

**CONSULTATION RESPONSES TO PROPOSED STREET TRADING SCHEME**

**Executive Summary**

This report informs Members of progress on the introduction of a single, council-wide consent street trading scheme.

**Recommendations**

**It is recommended that the Licensing Committee:**

- i) Consider, and comment on the issues raised by consultation on the introduction of a single, council-wide consent street trading scheme.
- ii) Support discussions between the licensing team and neighbourhood services to produce an integrated and co-ordinated response to the issues raised by public consultation.
- iii) Agree to consider details of the revised street trading scheme and results of the second public consultation before recommending the scheme for adoption by full Council.

**Reason for Proposal**

To consider the results of an extensive consultation on a council-wide street trading scheme.

Author: Alissa Davies, Licensing Team (North and West), Public Protection Services

Corporate Director: Maggie Rae, Public Health and Wellbeing

Contact Details: [alissa.davies@wiltshire.gov.uk](mailto:alissa.davies@wiltshire.gov.uk)

## **1. Purpose of Report**

- 1.1 To inform Members of the results of public consultation on a single, council-wide street trading scheme.
- 1.2 To give Members the opportunity to comment on concerns raised during the public consultation.
- 1.3 To recommend that Members support discussions between the licensing team and neighbourhood services to produce an integrated and co-ordinated response to the issues raised by public consultation.
- 1.4 To recommend that the Licensing Team produce a revised street trading scheme for further public consultation.

## **2. Background**

- 2.1 There is no harmonised street trading policy for Wiltshire because the former district councils chose to control street trading in different ways:
  - In the north and west there are two different consent street trading schemes
  - In the east there is a prohibited (street) trading scheme for a small number of streets in town centres
  - In the south there is no street trading scheme because Salisbury District Council did not adopt powers under Part III, Schedule 4 of the 1982 Local Government (Miscellaneous Provisions) Act (the 1982 Act)
  - Lay-bys are not regulated anywhere in the Wiltshire Council area, except food hygiene controls for food traders.
- 2.2 A report on existing street trading controls was presented to the Licensing Committee on 30 November 2010. This report informed Members of the current policies for controlling street trading and recommended the introduction of a single council-wide street trading scheme by adopting powers under the 1982 Act.
- 2.3 The licensing team was tasked with producing an appropriate council-wide consent street trading scheme. In January 2011 a draft street trading scheme was produced after consultation across public protection, planning and neighbourhood services.

## **3. Key Features of the Draft Street Trading Scheme**

- 3.1 It was proposed to designate all streets in Wiltshire as consent streets, with the exception of a number of highway lay-bys which would be designated as prohibited streets, where street trading would not be permitted.
- 3.2 The street trading scheme incorporated the legal definitions of 'street trading' and a 'street' from the 1982 Act. Street trading was defined as selling, exposing or offering articles for sale in a street. A street was defined as any area which the public can access without payment, including private land.

3.3 In addition to the legal exemptions listed in the 1982 Act, the council proposed to exempt the following activities from the need to obtain a Street Trading Consent:

- Trading in a market run by Wiltshire Council
- Trading as part of a travelling fair that has already been granted permission to trade on Wiltshire Council land by the council
- Trading from a motorised ice-cream van which moves from street to street not stopping in one place for longer than 15 minutes or within 500 metres of a school.

3.4 The scheme proposed to offer three types of street trading consent:

- Annual Street Trading Consent for trading on all days of the year, including bank holidays
- Daily Street Trading Consent for trading on a single day, a number of days, or a specific day of the year. For example, trading for a full week once a year, on all Mondays for one month or all Saturdays throughout the year.
- Block Street Trading Consent for organisers of large street trading events, where the event organiser is responsible for all street traders at the event. This would be offered at no charge where the proceeds from both the street trading activity and the event as a whole will go to a registered charity or will not be used for private gain.

Street Trading Consents would be issued subject to Standard Conditions (See Appendix 1) and Additional Conditions which should be upheld at all times.

3.5 The council proposed to consider Annual and Daily Street Trading Consents four times a year in March, June, September and December. Applications for Block Street Trading Consents were to be considered all year round. All applications were to be processed within 90 days.

3.6 There were two sets of fees for Annual and Daily Street Trading Consents:

- Fees for town centre traders: £2800 for an Annual Street Trading Consent, £20 a day for a Daily Street Trading Consent from Sunday to Friday and £40 a day for a Daily Street Trading Consent on Saturday.
- Fees for all other traders: £1400 for an Annual Street Trading Consent, £10 a day for a Daily Street Trading Consent.

3.7 The proposed criteria for assessing applications were:

- Site safety
- Public order
- Avoidance of nuisance
- Needs of the area
- Compliance with legal requirements

- Consultees observations
- Permitted trading hours
- Planning permission
- Suitability of the applicant
- Proximity to schools and colleges.

3.8 The proposed consultees for applications were:

- The appropriate town/parish council
- The local councillor and community area manager
- Members of the public living within 100 metres of the proposed street trading site
- Local businesses and Chamber of Commerce
- Wiltshire Police
- The land owner
- Environmental health officers, food safety officers, planning officers, highway officers and health and safety officers.

Consultees would have 60 days to object to applications for Annual and Daily Street Trading Consents.

3.9 Applications would be determined by the licensing manager on the basis of recommendations from licensing officers. Licensing officers would make recommendations by assessing applications and objections against the scheme criteria. Applicants who felt aggrieved by the licensing manager's decision would have the right to appeal to the Licensing Sub-Committee.

3.10 More detail on the proposed street trading scheme is available at Appendix 1.

#### **4. Public Consultation**

4.1 Public consultation on the proposed street trading scheme opened on 18 January 2011 and closed on 17 March 2011.

4.2 The consultation documents (the draft street trading scheme, maps of the proposed prohibited lay-bys by area board area and a consultation survey) were made available on the Wiltshire Council website. These documents are available at Appendix 1.

4.3 Notice of the consultation was sent to:

- Area boards
- Town and parish councils
- 125 food traders registered with the Food Safety Team
- The Wessex Association of Chambers of Commerce who circulated a flyer to all local chambers of commerce, 36 companies and 150 local businesses
- The Federation of Small Businesses in Somerset and Wiltshire
- All Wiltshire Council councillors
- Wiltshire Police
- Wiltshire Fire Safety

- Wiltshire Farmers Markets Association
- The Highways Agency
- The Salisbury Town Centre Manager
- The Freight Transport Association
- The Road Haulers Association
- The Wiltshire and Swindon Freight Quality Partnership

4.4 There was a very high rate of response to the public consultation, especially from town/parish councils and registered food traders. There were 91 responses to the online consultation survey and a number of written responses from Wiltshire Councillors and Town/Parish Councils. For a detailed breakdown of consultation responses please see Appendix 2.

## **5. Issues Raised by Public Consultation**

5.1 A number of concerns were raised during the public consultation, including:

- The scope of the street trading scheme
- The level of bureaucracy and length of time it would take to process applications
- The level of the proposed street trading fees

### The scope of the street trading scheme

5.2 Wiltshire councillors, town/ parish councils and members of the public expressed concerns about:

- The definition of a 'street' as 'any area which the public can access without payment, including private land.' Respondents object to the proposal to include private land and land owned, leased and maintained by town/parish councils. Street traders are worried that they will need to pay fees to the council in addition to fees to private land owners.
- The definition of 'street trading' as 'selling, exposing or offering articles for sale in a street.' Respondents object to the proposal to include certain types of street trading activity, for example the sale of articles by householders on land next to their property, such as private car sales or the sale of farm produce by local farms.

5.3 Responses to the consultation survey suggest general support for exempting non-commercial street trading activity, such as charitable fund-raising events (71 percent of respondents) and sales of articles by householders on land next to their property (60 percent of respondents.)

### The level of bureaucracy and length of time it would take to process applications

5.4 Town/parish councils and Wiltshire councillors were concerned that the street trading scheme will increase the burden of consultation, inspection and red tape. They suggest this will diminish community vitality by putting off volunteers and making it more difficult for councils, local charities, social

enterprises and voluntary groups to organise community events, such as parish fun-days and carnivals.

- 5.5 Event organisers and town/parish councils suggest they will find it difficult to prove that all proceeds from community events will not be used for private gain. Some organisers of community fund-raising events are worried they will need to pay the daily fee for a Block Street Trading Consent, for example Amesbury Rotary Club's annual car-boot sale where traders are charged a pitch fee which is donated to the community but keep any profits they make from trading.
- 5.6 Although most concerns about the level of bureaucracy relate to community events, respondents also express concern about the large number of Standard Conditions and detailed references to additional legal requirements, such as planning permission, consumer protection law and late night refreshment licences.
- 5.7 The consultation also highlighted concern about the length of the consultation procedure and length of time it would take to process applications. Some town/parish councils support the proposed 60 day consultation period as they often find it difficult to respond to consultations on planning applications within 21 days. Other town/parish councils and members of the public suggest a lengthy application process will be off-putting for street traders and event organisers.
- 5.8 Some respondents feel that there are too many consultees for street trading applications, while others are worried that insufficient weight will be given to consultees' objections.

#### The level of proposed street trading fees

- 5.9 A number of street traders have complained that the proposed street trading fees are too high and will put them out of business.
- 5.10 A small number of street traders are already paying business rates and permanent street traders (most of those who would hold Annual Street Trading Consents under the proposed street trading scheme) may be liable for business rates. It may be unfair to charge a fee for a Street Trading Consent where a street trader is already paying business rates, particularly if the trader is already paying a fee to the landowner to trade on private land.
- 5.11 Although some street traders support the introduction of a street trading scheme, many street traders question the added value of a Street Trading Consent- they feel they will not receive anything from the council in exchange for their street trading fee.
- 5.12 Respondents were split on the issue of whether town centre traders should pay higher fees than all other traders. Local businesses and members of the public broadly supported higher fees for town centre traders.
- 5.13 Respondents were also split on the level of the proposed street trading fees, although there was overall support for a fee of £10 to £30 a day.

## **6. Measures to Overcome Issues Raised by Public Consultation**

### The scope of the street trading scheme

- 6.1 Consultation responses suggest community fund-raising events should be exempt from the need to apply for a Street Trading Consent and private land should only be included where absolutely necessary.
- 6.2 Although the council cannot alter the legal definition of a 'street' or 'street trading,' it can limit the scope of the street trading scheme by introducing a number of additional exemptions. These additional exemptions could include:
- trading on private land (including land owned, leased or maintained by a town/parish council) where this is not a road, street, car-park or industrial estate with public access or within 20 metres of any road, street, car-park or industrial estate with public access
  - fetes, carnivals or similar community based and run events, such as community car boot sales and Christmas lights switch on events
  - non-commercial or charitable events where the profits are wholly passed to a charity or political/ educational organisation
  - sales of articles by householders on land within the boundary of their home, for example garage sales
  - goods from working farms sold at the premises where they were produced

### The level of bureaucracy and length of time it would take to process applications

- 6.3 The additional exemptions (above) would address town/parish councils' concerns about the negative impact of the street trading scheme on the financial viability of community events and the ability of community groups to organise them.
- 6.4 The scheme could be revised to reduce the number of Standard Conditions for all street traders, especially holders of Block Street Trading Consents.
- 6.5 Block Street Trading Consents for events which would not be covered by the additional exemptions, such as continental markets or the Wiltshire Farmers Markets Association could be issued annually for a certain number of events per year and renewed automatically.
- 6.6 The detailed references to additional legal requirements could be replaced with a sentence reminding traders that all other legal requirements must be met. The council needs to decide whether it wants to make the granting of Street Trading Consents conditional on compliance with other legal requirements, or merely to remind traders of these requirements. If the council chose to merely remind traders of other legal requirements it would not be able to refuse to grant or withdraw a Street Trading Consent if the Consent Holder failed to meet these requirements.

## The level of proposed street trading fees

- 6.7 The proposed street trading fees were calculated on the basis of the maximum costs of administering and enforcing the street trading scheme. The administration and enforcement costs were used as the fee for all other street traders, and were doubled for the fees for town centre traders to reflect the greater commercial benefit of a town centre location.
- 6.8 The proposed annual fees are roughly the average of the street trading fees paid by traders in consent streets in the west (£4,502) and north (£1385) and are similar to fees charged by neighbouring councils. The proposed daily fees are in line with fees paid by market traders throughout Wiltshire.
- 6.9 The street trading fees for a revised street trading scheme could be calculated on basis of the average costs of administration and enforcement. The administration and enforcement costs would need to include overhead costs as well as officer time. To make the scheme easier to administer all street traders could be charged the same fees regardless of location.
- 6.10 The council could allow street traders to pay fees in instalments and could offer a rebate on street trading fees to street traders who can demonstrate that they have paid business rates.

## **7. Further Issues**

### Overlap with the department of neighbourhoods and planning

- 7.1 The licensing team needs to collaborate with neighbourhood services to produce an integrated and co-ordinated street trading scheme.
- 7.2 There is considerable overlap between street trading and activities controlled by the Department of Neighbourhoods and Planning as the highways authority, such as cars for sale on the street, and the placing of tables and chairs on the highway.
- 7.3 There are detailed issues which need to be resolved, for example parking waivers for burger vans who hold Street Trading Consents for trading in pedestrianised streets.
- 7.4 The consultation highlighted inaccuracies in the data for the proposed prohibited lay-bys. This data was supplied by the area highway engineers in neighbourhood services and will be checked for accuracy by the licensing team and the area highway engineers before any further consultation takes place.

### Competition between street traders and fixed business premises

- 7.5 There was a mixed response on the issue of whether a Street Trading Consent should be granted for trading where similar provision already exists.
- 7.6 The proposed criteria for determining applications included the 'needs of the area:' applicants will have to demonstrate the need for the proposed street trading activity in relation to the presence of other similar outlets already



existing in the immediate locality of the street trading site and the general needs of the locality if no comparable outlets already exists.

- 7.7 Some respondents suggest the council should not have a role in controlling competition between street traders and fixed business premises if street traders are paying street trading fees to the council. Others suggest that where there is adequate shopping provision a Street Trading Consent should not be granted within shopping areas without the prior approval of the owners of the shopping centres.

## **8. Environmental Impact**

- 8.1 Reducing the number of Standard Conditions may limit the ability of the council to reduce the environmental impact of street trading activity.
- 8.2 Designating highway lay-bys which are inappropriate for street trading as prohibited streets would have a positive environmental impact.

## **9. Equality and Diversity**

- 9.1 The public consultation was fully compliant with the principles for consultation outlined in the Wiltshire Compact.
- 9.2 A full equality impact assessment will be carried out on the final street trading scheme before it is introduced.

## **10. Risk Assessment**

- 10.1 Failure to introduce a single consistent scheme across Wiltshire will result in the continuation of different schemes dependant on which former district council area traders are operating, which represents a reputational risk to the council, and may present an opportunity for challenge to the authority.

## **11. Financial Implications**

- 11.1 Some town/parish councils have expressed an interest in s101 agreements under the Local Government Act 1972 to allow them to control street trading activity in their areas, but the cost of such agreements would need to be investigated.

## **12. Legal Implications**

- 12.1 The proposed additional exemptions may mean the council is favouring one type of street trading at the expense of another.
- 12.2 Although street trading fees can be calculated to take market forces into account, legal judgements have shown that a council cannot use a street trading scheme to generate income. It may be safer to charge a flat-rate fee for all street traders across Wiltshire regardless of the commercial value of the location.

### **13. Next Steps**

- 13.1 The licensing team to produce a revised street trading scheme and carry out a second public consultation in conjunction with neighbourhood services.
- 13.2 Licensing Committee to consider details of the revised street trading scheme and results of the second public consultation before recommending the scheme for adoption by full council.

### **14. Conclusion**

- 14.1 The recent consultation exercise has prompted considerable response from a variety of organisations and individuals. It is considered that a consistent scheme can be agreed that will meet these concerns and provide a way ahead to improve this area of work.

---

## **Background Papers**

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

## **Appendices**

Appendix 1: Consultation documents, including the executive summary, the proposed street trading scheme and the consultation survey.

Appendix 2: Detailed breakdown of consultation survey responses.

Appendix 3: Selection of written consultation responses.