

WILTSHIRE COUNCIL

LICENSING COMMITTEE

7 SEPTEMBER 2011

PROPOSED WILTSHIRE COUNCIL STREET TRADING CONSENT SCHEME

Executive Summary

This report informs the Committee of progress on the introduction of a single, council-wide consent street trading scheme and seeks the commendation of the scheme to Council.

Recommendations

It is recommended that the Licensing Committee:

- i) Consider, and comment on the revised single, council-wide consent street trading scheme in light of the results of the second public consultation.
- ii) Support the changes proposed by the licensing team and neighbourhood services to produce an integrated and co-ordinated response to the issues raised by the public consultation.
- iii) Recommend the revised scheme for adoption by Council on the 8th November 2011.

Reason for Proposal

To provide a consistent approach to street trading in the Wiltshire Council area.

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1. Purpose of Report

- 1.1 To inform Members of the results of the second two week public consultation on a revised single, council-wide street trading consent scheme.
- 1.2 To give Members the opportunity to comment on the revised consent street trade scheme, which was originally considered by the Committee on 5 April 2011.
- 1.3 To recommend that Members support the revisions proposed by 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 revised street trading scheme be commended for adoption by Council at its meeting on the 8th November 2011.

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 the public consultation carried out between January 2011 and the end of March 2011 was presented to the Licensing Committee on the 5th April 2011 where further changes were agreed to address the concerns raised by the public consultation and members.
- 2.3 The Licensing team were tasked with making further changes to the scheme following a second two week consultation.
- 2.4 A second two week public consultation took place between the 26th July 2011 and the 12th August 2011.
- 2.5 A meeting took place between the licensing manager and representatives of the neighbourhood services team to ensure that any changes made to the scheme did not duplicate any existing powers available to Wiltshire Council highways officers to control trading on the highway.

3. Changes made to the Draft Street Trading Scheme further to consultation

- 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. During the meeting with highways representatives it became clear that for the purposes of the street trade consent scheme it would not be possible to accurately demark the lay-bys to the degree necessary to legally prohibit them. This was partly due to inaccuracies in the location data held and the fact that third parties held other access rights over the land in some lay-by areas. In the revised scheme lay-bys will be consent streets.
- 3.2 It was agreed to designate all streets in Wiltshire as consent streets with the proviso that the highways officers as part of the neighbourhoods' team would maintain mapping data on Wiltshire Council lay-bys where applications for street trade consent would not be granted due to highway safety or access issues.
- 3.3 To aid applicants it was agreed that the neighbourhoods' team would also maintain a list of highway lay-bys where street trading was deemed to be suitable and appropriate.
- 3.4 The street trading scheme incorporates 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.
- 3.5 To avoid duplication with existing powers available to other teams within Wiltshire Council the consent scheme will not cover bridleways, walkways or subways. It is also proposed that the scheme will not cover the sale of cars on the highway.
- 3.6 It is considered that street trading consents should be determined by appropriately authorised officers rather than just the licensing manager to build resilience in to the scheme.
- 3.7 The revised street trade consent scheme is attached as Appendix 1.

4. Public Consultation

- 4.1 Public consultation on the redrafted street trading scheme opened on 26th July 2011 and closed on 12th August 2011.
- 4.2 The redrafted street trading scheme was made available on the Wiltshire Council website.
- 4.3 Notice of the consultation was sent to:
- Area boards
 - Town and parish councils
 - All Wiltshire Council councillors

- Wiltshire Police
- Wiltshire Fire and Rescue
- Wiltshire Farmers Markets Association
- The Highways Agency
- The Freight Transport Association
- The Road Haulers Association
- The Wiltshire and Swindon Freight Quality Partnership

4.4 There was a low rate of response to the public consultation; we received response from four town/parish councils and three members of the public.

5. Issues Raised by Public Consultation

5.1 The only remaining concern from the public was the length of the document and the perception of the bureaucracy involved when applying for consent. It is proposed to produce a simplified guide to aid our customers through the application process.

5.2 The responses from the town/parish councils were all positive in nature and confirmed that the changes made to the draft scheme further to the first public consultation and the Licensing Committee on the 5th of April 2011 had addressed their original concerns.

6. Further Issues

Overlap with the department of neighbourhoods and planning

6.1 The licensing team have collaborated with neighbourhood services to produce an integrated and co-ordinated street trading scheme.

6.2 There is considerable overlap between the street trading scheme and other 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. These activities have been removed from the redrafted scheme to remove the duplication.

6.3 There are detailed issues which need to be resolved, for example parking waivers for burger vans which hold Street Trading Consents for trading in pedestrianised streets. An agreement with parking services will be made prior to the implementation of the scheme to address this issue.

7. Environmental Impact

7.1 By consenting street trading and implementing standard conditions the areas located around such traders will be maintained in a clean and litter free condition and provide control of the numbers of traders in any one area.

7.2 Refusing to consent highway lay-bys which are inappropriate for street trading would have a positive environmental impact.

8. Equality and Diversity

- 8.1 The public consultation was fully compliant with the principles for consultation outlined in the Wiltshire Compact.

9. Risk Assessment

- 9.1 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.

10. Financial Implications

- 10.1 The fee levels set will ensure that the street trade consent scheme is a cost neutral service.

11. Legal Implications

- 11.1 The proposed additional exemptions may mean the council is favouring one type of street trading at the expense of another.
- 11.2 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 but only to cover the reasonable costs of operating the scheme.

12. Next Steps

- 12.1 Following the Licensing Committee's consideration of the revised street trading scheme and results of the second public consultation the scheme needs approval by council at its meeting of the 8th November 2011.

13. Conclusion

- 13.1 The recent two week consultation exercise has prompted positive response from both the town and parish council's. The revised scheme has addressed all the major concerns raised by the first public consultation and the licensing committee. The revised scheme addresses areas of duplication and cross over with other teams within Wiltshire Council.

Background Papers

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

Appendices

Appendix 1: The Final draft street trading consent scheme