

REPORT TO LICENSING COMMITTEE

Date of Meeting: 30 July 2024

Report of: Service Lead – Environmental Health and Community Safety

Title: Revision of the Street Trading Policy

Is this a Key Decision?

No

Is this an Executive or Council Function?

Council

1. What is the report about?

- 1.1 A working group of the Licensing Committee made up of Councillors and Officers has been conducting a review of the Street Trading Policy. The purpose of the group was to reflect upon street trading in Exeter, how it is and what it should be like, and relate it to how it impacts upon the safety, vibrancy and choice within the city.
- 1.2 The Licensing Committee agreed to a consultation of the revised street trading policy which ran from 22 March 2024 until 31 May 2024.
- 1.3 This report presents the results of that consultation and asks that the policy is approved subject to any changes required as a result of the consultation.

2. Recommendations:

- 2.1 Licensing Committee consider the responses received to the consultation and determine whether there are any changes required to the proposed street trading policy as a result of the consultation responses.
- 2.2 Subject to 2.1 above recommend the policy for adoption with effect from 1st January 2025.

3. Reasons for the recommendation:

- 3.1 The street trading policy sets out the council's position in how it will administer applications for street trading consents in order to protect residents, customers and road users' safety whilst permitting well run businesses to provide services that are in demand and contribute to the local economy.
- 3.2 It aims to ensure that only those persons entitled to work and run a business are granted the consents to trade and that there is no detriment to the amenity of city and business locations, or residential areas created by the businesses being granted consents.
- 3.3 There have been no changes in the legislation since the updated policy was last approved in 2015.

- 3.4 This policy has been produced following the Licensing Committee setting up a member led working group to revise the policy in line with the Council's current corporate objectives and best practice from other authorities.

4. What are the resource implications including non financial resources

- 4.1 There are no direct financial implications within this report.
- 4.2 Any costs associated with street trading are recovered through the fees set for the Street Trading Consents application and determination process.

5. Section 151 Officer comments:

- 5.1 There are no financial implications contained in this report.

6. What are the legal aspects?

- 6.1 On 15th March 1983 the Council resolved to adopt Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, "The Act", for the whole of its area which allows for the Council to adopt 'streets' in which trading requires the consent of the Council. This is the means of regulating street trading within the Council's area. On the 15th February 2011 the Council resolved to designate all streets in the Exeter City Council jurisdiction as 'Consent Streets' with the exception of a number of streets that are classified as either 'Licensed' or 'Prohibited'.
- 6.2 Schedule 4 of the Act sets out the legal definition of street which includes any road, footway, beach or other area to which the public have access without payment. The Act also defines Street Trading in Schedule 4 paragraph 1 (1) as the selling, or exposing or offering for sale, of any article (including a living thing) in a street.
- 6.3 The powers set out in Paragraph 7 of Schedule 4 of the Act provides for the Council to have a broad discretion as to whether to grant a consent and if so on what terms.
- 6.4 There is no statutory requirement to consult upon and or adopt a street trading policy however it is considered best practice to adopt such a policy and where the Council consults on such matters it must do so properly in accordance with the principles in the case of R v London Borough of Brent ex parte Gunning [1985] LGR 168. The principles are a) consultation must be carried out when proposals are in a formative stage, b) sufficient information is provided for intelligent consideration, c) adequate time must be given for a response and d) the product of the consultation must be conscientiously taken into account in making the decision.

7. Monitoring Officer's comments:

Members will note the content of this report and the legal comments above concerning the consultation which has taken place in order to inform the review of the Council's Street Trading Policy.

8. Report details:

- 8.1 The Licensing Committee set up a working group to reflect upon street trading in Exeter, how it is and what it should be like, and relate it to how it impacts upon the safety, vibrancy and choice within the city.

8.2 The Licensing Committee agreed that the review should focus on the following:

- To review the existing Street Trading Policy to determine what is or is not working well within the Street Trading Policy;
- Where could the Street Trading Policy be altered to increase vibrancy and choice;
- What good practice is there from other authorities and what lessons can be applied to develop Exeter's Street Trading Policy;
- How does Exeter's Street Trading Policy fit in with the Council's Strategic Plan.

8.3 The working group met on several occasions over the last 18 months, speaking to a number of expert witnesses regarding street trading in areas such as the city centre and in Public and Green Spaces. The group also carefully considered the difference between the Street Trading Policy and the City's Market Charter.

8.4 Following extensive research from Councillors and Officers, the revised policy presented with the report for consultation have focused on ten areas where the working group felt the policy either needed to be strengthened or required an update since the policy was last updated. These are: -

- a. **Mandatory requirement for basic DBS Checks on applicants and staff** – in line with other Council's, the working group felt strongly that DBS checks should be introduced to enhance the Council's role in maintaining public safety.
- b. **An assessment framework for officers to be completed as part of the application process** – Birmingham City Council had an effective scoring matrix to be able to assess all applications in a consistent and transparent manner. This assessment would then be presented as an appendix to the reports pack, to aid the Licensing Sub Committee in determining all initial applications.
- c. **Enhanced health and safety requirements** – the working group were keen to see an enhanced focus on all aspects of health and safety, but in particular with respect to gas and electrical safety. Therefore, a number of mandatory requirements have been proposed to ensure that safety checks are being conducted.
- d. **Schools and Educational Establishments** – the working group were keen that the policy should provide greater clarity with respect to trading around schools and educational establishments. The proposed policy seeks to prohibit any trading within a 250m radius of a school between Monday to Fridays 08:00 and 16:00 hrs during term times.
- e. **Emissions Standards** – the Council has a clear aspiration to be Net Zero by 2030. As part of this aspiration, it is seeking that its policies are also seeking to meet the same commitment. Therefore, the policy sets out a proposal for all Street Traders to be zero emissions by 2030.

- f. **Enhancement of Green Spaces** – the policy seeks to remove key green spaces from the Policy so that the operational team responsible for these areas will become responsible for authorising traders within these locations. This seeks to enhance the vibrancy and safety of these locations and prevents traders that wish to use these areas from having to obtain both a licence from the operational teams and licensing, thereby removing cost and duplication.
- g. **Power Sources** – Exeter City Council has committed to the principles of Net Zero 2030. Therefore, preference will be given to applications that are able to demonstrate using renewable energy sources and reducing carbon emissions, particularly whilst idling.
- h. **Greater diversity in food offering** – The proposed policy will see a preference given to those applicants offering locally sourced food, include plant-based food in their menus and diverse food offering for customers.
- i. **Waste Management** – the revised policy seeks to ensure that correct waste management arrangements are in place and litter resulting from the street trading consent is cleared away. The revised policy is seeking applicants to demonstrate recycling of waste wherever possible.
- j. **Clear guidance regarding horns and chimes** – to reduce annoyance on communities, clear guidance has been drawn up regarding horns and chimes used by mobile traders.

8.5 The consultation ran from 22 March 2024 until 31 May 2024 (10 weeks). All those with a current consent to street trade were written to as well as several identified statutory partners and other stakeholders that had been identified. Information was published on the Council's consultation web pages and a notice was also published in the local newspaper.

8.6 A full list of all responses received is attached as Appendix A, along with comments to those responses.

9. How does the decision contribute to the Council's Corporate Plan?

9.1 The policy recognises the importance of street trading to the city and that it can add to the vibrancy and vitality contributing positively to the Council's corporate plan of a prosperous local economy, healthy and active city, building great neighbourhoods and communities and a net zero carbon city.

10. What risks are there and how can they be reduced?

10.1 The main risk is not to have an open and transparent consultation process where those persons affected by the proposed policy have an opportunity to have an input into it.

10.2 To minimise this risk a Consultation Plan is set out at Appendix A and the consultation results will be presented to the Licensing Committee on 30 July 2024.

11. Equality Act 2010 (The Act)

- 11.1 Under the Act's Public Sector Equalities Duty, decision makers are required to consider the need to:
- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
 - advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
 - foster good relations between people by tackling prejudice and promoting understanding.
- 11.2 In order to comply with the general duty authorities must assess the impact on equality of decisions, policies and practices. These duties do not prevent the authority from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.
- 11.3 In making decisions the authority must consider the potential impact of that decision in relation to age, disability, race/ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant women and new and breastfeeding mothers, marriage and civil partnership status in coming to a decision.
- 11.4 In recommending this proposal, positive impacts have been identified with respect to those with disabilities and those in vulnerable age groups.

12. Carbon Footprint (Environmental) Implications:

- 12.1 The policy review seeks to have positive carbon/environmental impacts arising from the revised policy.

13. Are there any other options?

- 13.1 An option that the Council could take is un-adopting the relevant legislation so there is no control over street trading within the city. Whilst this would remove regulation it would also remove any control of standards and would allow any trader to trade on land where the prior permission of the landowner is not required, or they have the consent of the landowner.
- 13.2 Excluding some streets that are currently consented. To achieve this would require the council to go through the requisite legal process. This would mean that unless designated as prohibited anyone could trade in these areas. For areas where the prior consent of the landowner is required this could be potentially regulated through robust booking procedures but would mean anyone could trade on streets where permission is not required
- 13.3 In the main the de-regulation options will mean the Council has less ability to protect public safety and prevent adverse impacts on premises-based businesses and residents in the City.

Director: David Bartram

Author: Simon Lane, Service Lead – Environmental Health and Community Safety
Nigel Marston, Principal Licensing Officer

Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

- Local Government (Miscellaneous Provisions) Act 1982

Contact for enquires:
Democratic Services (Committees)
Room 4.36
01392 265275