc.</p>
<p>7) Where a licence is surrendered or revoked, the council has a discretion to remit or refund any fee paid for it.</p>	<p>Where a consent is surrendered or revoked, a council is under a duty to remit or refund the whole or part of any fee paid for the consent.</p>
<p>8) The consent of the highway authority is necessary for the designation of a street as a licence street.</p>	<p>Highway authority consent is not required before the designation of a street as a consent street.</p>

Certain types of trading are excluded from the definition of street trading and these traders are not required to obtain a licence or consent to trade on a licence or a consent street. Similarly, a trader falling within the exclusions may trade in a street designated as a prohibited street.

Lawyer Consulted: Rebecca Sidell

Date: 24/10/08

Equalities Implications:

- 5.3 Diversity is valued and strong, safe communities are vital to future prosperity.

Sustainability Implications:

- 5.4 Some street trading supports recycling of goods. Farmers markets may reduce "food miles"

Crime & Disorder Implications:

- 5.5 Transparent, proportional street trading controls minimise danger of obstruction and nuisance. Street trading can be a source of stolen or counterfeit goods.

Risk and Opportunity Management Implications:

- 5.6 Street trading is a crucial business and employment opportunity and unnecessary regulation might lead to legal challenge.

Corporate / Citywide Implications:

- 5.7 Street trading represents some traditional, historic heritage of the city. Many characters and activities are interwoven into the city's history.

SUPPORTING DOCUMENTATION

Appendices:

1. Street Trading Harmonisation – Report to Consumer Services and Highways Management Sub Committee (Decommissioned).
2. Street Trading – Report to Licensing and Health Committee (Decommissioned).

