

CABINET

Thursday 9th March 2006

Review of Street Trading Policy

Report of the Head of Environmental Health

RECOMMENDATION(S)

The Cabinet approve the revised Street Trading Policy set out at Appendix B to this report.

Summary

This report recommends amendments to the Council's Street Trading Policy in respect of matters to be considered, methods of consideration of applications and standard conditions to be attached to Street Trading Consents.

Statutory Powers

- Local Government (Miscellaneous Provisions) Act 1982 – Schedule 4

Background

1. For street trading purposes there are four types of designation applied to streets as follows:-
 - Licence street – this is a street in which trading is prohibited without a licence granted by the Council. Licence streets are the most strictly controlled and the designation is generally reserved for streets where markets take place. Applications for a licence can only be refused in a limited number of defined circumstances however.
 - Consent street – this is a street in which street trading is prohibited without the consent of the Council. The Council is able to grant or refuse “as it sees fit”.
 - Prohibited street – a street in which street trading is prohibited. This is only used if there are overriding “public interest” issues such as road safety or prevention of nuisance e.g. litter, noise etc.

- Non-designated street – these are streets in which there is no restriction imposed by the Council on street trading.

(NB In this context “street” includes any road, footway, beach or other area to which *the public* have access without payment and service areas as defined in the Highways Act 1980).

2. The Council’s Street Trading Policy was approved in 1999 when there were only a limited number of streets which were designated as “Consent Streets”. Since that time the number of streets affected has increased considerably and it is therefore opportune to review the Council’s policy.

Detailed Considerations

3. Appendix A lists the designated streets in the Borough which were few in number until June 2005. However, decisions taken by the Chandler’s Ford and Hiltingbury, Bursledon, Hamble and Hound and Hedge End, West End and Botley Local Area Committees has greatly increased the number of streets designated as Consent Streets, and the list in Appendix A shows the additional streets in bold type face.
4. The original Council policy was written at a time when the only Consent Streets were in Eastleigh Town Centre and the Policy reflected the needs of that locality. In addition, because of the nature of the area it was considered that applications for consent would be few in number and the decision making process therefore involved a report to the Local Area Committee. Since the further designations have taken place experience has shown that there already have been, and are likely to continue to be, a significant number of applications. To consider these via the Local Area Committee process has resulted in these taking some time to determine involving a significant amount of officer and Member time. In order to streamline this process and to bring the policy in line with the current extended areas of designation a revised Policy is needed.

Proposed Revised Policy

5. The proposed revised policy shown at Appendix B makes no changes to the Policy in respect of Licensed Streets but does make amendments in respect of Street Trading Consents in three main areas:-
 - (1) The Council’s general policy on the types of trading that will be permitted (in this area the Council may make decisions “as they see fit”) particularly taking into account concerns relating for example to crime and disorder.
 - (2) The process for consideration of consent applications will therefore include consultee reports from Community Safety and the Local Area Co-ordinator. In addition the process to be streamlined so that the matter need not be decided by the full Committee but consideration by the Chair, Vice-Chair and Ward Councillors would still allow it to be subject to a democratic process.

- (3) The publication within the policy of standard conditions to be imposed. (although these are currently in existence they were not actually included as part of the original Policy).

(New wording is shown in bold typeface and deletions are struck through)

Financial Implications

6. It is estimated that approximately 0.05 FTE annually will be required to deal with the application process and 'police' the areas involved. The cost for this is estimated at £4,300. However, this will be offset by the fees charged provided that there are at least eight traders wishing to trade at least five days per week. The staff time involved will either be absorbed into the existing establishment or the income generated will be used to purchase contractor time to "backfill" e.g. for food hygiene inspections.

Risk Management

7. If the proposed revised policy is not agreed the process for deciding on each consent application will involve a report to a full meeting of the relevant Local Area Committee thereby leading to delays in decision making and impact on staff and member time.

Conclusion

8. In order to reflect the current situation regarding Designated Streets and the need to produce a process for decision making on consent applications which is pragmatic and democratic the Council's Policy should be amended in accordance with Appendix B.

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Appendices Attached: 2
Report No: Eh162

LOCAL GOVERNMENT ACT 1972 – SECTION 100D

The following documents disclose facts or matters on which this report or an important part of it is based and have been relied upon to a material extent in the preparation of this report:

*Street Trading Policy - Eastleigh Borough Council 1999

PROHIBITED STREETS

Allbrook Hill, Eastleigh

Allbrook Way, Eastleigh

Chestnut Avenue, Eastleigh

Knowle Hill, Eastleigh

Stoneham Lane, Eastleigh

Twyford Road, Eastleigh

High Street, West End (and the land adjoining)

LICENCE STREETS

Leigh Road, Eastleigh

CONSENT STREETS

High Street, Eastleigh

Market Street, Eastleigh

Wells Place, Eastleigh

Winchester Road and Brownhill Road, Chandler's Ford

All streets in the parishes of Hedge End, West End, Botley, Bursledon, Hamble-le-Rice and Hound



LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

STREET TRADING POLICY

The Council will determine all applications for Street Trading Licences and Consents and designate any Prohibited, Licence or Consent Streets in accordance with this policy.

DESIGNATION OF STREETS

Streets will, where necessary, be designated as Prohibited, Licence or Consent Streets in order to prevent inappropriate trading activity. The decision will be taken by the relevant Local Area Committee.

LICENCE STREETS

1. The Council will grant an application for a street trading licence or the renewal of such a licence unless it considers that the application should be refused on one or more of the grounds specified in 2 (a) to (g) below.
2.
 - (a) that there is not enough space in the street for the applicant to engage in the trading in which he/she desires to engage without causing undue interference or inconvenience to persons using the street;
 - (b) that there are already enough traders trading in the street from shops or otherwise in the goods in which the applicant desires to trade;
 - (c) that the applicant desires to trade on fewer days than the minimum number specified in a resolution previously passed by the Council;
 - (d) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence deemed recent and relevant to the application or for any other reason;
 - (e) that the applicant has at any time been granted a street trading licence by the Council and has persistently refused or neglected to pay fees due to them for it or charges due to them for services rendered by them to him/her in his/her capacity as licence holder;
 - (f) that the applicant has at any time been granted a street trading consent by the Council and has persistently refused or neglected to pay fees due to them for it;
 - (g) that the applicant has without reasonable excuse failed to avail himself/herself to a reasonable extent of a previous street trading licence.

Note: For the purpose of decision the following words in paragraph 2(b) will, unless exceptional circumstances apply, have the meaning hereafter assigned to them:-

“enough” - one or more traders

“street”- the street itself and the immediate neighbourhood

Note: these definitions do not apply to properly constituted markets under the oversight and management of the Head of Property Services.

3. The Council may at any time revoke or vary a street trading licence if it considers that:-

- (a) owing to circumstances which have arisen since the grant or renewal of the licence, there is not enough space in the streets for the licence-holder to engage in the trading permitted by the licence without causing undue interference or inconvenience to persons using the street;
- (b) the licence holder is unsuitable to hold the licence by reason of having been convicted of an offence deemed recent and relevant to the application or for any other reason;
- (c) since the grant or renewal of the licence, the licence-holder has persistently refused or neglected to pay fees due to the Council for the licence, or charges due to it under paragraph 9(6) of the Local Government (Miscellaneous Provisions) Act 1982, Schedule 4 for services rendered by it to him/her in his/her capacity as a licence-holder; or
- (d) since the grant or renewal of the licence, the licence-holder has without reasonable excuse failed to avail himself/herself of the licence to a reasonable extent.

4. The decision on an application, renewal or revocation will be taken as follows:-

2(a) and 3(a)	Head of Engineering Services
2(c) to (g) and 3(b) to (d)	Head of Environmental Health
2(b)	A panel consisting of the Chair, Vice Chair and Opposition Spokesperson of Eastleigh Local Area Committee, with a majority view prevailing, or a similar panel appointed by each of the other Area Committees, again with a majority view prevailing.

CONSENT STREETS

5. The Council will only grant consent, or renewal of consent if it considers that the proposed trade is appropriate **and will impose standard conditions (see appendix 1) together with any additional conditions it considers reasonably necessary**

6. In general, consent will not be given to the following trades:-

- ~~Any form of hot food takeaway~~
- Obscene or undesirable publications or articles
- Goods or articles of dubious safety
- Goods or articles manufactured on the stall (except for small scale manufacture of arts and crafts)
- Any goods with an alcoholic content

- Items which are the same or similar to those of a shop/stall in close proximity to the pitch of the trader
- Goods or articles deemed not to comply with appropriate Environmental Health or Trading Standards legislation
- Peripatetic personal services
- Any live animals
- **any trade which is likely to cause a nuisance to residents or to give rise to, or encourage, public disorder**

However, this list is not exhaustive.

7. Notwithstanding the above, each application will be considered on its merits in the following manner ~~A report will be submitted to the Committee which will include the views of the Principal Valuer, Town Centre Manager and the Heads of Engineering Services and Environmental Health.~~
8. ~~The Council may, if an application is approved, impose such conditions they consider reasonably necessary.~~

In the case of applications for consent to trade for not more than a total of seven days in any twelve month period - by the Head of Environmental Health (HOEH)

In all other cases by the relevant Local Area Committee as follows:-

1. The matter will be considered by a panel consisting of the Chair, Vice Chair and ward councillors taking into account any comments from the applicant, HOEH, Town Centre Manager, Principal Valuer, Hampshire Highways Eastleigh, Community Safety Co-ordinator and the Local Area Co-ordinator.
 2. If all of the panel agree to grant consent and all agree (where appropriate) to any additional conditions then HOEH will, on payment of any fees which are due, issue consent.
 3. If not all are in agreement the HOEH will make a report to the next available meeting of the Local Area Committee who will decide upon the matter
- 8 If any of the following conditions apply, the application is deemed to be de minimus and no application need be made:
- 1/ Trading is not anticipated to occur for more than 2 occasions in any calendar year, and if it does, further trading in that year must cease until consent is granted.
 - 2/ Trading does not occur for more than 20 hours in any calendar year, and if it does, further trading in that year must cease until consent is granted.

**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982
STANDARD CONDITIONS FOR STREET TRADING CONSENTS**

- (a) Only xxxx and similar goods shall be sold in the consent street;
- (b) Trading shall only take place in that part of the street outlined in red on the plan annexed hereto;
- (c) The site used for trading shall be left in a clean and tidy condition and all equipment and articles used for trading shall be removed when trading ceases;
- (d) No nuisance, annoyance or danger shall be caused to any person using the street
- (e) Neither the consent holder, their employees or agents shall cause nuisance to, or interfere with, any other person trading in the street with the Council's consent;
- (f) There must be no obstruction of free passage for pedestrians;
- (g) The provisions of Schedule 4 to the above Act shall be complied with so far as they relate to street trading consents.
- (h) The consent holder must ensure that all trading complies with, where applicable, current food safety, health and safety and other relevant legislation.
- (i) The consent holder shall indemnify and keep indemnified the Council from and against all claims, damages, losses, expenses, costs and proceedings howsoever arising either directly or indirectly from the occupation or use of the site by the consent holder, and the consent holder shall at all times be insured against third party liability in the sum of £5,000,000 (Five Million Pounds)

Where appropriate

- (j) The consent holder must ensure that a temporary road closure is in force for the period of trading