

WILTSHIRE COUNCIL

LICENSING COMMITTEE

30TH NOVEMBER 2010

REVIEW OF EXISTING STREET TRADING CONTROLS

Executive Summary

This report reviews the current mechanisms for controlling street trading activity across the Wiltshire Council area, and outlines options for a harmonised scheme.

Recommendations

It is recommended:

- That the Licensing Committee recognise the need to introduce a new harmonised street trading scheme.
- That a single council-wide consent street trading scheme is the best option for the new scheme.
- That Licensing officers are tasked with producing an appropriate single council-wide consent street trading scheme by May 2011.
- That the Licensing Committee agree to consider the details of the proposed consent street trading scheme before recommending it for resolution to full Council.

Reason for Proposal

To adequately control street trading activity.

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Purpose of Report

1. To inform members of the current policies for controlling street trading.
2. To make members aware of the legal process for introducing a harmonised street trading scheme across the Wiltshire Council area.
3. To recommend that Wiltshire Council introduces a single council-wide consent street trading scheme.

Background

4. 'Street trading' is the selling or exposing or offering for sale of any article, including a living thing. A 'street' is any area which the public have access to without payment, including private land. This includes both town centres and road lay-bys.
5. Part III, Schedule 4 of the 1982 Local Government (Miscellaneous Provisions) Act (the 1982 Act) gives District Councils extensive powers to regulate street trading.
6. Under the 1982 Act District Councils were able to designate any street as a:
 - Consent street
 - Licence street
 - Prohibited street
7. It is illegal to trade in a consent street or licence street without first obtaining a consent or licence from the council. It is illegal to trade in a prohibited street.
8. The 1982 Act also allowed councils to introduce 'reasonable charges' for granting and renewing street trading consents.
9. The following are exempt from the 1982 Act:
 - Pedlars with valid pedlar's certificates issued by the Chief Constable of the police authority
 - Chartered markets
 - Trading in a trunk road picnic area
 - Trading as a news vendor or roundsman
 - Permitted street collections
 - Trading on premises used as a petrol station or on the street adjoining premises used as a shop under the same ownership
 - Using an object or structure placed on or over a highway
10. Consent street trading can be used to assist local businesses by establishing a level playing field between fixed and mobile traders.

Current Situation

11. Before the formation of the unitary authority, Wiltshire County Council controlled street trading using the Highways Act 1980 and the District Councils controlled street trading by adopting powers under the 1982 Act.
12. Currently there is no harmonised street trading policy for Wiltshire Council, this is due to the former District Councils choosing to control street trading in different ways:
 - The North and West areas operate two different consent street trading schemes with different fee structures and different conditions.
 - The East operates a prohibited street (trading) scheme for a limited number of streets in the town centres.
 - There is no street trading scheme in the South area as Salisbury District Council did not adopt the powers in the 1982 Act. Wiltshire Council therefore has no enforcement powers in the South except to remove traders who are obstructing the public highway under the Highways Act 1980.
13. Lay-by traders are currently not regulated anywhere in the Wiltshire Council area, apart from food hygiene controls for food traders.
14. There have been some complaints from market traders in Salisbury in relation to street trading which have not been able to be satisfactorily resolved due to the lack of any scheme in the South area.

Options

There are two options:

- Do nothing, and continue with a mix of different schemes.
- Introduce a new harmonised street trading scheme across the Wiltshire Council area.

Do nothing

15. Taken together the existing policies are not fit for purpose and fail to meet Wiltshire Council's corporate priorities in that they are not customer focused. In different areas of the county street traders have different rights, are charged different fees and are subject to different procedures and conditions. This does not meet the corporate priority of the Council being fair, open and honest in its decision making. The existing consent street trading schemes in the North and West use different consultation procedures for granting and renewing street trading consents. There is no consultation on street trading in the East. This is inconsistent, unfair and confusing for street traders, local businesses, residents and council officers.
16. At present the Council finds it difficult to remove illegal street traders in the South because it has no enforcement powers except in cases where a street trader obstructs the public highway. Local businesses feel they are being

undermined by unfair competition from illegal traders who do not pay business rates.

Introduce a new harmonised street trading scheme across the Wiltshire Council area

17. A new harmonised street trading scheme would introduce the same fees, procedures and conditions for all street traders. This would ensure consistency, fairness and clarity for street traders, local businesses, residents and council officers.
18. It would afford Wiltshire Council extensive powers to remove all illegal street traders, including those in the South. There would be a clear enforcement procedure for removing illegal traders. The new harmonised street trading scheme could ensure a level playing field for all businesses in Wiltshire.

The introduction of a new harmonised scheme across the Wiltshire Council area would enable the Council to adequately control street trading activity. There are 3 options for designation:

- Consent street trading scheme
- Licence street trading scheme
- Prohibited street (trading) scheme

Consent street trading scheme

19. A new harmonised consent street trading scheme across the Wiltshire Council area would provide a flexible means of controlling street trading activity. There is scope for the fees charged for a street trading consent to cover the costs of administration and enforcement. It would also be possible for Wiltshire Council to generate income through the introduction of a new harmonised consent street trading scheme. A consent street trading scheme would allow greater scope for local decision making.
20. Wiltshire Council would be free to choose the procedure for administering and enforcing the consent street trading scheme and would be able to introduce conditions to prevent nuisance.

Licence street trading scheme

21. A new harmonised licence street trading scheme across the Wiltshire Council area would afford Wiltshire Council powers to adequately control street trading activity. As in a consent street trading scheme, there is scope for the fees charged for a street trading licence to reflect the costs of administration and enforcement.
22. However, a licence street trading scheme is less flexible and would have slower enforcement processes and higher administration costs. Wiltshire Council would not be free to choose the procedure for administering and enforcing a licence street trading scheme.

Prohibited street (trading) scheme

23. A new harmonised prohibited street (trading) scheme across the Wiltshire Council area would send a very clear message that Wiltshire Council does not tolerate any street trading, except by traders exempt from the 1982 Act.
24. However, it would be impossible for Wiltshire Council to cover its administration or enforcement costs if a prohibited street (trading) scheme was introduced. A prohibited street (trading) scheme is very inflexible- Wiltshire Council would not be able to make any concessions for street trading events held by charities, not-for-profit organisations, Town and Parish Councils or the Wiltshire Council Markets Team.
25. An options appraisal detailing the positive and negative consequences of each type of designation is provided in Appendix 1.

Environmental Impact

26. The introduction of an appropriate harmonised street trading scheme will improve the local environment in Wiltshire. If a consent street trading scheme is introduced Wiltshire Council will be able to control the appearance of mobile street trading units, their location and impose conditions for appropriate waste disposal.

Equality and Diversity

27. Unless a prohibited street (trading) scheme is introduced, a new harmonised street trading scheme will have a low impact. If a prohibited street (trading) scheme is introduced, there are potential implications with respect to human rights where a street trader has previously been granted planning permission to change the use of the land.
28. The introduction of a new harmonised street trading scheme will allow Wiltshire Council to promote fairness and consistency in the regulation of street trading activity.

Risk Assessment

29. The existing policies are inconsistent and open to challenge.

Financial Implications

30. A harmonised consent street trading scheme or licence street trading scheme will either generate income or be cost neutral.

Legal Implications

31. Any proposed harmonised street trading scheme will be compatible with the Human Rights Act.

32. Full formal consultation will take place before any street trading scheme is implemented.

Next Steps

33. Licensing officers will produce an appropriate street trading scheme for the consideration of the Licensing Committee by May 2011.
34. There is a set legal procedure for resolution by full Council whichever type of street trading scheme is decided upon.

Conclusion

35. The introduction of a harmonised street trading scheme will benefit local businesses by providing fairer trading conditions, and would ensure consistency, whilst generating income for the authority.

Background Papers

Part III, Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982

Appendices

Appendix 1: An options appraisal detailing the positive and negative consequences of each type of designation.

Appendix 1

An options appraisal detailing the positive and negative consequences of each type of designation

Consent Street Trading Scheme	
Positives	Negatives
High potential for income generation	
The council is free to set the fees for a street trading consent, as long as these are 'reasonable.' This means the scheme either pays for itself or allows the council to generate income.	The council cannot recover costs for refuse collection or street cleansing, although consent can include conditions for adequate refuse collection and street cleansing and the council can revoke or refuse to renew consent if these conditions are breached. The council must return whole or part of the fee where consent is surrendered or revoked.
Reduced administration costs	
<p>The council is under no duty to grant a street trading consent. There is no need to specify statutory grounds for refusal to grant as long as the refusal is 'reasonable.'</p> <p>The applicant has no right of appeal to the Magistrates' court.</p> <p>There are no notice requirements. The applicant does not have the right to make representations, although the council does have discretion to hear representations.</p> <p>Highway authority consent is not required before designating a street as a consent street.</p>	
Adequate enforcement powers	
The council can prosecute for breach of times, streets and days.	The council cannot prosecute a street trader for breach of the type of article sold.

<p>There are no statutory limitations on the council's power to revoke or refuse to renew consent.</p> <p>The council can include any 'reasonable' conditions and can withdraw, revoke or refuse to renew a consent at any time if conditions are breached. This includes standard conditions for all consents and specific conditions for specific traders, for example the type of article sold. The council has power to ensure conditions are upheld.</p>	
Scope to be flexible/ make concessions	
<p>The council is free to choose the procedure for a consent street trading scheme, provided it acts 'reasonably.'</p> <p>The council can make concessions for certain types of street trading activity, such as street trading events run by charities and not for profit organisations.</p>	

Licence Street Trading Scheme	
Positives	Negatives
Some potential for income generation	
<p>The council is free to set the fees for a street trading licence, as long as these are 'reasonable.'</p> <p>The council can recover costs for refuse collection and waste cleansing. These costs can be included in the fee for a street trading licence. (Schemes that mix consent streets and licence streets often charge more for a licence).</p> <p>Where a street trading licence is surrendered or revoked the council is under no obligation to refund the licence fee. This is at the discretion of the council.</p>	<p>The applicant has the right of appeal to the Magistrates' court on statutory grounds if the council varies the conditions, revokes or refuses to renew the licence. Appeals can be protracted and expensive.</p>

Higher administration costs	
<p>The council can include administration costs in the fee it charges for a street trading licence.</p>	<p>Before a council revokes, varies or refuses to renew a licence, the applicant has the right to make representations. The applicant must be given 7 days to decide whether to make representations and a further 'reasonable period' to make representations.</p>
Slower enforcement process	
<p>The council can use the 'principal terms' of a street trading licence to specify the street, days, times and type of article sold. The council can prosecute for breach of the principal terms of a street trading licence.</p> <p>The council can attach 'reasonable subsidiary terms' to a street trading licence, for example requiring the trader to display their licence or preventing the trader from leaving refuse behind.</p>	<p>The council is not free to set the procedure for a licence street trading scheme- the procedure is set by the 1982 Act.</p> <p>The council is obliged to grant a street trading licence unless the application can be refused on the following statutory grounds:</p> <ul style="list-style-type: none"> • There is not enough space • There are already enough traders • The trader wants to trade for less days than the minimum number decided on by the council • The trader is unsuitable because of a previous conviction or failure to pay fees • The trader did not use their licence sufficiently. <p>The council can only revoke, vary the terms or refuse to renew a street trading licence if:</p> <ul style="list-style-type: none"> • The applicant is unsuitable because of a previous conviction • The applicant has persistently refused or neglected to pay fees • The applicant has not used the licence sufficiently and has no reasonable excuse. <p>The applicant has the right of appeal to the Magistrates' court against the refusal, revocation or variation of the principal terms of the licence (street, days, times and type of article sold). If the licence holder applies for renewal before the expiry date the licence remains valid until the end of the appeals process.</p>

Inflexible- hard to move from a licence street trading scheme to a consent street trading scheme or a prohibited street trading scheme	
	A street trading licence is a possession, therefore holders of street trading licences would be protected under the Human Rights Act if the council chose to introduce a prohibited street trading scheme or a consent street trading scheme in any street that was previously in a licence street trading scheme.

Prohibited Street (Trading) Scheme	
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Positives	Negatives
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No potential for income generation	
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A prohibited street (trading) scheme has low administration costs after the initial designation has taken place. Action is only taken by the licensing authority when the council receives a complaint about an illegal street trader.	No fees are charged in a prohibited street (trading) scheme. The council cannot recover the costs of administration and enforcement work and may make a loss.
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Very clear 'zero-tolerance' policy	
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It is illegal for anyone to trade in a prohibited street unless they are exempt from the 1982 Act. This is easy for potential street traders, residents and local businesses to understand. The council can prosecute for illegal street trading in a prohibited street.	
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The council has no enforcement powers outside of the area covered by the prohibited street (trading) scheme	
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	The council cannot impose any licensing conditions on anyone trading in areas outside of the prohibited street (trading) scheme.
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No scope to be flexible or make concessions	
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A prohibited street (trading) scheme has no procedural requirements once designation has taken place.	It is not possible to make any concessions for street trading events, such as those held by charities, not-for-profit organisations, Wiltshire Council or Town and Parish Councils.
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