

Bath & North East Somerset Council

MEETING/ DECISION MAKER:	Licensing Committee	
MEETING/ DECISION DATE:	11 th July 2018	EXECUTIVE FORWARD PLAN REFERENCE:
TITLE:	A review of the Council’s Street Trading Policy and other street activities	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report:		
Annex A - Schedule 4 Local Government (Miscellaneous Provisions) Act 1982		
Annex B - Copy of the current Street Trading Policy and Conditions		
Annex C - Copy of the responses to the consultation exercise on the proposed revised Street Trading Policy		
Annex D - Summary of the key issues arising from the consultation exercise		
Annex E - Copy of the proposed Street Trading Policy with amendments		
Annex F – List of stakeholders consulted		

1 THE ISSUE

1.1 Street Trading Policy:

To review the Council's Street Trading Policy.

1.2 The report brings the findings of engagement and consultation exercises undertaken with respect to the above and includes proposals for an updated Street Trading Policy.

1.3 Other Street Activities:

To consider the management of promotional pitches in Bath City Centre in light of feedback from stakeholder engagement and propose a future management regime

To explore future options for temporary markets throughout Bath and North East Somerset

2 RECOMMENDATIONS

The Committee is asked

- 2.1 To note the contents of this report and the progress made with respect to the Street Trading Review.
- 2.2 To note the responses received as a result of consultation as given in Annex C and as summarised with officer comments in Annex D.
- 2.3 To endorse the adoption of the revised Street Trading Policy provided at Annex E.
- 2.4 To endorse the development of a city-wide planning application for events which includes markets and therefore, related street trading activities
- 2.5 To endorse the proposal that no further action should be taken with respect to outsourcing of the Council's statutory functions under the Local Government (Miscellaneous Provisions) Act 1982 ("the Act") to a third party organisation
- 2.6 To endorse the integration of the management of promotional pitches from Highways into the Licensing Authority to better align with Street Trading management principles and the introduction of a fee to cover the administration of applications for promotional pitches.

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 Property: there is no impact on property. Events on Council-owned land such as Queens Square, are managed through the application of land hire agreements.
- 3.2 Finance and People: the report discusses increasing enforcement activity within the Licensing service; this would be funded from within existing budgets.
- 3.3 The report also refers to the introduction of an administrative fee for promotional pitches. New fees and charges would be set to achieve full cost recovery. The provision of promotional pitches aligns with the Council's highway management duty under the Highways Act 1980.
- 3.4 The report refers to the devolvement of the Council's functions to a third party in its entirety. This is a complex area of law and should the Committee wish to explore this option further it is likely to incur disproportionate legal costs.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 All streets in Bath and North East Somerset Council are designated 'consent streets' as defined by schedule 4 of Local Government (Miscellaneous Provisions) Act 1982 ('the Act'). The effect of this is that, with some exceptions, selling, exposing or offering for sell any article in a street requires a Street Trading consent issued by the council. Those trading without a consent are liable to prosecution and a fine if convicted. The aim of the legislation therefore is to regulate street trading activity. Annex A gives details of the relevant legislation.

- 4.2 The Council discharges its statutory function as Licensing Authority through the Licensing team and this function is informed by the Street Trading Policy and Standard Conditions attached to any street trading consent issued. The current Policy and Standard Conditions are given in annex B.
- 4.3 The basis for this report stems from the need to periodically review its Street Trading Policy to ensure that it remains current and in line with Council's ambitions for communities in the District. The Council is keen to ensure that the proposed Street Trading Policy provides a clear framework that balances the needs and interests of Street Traders with those of shop owners, residents, partners and the public.
- 4.4 Street markets are managed by the Council's Event team and, whilst subject to a number of operational considerations, street market traders will also require Street Trading consent to trade under the Act. This review does not cover indoor markets, those held on private land or those that operate through Royal Charter (Guildhall) as these markets fall outside the scope of the Act.
- 4.5 Promotional pitches are currently managed by the Highways team through a 'permitting' process. Goods are not offered or exposed for sale and as such do not fall within Street Trading as defined by the Act. Typically, activities include leaflet distribution, or giving out free promotional products. They are however perceived by the public to be part of the street trading scene.

5 THE REPORT

Background to the review:

- 5.1 The Council recognises that Street Trading can and often does provide vibrancy and interest to the local environment. It offers an opportunity for small businesses to establish themselves, to grow, provide livelihoods and contribute to the local economy.
- 5.2 The Council is mindful however that Street Trading divides opinion. It is often quoted as providing an unfair advantage over retail units whose operators pay business rates and rents and that, in Bath, the appearance and management of stalls (and promotional pitches) does not complement the existing commercial environment nor is reflective of the City's world heritage status.

Table 1 summarises the key drivers for the review:

Table 1 Key Drivers for the Street Trading Review	
<ul style="list-style-type: none">• Concern from partners regarding the look, feel and location of the stalls• Concern about the concentration of traders in Bath but lower numbers in other towns such as Midsomer Norton, Keynsham and Radstock• The Policy was due for a review – last done in 2014• An opportunity to review issues that had arisen over the last 3 years – strategic and operational• The need to ensure that the Policy aligns with current strategic documents such as the Public Realm and Movement Strategy (PRAMS) and the outcomes of the wider Bath and North East Somerset Strategic Review which includes consideration of new markets for its communities	

5.3 Table 2 illustrates the aims and outcomes of the review

Table 2 Review Aims and Outcomes	
Aims	Outcomes
To review the existing Street Trading Policy	A refreshed Policy endorsed by the Licensing Committee and adopted by Cabinet
A review the markets that were held as 'pilots' to test long term viability	Recommendations for future market activity
A review of promotional pitches and other promotional activity	A clear approach for the management of promotional pitches
To review links to strategic ambitions	Alignment with relevant strategies

5.4 The review does not include consideration of buskers (the subject of a previous review) and pedlars.

5.5 As Street Trading is concentrated in the centre of Bath, it follows that the focus of this report is on the city centre. Any revised Policy however will apply across the Bath and North East Somerset area as all streets in the District are consent streets.

Background Information:

5.6 The following information is provided to give context to the review, findings and proposals.

5.7 Table 3 gives information regarding the number and location of current Street Traders, markets and promotional pitches. From the survey 43% of respondents feel that the number of pitches in their community is about right, 26% say that there is not enough, and 20% say there are too many.

Table 3 Street Traders, Markets and Promotional Pitches	
Street Traders and Markets	
A total of 43 consented Street Traders across the Bath and North East Somerset area	30 permanent consents within Bath city centre (plus 2 occasional consents) 2 permanent consents in Bath but outside the city centre (plus 1 occasional consent) 2 permanent consents in Keynsham (plus 3 occasional consents) 2 permanent consents in Radstock/Midsomer Norton (1 occasional consents) Includes a wide range of goods and services
6 Markets	Abbey Green, Kingsmead Square, Walcot Street, Christmas Market, Midsomer Norton and Keynsham Farmers Market. This does not include markets that may be held on BANES park or private land
Kingston Parade	A consent pitch for charitable trading
Promotional Pitches	
Old Bond Street	Bottom of Milsom Street
Union Street	Outside WH Smith
Stall Street	Outside the Pump Room
NB this does not include ice cream sellers or buskers	

The approach taken:

5.8 The approach taken was that of engagement with key stakeholders (partners and traders), with support from internal services and benchmarking with similar authorities, including Oxford, York, Cambridge, Cheltenham, Chester and Harrogate. This was followed up with an online consultation. See section 8.

Findings:

5.9 Annex C provides an analysis of all the responses received from the on-line consultation together with comments made. A total of 50 responses were received with roughly equal representation from Street Traders, other businesses, residents and 'other' parties, including the Council's key partners and services.

5.10 Annex D gives a summary of the key points arising from the responses together with officer's comments. This report discusses some of the most salient points to come out of the engagement/consultation process.

Review of the Street Trading Policy:

5.11 Findings from the review with respect to the current policy fall into 3 key areas: strategic, policy and operational considerations.

5.12 **Strategic considerations:** The Council's vision for Street Trading is given in table 4. The review set out to test whether this vision was being fulfilled.

Table 4 The Current Vision for Street Trading in Bath and North East Somerset

To create an environment which:

- Complements premises-based trading
- Is sensitive to the needs of residents
- Ensures that public spaces become active spaces
- Provides diversity and consumer choice
- Seeks to enhance the character, ambiance and safety of local environments
- Promotes healthy eating
- Provides local food

5.13 The findings from both the survey and engagement process suggest that the Council is only partially fulfilling its vision for this function. In Bath, there is concern that Street Trading is not managed within the context of the wider ambitions for the city. Key concerns relate to the lack of a strategic link between the vision and the commercial environment (the location of pitches), inconsistent approaches to enforcement (the look and feel of traders) and frustrations arising from pitch and consent application procedures. This is compounded by conflicting approaches to both Street Trading activity and promotional pitches across the authority.

5.14 The Council is mindful that regulation of Street Trading activity plays a role in the character and ambiance of its communities and how Street Trading impacts on residents given the increasing demands on the public realm. The Council will nevertheless continue to discharge its responsibilities within the framework of the Act and the Policy with a view to aligning decisions with its vision, wider strategic objectives and within the confines of the Act.

5.15 ***A new approach to street trading?*** It has been suggested that the time is right for a radical re-think about the authority's approach to Street Trading perhaps moving traders from a dispersed model where traders trade daily to a more 'traditional street market' where traders trade once or twice a week.

5.16 This suggestion has been included in the consultation and whilst there was no clear mandate one way or the other, the majority were against this idea with strong opposition from traders for whom trading on a less frequent basis would have a serious impact on income and livelihood. Other respondents referred to restricted access to traders generally and the inability to access alternative low-cost options for goods on a daily basis.

5.17 **The proposed Street Trading Policy:** The proposed Policy in annex E has been developed with officer input, informed by feedback from the engagement process and tested through the on-line consultation. The proposed changes to the Policy are shown in red and are summarised for ease of reference in table 5. The Council has not received any adverse comments about the proposed policy changes and 83% of respondents said that it was easy to understand.

Table 5 Summary of the Key Policy Changes
The inclusion of an explicit link between policy and other key strategic documents
Clarification of the legal position where private land is covered by Walkway Agreements (s5 Highways Act 1980)
The introduction of assessment criteria to provide greater clarity in determining applications for consent
A move to a more standard type of stall to improve the look of traders
Removal of any ambiguity throughout the policy to facilitate enforcement
The inclusion of a definition of a market in respect of fees and charges
Clarity regarding the transfer of consents
A right of reply for traders in respect of decisions made by the Council

5.18 The introduction of assessment criteria will help provide more transparency for the decision-making process. The principle has strong backing from respondents with 92% in favour of this proposal. Assessment criteria to guide Consent approval have been included in the proposed policy.

5.19 In December 2014, the Cabinet adopted a revised street trading policy that set a new direction to improve the look and feel of stalls. It introduced a requirement for all new applicants to use an approved design unless a suitable alternative was agreed. Further it agreed that all existing consent holders would be required to move to an approved design or upgrade as appropriate by January 2017. This has not created the change required and may account for concerns about the look of trader stalls.

5.20 The proposed policy has extended this requirement to 31st March 2019. The Council is however conscious that this is not a 'one design fits all' solution and proposes to work with traders and partners develop a 'pattern book' of designs with options to meet all needs. The pattern book will form part of the Council's guidance for making a Street Trading consent application.

5.21 **Operational Considerations:** It has been suggested that the Council considers alternatives to managing the Street Trading Service, such as devolving management to a 3rd party organisation.

5.22 As a first step officers have explored the legal basis of this suggestion. No clear legal basis has been established for this proposal and such a proposal, if possible will be complicated by procurement issues, conflicts of interest, enforcement and data protection arrangements. Furthermore, when asked in the public consultation, 70% of respondents chose Bath and North East Somerset to manage the day to day street trading service rather than a third party.

5.23 A suggestion was also received regarding the rotation of traders so that all traders had the opportunity to trade on premium sites. This was tested as part of the online public consultation. Although the results show a slight favour for rotation there is no clear mandate to do so. In addition, there is strong opposition from traders themselves who have established client bases over a number of years. It is also likely that enforcing this requirement would be resource intensive, disproportionate to the benefit gained and lead to an

increase in Street Trading consent charges to cover additional costs to the Council.

- 5.24 Officers are mindful of the enforcement issues and that more rigorous enforcement of consent conditions would help ameliorate concerns regarding the look and feel of stalls. Officers are therefore considering options to increase its enforcement activity including a review of its procedures and the exploration of a partnership approach to enforcement (albeit in consideration of the Public Protection and Health Improvement Enforcement Policy).

Other Street Activities:

- 5.25 **Promotional Pitches:** Promotional pitches have evolved over time and have become custom and practice within the city. They provide opportunity for organisations to promote awareness and raise profiles. However, the Council has received complaints about the way these pitches operate including pitch overspill and aggressive behaviour by pitch operators. There is also evidence to suggest that the 'permitting' process has been abused by third parties who apply for permits only to sell them on for profit.

- 5.26 The Council is therefore seeking to review management arrangements for this service and proposes to align the operation of promotional pitches with the principles of street trading by moving the management of these pitches from the Highways team to the Licensing team. This will improve the consistency of management approach.

- 5.27 The Council also seeks to introduce a reasonable introductory charge to cover the cost of administering the permitting process and suggests a fee of £75 + VAT. This charge is designed to achieve full cost recovery and will be reviewed on an annual basis. The Committee is asked to endorse this proposal.

Temporary Markets:

- 5.28 **Preserving the heritage of the city:** Concern has been raised about the impact that increasing numbers of markets and events will have on the heritage value of the city. Feedback indicates the need for 'rest periods' where visitors and residents can enjoy quiet reflection of city's historical significance. To address this, the Council is looking to a city-wide planning permission that would provide greater clarity for planned Street Trading activity including the potential for a designated public event space e.g. Kingston Parade. This will benefit all interested parties including event organisers. The Licensing Committee is asked to endorse this way forward as it will signal a major change in the Council's approach to events in the City.

- 5.29 **Events Planning:** The Local Planning Authority has advised that events will require consent as they are either considered as 'development' or 'a change of use' in planning terms.

- 5.30 There is support for the wider development of markets. Feedback indicates that pilot markets held in Kingsmead Square and Abbey Green have been successful and there is an appetite to explore market provision further not only in Bath but in other localities such as Keynsham and Midsomer Norton. This

aligns with the Council's own strategic aim of increasing the number of markets across the Council's area.

5.31 Whilst in-depth consideration of market development lies outside the scope of this review the opportunity was taken to ask some exploratory questions about future market provision. The Council is keen that markets should be beneficial to the local area. Respondents were invited to define what benefits might mean for their own community. Key themes include street vibrancy, diversity and choice, complementing existing traders, local produce for local people and increasing footfall. Respondents were asked to suggest locations for markets. A number of responses were received, and these can be viewed at annex C question 10. 64% of respondents said that they would welcome 'zoning' of markets with traders offering similar goods in the same area. It is suggested that this is explored further as part of the planning permission mentioned in 5.29.

6 RATIONALE

6.1 The rationale for this Policy stems from a need to set out the statutory framework within which Street Trading activities are regulated for the benefit of Council officers, new, existing and potential Street Traders. The opportunity has also been taken to include within the Policy the Council's vision and aspirations for Street Trading in the District.

7 OTHER OPTIONS CONSIDERED

7.1 None.

7.2 Advice has been sought from the Council's Legal Services and the Council's Monitoring Officer (Council Solicitor). The Council's Section 151 Officer (Resources Director) has also had the opportunity to input to this report and have cleared it for publication.

8 CONSULTATION

Approach:

8.1 Consultation took the form of 2 phases – engagement and formal consultation. During February and March 2018, a number of engagement meetings were held with key stakeholders including a Street Trader's forum that was attended by 15 Street Traders. The purpose of these meetings was to outline the reason for the review, to understand current challenges and issues and to explore potential future opportunities.

8.2 The outcomes from this engagement phase were used to review the existing Policy and to inform a more formal consultation process during which stakeholders were invited to complete an online survey. The formal consultation ran for a period of 8 weeks between April and June 2018. During this period a repeat of the engagement meetings was undertaken to explain the rationale behind the survey questions and how the Council was addressing other issues raised during the first engagement phase. This included a further Street Traders forum

Parties Consulted

8.3 A full list of consultees is given in Annex F

9 RISK MANAGEMENT

A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision-making risk management guidance.

Contact person	<i>Cathryn Brown, Licensing and Environmental Protection Manager (01225 477645)</i> <i>Lynda Deane, Team Manager Events and Active Lifestyles (01225 396428)</i>
Background papers	<i>Local Government (Miscellaneous Provisions) Act 1982</i> <i>Highways Act 1980</i> <i>Local Government Act 2003</i>
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