

<b>Subject:</b>	<b>Designation of new consent street</b>		
<b>Date of Meeting:</b>	<b>21 November 2013</b>		
<b>Report of:</b>	<b>Head of Regulatory Services</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Jean Cranford</b>	<b>Tel: 29-2550</b>
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<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE**

**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 On 27 June 2013, a resolution was passed to publish a notice of the council's intention to resolve to designate Memorial Way in the Old Steine as a consent street; such notice to be published in the local newspaper and served to the Chief Officer of Police and Highway Authority to request necessary consent; and that any representations arising were reported to the next meeting of the Committee.
- 1.2 Representations received and letter sent to the local paper are reproduced in paragraph 5.

**2. RECOMMENDATIONS:**

- 2.1 That members consider in light of representations received, whether the Council should designate Memorial Way as a consent street.
- 2.2 That, if 2.1 were resolved, as a matter of street trading consent policy, no consents will be issued for three days of the year when ceremonies take place at the War Memorial; including the Blessing of the Gardens on the Thursday before Remembrance Sunday, Remembrance Sunday itself and Armistice Day on 11th November.

**3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**

- 3.1 In order to facilitate a farmers market on a temporary basis, trial period, officers from the council's Highways team made a sealed order for the road closures for the trial period which runs until 15 March 2014. The first of these trial farmers markets took place on Saturday 20 April 2013.
- 3.2 In a separate report on 27 June 2013, it was resolved:
  - (1) That subject to designation as a Consent Street, the Committee agrees that street trading in Memorial Way will be restricted for use as a farmers market;
  - (2) That Members confirm that consent fees will be payable for this farmers market, subject to designation.

3.3 Representations were received (see 5 – Community Engagement and Consultation). A report from the current market organiser is attached at appendix A, in which he states “In order to maintain operating on the current site, the council would need to waive all future fees”.

- 3.4 The reason and justification for charging a street trading consent fee:
- Applicability of the European Services Directive and R v WCC ex parte Hemming 2012 Proper annual determination is necessary. Need to make distinction between enforcement against licensed operators and unlicensed operators. European Services Directive applies to street trading and sex licensing.
  - R v Manchester ex parte King 1991 and R v GLC ex parte Rank 1982. Set at level reasonably expected to cover cost of service.
  - R v WCC ex parte Hutton 1985 Surplus and deficit should carry over.
  - Challenges to the reasonableness and proportionality of the determination of the authorisation fee will be subject to established public law principles
  - The licensing authority is not entitled to make a profit. R v Manchester ex parte King (1991) 89 LGR 696.
  - Different fee levels for different types of application.

Extract from corporate fees policy:

- “charges for services provided should be set to recover costs, including central overheads and capital financing, or to a defined subsidy level agreed by the Council...unless it can be demonstrated that: there will be an anticipated negative effect on service usage; which is contrary to corporate priorities; prevailing or comparable public or private sector market rates dictate charging levels; there are prohibitive legislative factors; or there are legitimate concerns about anti-poverty issues.”
- Correspondence from Brighton and Hove Food and Drink Festival is appended. This reports progress of the trial market operating with Highway Act 1981 s115E licence.

#### **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

No action. No new farmers market.

#### **5. COMMUNITY ENGAGEMENT AND CONSULTATION**

5.1 Finance and legal services, Sussex Police and officers acting as Highway Authority were consulted.

5.2 Sussex Police commented as follows:

There is one representation I need to make and this relates to the 3 days of the year

when ceremonies are taking place at the War Memorial. These are Blessing of the Gardens which takes place on the Thursday before Remembrance Sunday, Remembrance Sunday and Armistice Day on 11th November.

Due to the sensitivity and solemnity of these ceremonies can I ask that consideration is given to street trading in these areas being prohibited on these days.

5.3 The Head of Highways Operation commented as follows:

“Our comments regarding the order are principally for Highways but need to be taken into account for any granting of markets, street trading. The comments are as follows:

- This street contains a cycleway. Anyone wishing to use the area for street trading/markets must apply to the Highway Authority for a temporary suspension of the cycle lane. There will be a charge for this to cover the council’s administration costs
- Ingress and exit from the street is close to very busy traffic and to pedestrian crossings. Events organisers must submit a traffic management plan showing how they will manage the arrival and departure of vehicles (e.g. use of properly trained and equipped personnel to stop traffic”).

5.4 A local resident telephoned; he was concerned about the potential for noise during ceremonies. We discussed the representation made by Sussex Police and he confirmed that if 2.2 was resolved, his concerns would be ameliorated.

5.5 A letter written by a resident appeared in the Argus on 7 October 2013 as follows:

“Show some respect...

A proposal submitted by Brighton & Hove City Council on September 27 concerns an area known as Memorial Way, adjacent to the War Memorial, being used for street trading.

Apart from the possible mess, this is totally inappropriate for that area and, once again, appears to show a lack of sensitivity on the part of the council.

Will the traders be asked to pack up and go when various services are held there?

Will they be moved to the Royal Pavilion Gardens?

I hope enough people will protest to the head of regulatory services of the council to stop this disrespectful proposal”.

5.6 A letter objecting to all types of street trading on Memorial Way was received on 27 September 2013 from a local resident.

## **6. CONCLUSION**

That members consider the recommendations.

## **7. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

7.1 Fees charged will be in accordance with the existing schedule of street trading charges. These are set locally under the Local Government (Miscellaneous Provisions) Act 1982. They must be set at a level which is reasonably expected to cover costs.

*Finance Officer Consulted:* Steven Bedford

*Date:* 17/10/13

### Legal Implications:

7.2 Schedule 4 paragraph 2 of the Local Government (Miscellaneous Provisions) Act 1982 sets out the procedure for designation of streets. The committee must

consider the representations and decide whether to pass a resolution to designate the street as a Consent street

*Lawyer Consulted:*

Rebecca Sidell

*Date: 18/10/13*

Equalities Implications:

- 7.3 Farmers markets may encourage availability of nutritious food economically.

Sustainability Implications:

- 7.4 Farmers markets promote locally sourced sustainable food produce reducing 'food miles' (distance food transported from production point).

Any Other Significant Implications:

- 7.5 There are no direct crime and disorder implications.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Appendix A – Brighton Farmers Market Interim Report.
2. Appendix B – Letter of objection.

### **Documents in Members' Rooms**

1. None.

### **Background Documents**

1. None.