

Regeneration, Culture and Adult Education Scrutiny Committee – 7th March 2012

Report of the Director of Corporate Resources

Street Trading

Purpose of Report

1. To consider the issues in relation to street trading raised at the Committee's meeting of the 18th January 2011.

Background

2. On the 28th October, 1987 the then Administration, Property and Legal Committee resolved under Section 40 of the West Midlands County Council Act 1980 that the designation of the streets and parts of streets and off street parking places specified in Schedule 3 should be revoked. and pursuant to Section 3 and Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 that specified streets should be designated as prohibited and consent streets for the purposes of street trading to take effect on the 22nd May, 1989. The current schedule of prohibited and consent streets are attached to this report at Appendix 1.
3. The Council also resolved to issue Street Trading Consents rather than Street Trading Licences. The principle differences between Street Trading Consents and Street Trading Licences is attached to this report at Appendix 2.
4. A consent street is a street where a Street Trading Consent is required from the Council to sell goods from a stall/barrow etc in that street. A prohibited street is a street where street trading cannot take place. If a street has no designation a Street Trading Consent is not required to trade nor is street trading prohibited. However, other permissions such as planning and highway obstruction may apply.
5. The licensing web site has a specific area devoted to Street Trading which was emailed to Members of the Committee following the meeting on the 18th January 2011. The site gives detailed information about street trading, provides links for the consent and prohibited streets and the street trading regulations together with advice for making an application for a Street Trading Consent and the ability to download an application form. Applications for Street Trading Consents are open to all, regardless of whether a site is already occupied by a current Street Trading Consent holder.

6. The functions relating to street trading are within the terms of reference of the Licensing and Safety Committee with onward delegations of specific functions to the Director of Corporate Resources
7. The Licensing and Safety Committee determine all new applications for Street Trading Consents, any applications where objections have been received and any applications where there are more than one applicant for a specific pitch. The Committee also consider any variation of terms and conditions attached to a Street Trading Consent and review a Street Trading Consent where a complaint has been received against the holder. The Committee also consider any applications to designate further streets to be either prohibited or consent streets.
8. The Director of Corporate Resources determines applications for renewal of Street Trading Consents where there are no objections.
9. Street Trading Consents are issued for a period of up to 12 months together with standard conditions. The Committee may vary these conditions where appropriate. Street Trading Consents are very prescriptive about the position of the trader, the articles which may be sold, the receptacle/vehicle from which the sale is made and the days and times that the Street Trading Consent is in force. A copy of a Street Trading Consent together with the standard conditions is attached to this report at Appendix 3.
10. There are currently twelve Street Trading Consents issued within the Borough. A schedule of those consents is attached to this report at Appendix 4.
11. The Council may charge such fees as they consider reasonable for the grant or renewal of a Street Trading Consent. What is reasonable to take into account when determining the fees to be charged for a Street Trading Consent was defined by a decision of the High Court in 1991, Manchester Ex Parte King.
12. The Court's decisions stated that when looking at what fees are reasonable the Council may take into account the total costs covering the operation of the trading scheme. There is no intention that this should enable the Council to merely raise general revenue/income and this was not Parliament's intention. Therefore, providing that the reasonable fee can be justified and evidence that the fee reflects administration and enforcement costs, then the Council can charge a reasonable fee that reflects those things. (The Act does not allow a Street Trading Consent holder to be charged for the collection of refuse and cleansing of streets etc.)
13. The Council's current fees for street trading together with those of the neighbouring councils are attached to this report at Appendix 5.
14. The Localism Act 2011, particularly those provisions which relate to the newly created General Power of Competence, have been reviewed to establish whether the Council has greater flexibility in relation to charging in respect of pitches for street trading. Our initial view is that we do not believe that the power of competency can override the legislation that governs street trading, however, this legislation has only just been introduced and further work is needed to review the parameters of the Act.

15. Currently, hot food stalls cannot be accommodated on Dudley Market because the electrical supply is restricted and in addition there is no provision for running water. This will be addressed through the planned re-generation of the market.
16. The Council's Regeneration Strategy will include a comprehensive review of street trading which will include fee levels and a further report will be taken to the Licensing and Safety Committee. Included in that review for consideration, will be a policy, that has been implemented elsewhere. This is to designate the whole of the Local Authority area as a consent area for the purposes of street trading. In some cases prohibited streets have been retained and in others there are no longer prohibited streets. Broadly speaking the adoption of such a policy would eliminate the 'grey trading area', where a street is neither a consent or a prohibited street, and through rigorous enforcement, ensure that all street traders are approved by the Council.

Finance

17. The current fees cover the costs of enforcing and administering Street Trading consents.

Law


18. The grant of consents to engage in street trading is governed by Part 111 of Schedule IV to the Local Government (Miscellaneous Provisions) Act 1982.
19. Section 1 of the Localism Act 2011 provides a general power of competence to local authorities. A local authority has power to do anything that individuals generally may do.

Equality Impact

20. This report has been written in full accordance with the Council's equality and diversity policies.

Recommendation

21. That the Committee note the contents of the report and make such recommendations to the Licensing and Safety Committee as they think fit.



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DIRECTOR OF CORPORATE RESOURCES

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List of Background Papers