

Gloucester City Council

Meeting:	Licensing and Enforcement Committee	Date:	19 March 2013
	Council		21 March 2013
Subject:	Street Trading – Review of Street Trading Policy		
Report Of:	Chair of the Licensing and Enforcement Committee		
Wards Affected:	All		
Key Decision:	No	Budget/Policy Framework:	Yes
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Appendices:	1. Proposed Revised Criteria for determining Street Trading Applications		

FOR GENERAL RELEASE

1.0 Purpose of Report

1.1 The purpose of this report is to inform Members of the proposed changes to the Council's Street Trading Policy, required to comply with the European Services Directive 2006/123/EC of 12 December 2006 and the Provision of Services Regulations 2009.

2.0 Recommendations

2.1 Licensing and Enforcement Committee is asked to **RESOLVE** that

(1) The "*Criteria for Determining Street Trading Consent Applications in the City of Gloucester*" are revised to remove the two criteria as set out in paragraph 5.2 and 5.3 of this report in respect of determining applications for Street Trading Consents.

2.2 Licensing and Enforcement Committee is asked to **RECOMMEND** that

(1) The delegated function to consider appeals against officer decisions on street trading applications should be delegated to the Licensing and Enforcement Sub-Committee

AND

(2) The delegated function to determine and approve street trading policies should be delegated to the Full Licensing and Enforcement Committee.

2.3 Council is asked to **RESOLVE** that

(1) The delegated function to consider appeals against officer decisions on street trading applications is delegated to the Licensing and Enforcement Sub-Committee.

AND

(2) The delegated function to determine and approve Street Trading Policy is delegated to the Full Licensing and Enforcement Committee.

3.0 Background and Key Issues

3.1 In accordance with Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982, Gloucester City Council has adopted criteria in a Street Trading Consent scheme, where Street Trading covers the selling or exposing or offering for sale of any article in a designated street.

3.2 Street Trading covers a wide range of outdoor retail and catering activities undertaken in public streets. It includes familiar sights such as flower sellers, ice cream vendors, fancy goods, souvenir stalls and a variety of hot and cold catering activities.

3.3 On the 19th February 2009 Council designated all streets in Gloucester City as Consent Streets with effect from 31st March 2009. At the same time, the Council adopted a scheme to determine Street Trading Consent applications. A Street Trading Consent is therefore required before any person can trade on any street in Gloucester City unless the trading is specifically made exempt under Schedule 4 of the Act.

3.4 Under the Act, the meaning of “street” is given a wide definition, going beyond being just highway, to include:
“(i) any road, footway, beach or other area to which the public have access without payment; and
(ii) service areas as defined under Section 329 of the Highways Act 1980, and also includes a part of a street.”

3.5 The Directive was transposed into English Law by virtue of the Regulations to take effect from 29 December 2009. The Directive and Regulations regulate authorisation schemes, which include those relating to Street Trading Licenses and Consents. Such schemes must be based on criteria which preclude a competent authority from exercising its power of assessment in an arbitrary manner. The criteria must be:

- a) non-discriminatory
- b) justified by an overriding reason relating to the public interest
- c) proportional to that public interest objective
- d) clear and unambiguous
- e) objective

- f) made public in advance and
- g) transparent and accessible.

- 3.6 In addition, under Section 21(1), a competent authority must not make access to, or the exercise of, a service activity subject to:
- (e) The case by case application of an economic test making the granting of authorisation subject to –
 - i) proof of the existence of an economic need or market demand,
 - ii) An assessment of the potential or current economic effects of the activity, or
 - iii) An assessment of the appropriateness of the activity in relation to the economic planning objective set by the competent authority.
 - (f) The direct or indirect involvement of competing operators, including within consultative bodies –
 - i) in the granting of authorisations, or
 - ii) in the adoption of other decisions of the competent authorities.
- 3.7 All determinations must be justified by reasons of public policy, public security, public health or the protection of the environment.

- 3.8 The Act is also not compatible with the Directive and Regulations and therefore Central Government are conducting a process to review and amend this and related legislation. The Department for Business and Innovation Skills (“BIS”) have reviewed the current legislation governing Street Trading and Pedlary and more recently consulted on some proposals and draft regulations to the UK Government. BIS have analysed the current provisions against the requirements of the Directive and the Regulations. Their proposals include removing criteria that consider business competition and market demand.

4.0 Alternative Options Considered

- 4.1 There is no alternative option, because if the Council retain and continue to use the current criteria for assessing street trading applications, the Council will contravene the Regulations and Directive. Already, in respect of individual applications, the Council is advised to disregard the offending provisions. It is also misleading for the Council to give the impression that objections could be based on the offending provisions. Failure to comply with the requirements could leave the Council open to challenge through judicial review.

5.0 Reasons for Recommendations

- 5.1 The current criteria for determining Street Trading Consent applications, has been revised to ensure that it is compatible with Articles 10 and Article 14 of the Directive which are now transposed into English Law via the Regulations. One of the key changes reflected in this legislation includes the prohibition of criteria that consider business competition and market demand.
- 5.2. Within the Council’s current Street Trading policy, the criteria for determination states:

- *The proposed use shall be compatible with any other nearby traders and businesses. It shall not be in direct competition, in terms of goods primarily sold, with nearby shops, restaurants or hot food take-aways (Note: nearby businesses and trader may be consulted on application).*
- *The trader shall provide a service, which is of benefit to the public and which enhances the area, by bringing in new products or adding to the vitality of the area/shopping centre.*

5.3. The above criteria clearly do not comply with the Directive and the Regulations and should therefore be deleted from the Council's 'Criteria for Determining Street Trading Consent Applications in the City of Gloucester'. The Licensing and Enforcement Committee are recommended to remove these two criteria and continue to use the remaining current set criteria for determining Street Trading Consent applications as found in Appendix 1.

5.4. The legislation concerning Street Trading 'Consents' does not require an appeal process, however, it is good practice consider representations regarding refusals from aggrieved applicants and the Services Directive supports this. Referring such matters to the full Licensing and Enforcement Committee each time an application is refused, and can delay the final response to these appeals due to the timescales that the Full Committee meetings are held. It is therefore recommended that this function is delegated to the Licensing and Enforcement Sub-Committee instead. This approach will maintain a fair hearing for applicants, but will be quicker for the Council to determine with shorter time periods for sub-committee meetings to be set.

6.0 Future Work and Conclusions

6.1 The Food and Licensing Service will be following the progress on the changes to the legislative framework; however, it is not anticipated that such legislation will be available until at least 2015. Once new legislation is in force, the Council's policy for Street Trading will be reviewed again at that time.

6.2 There will also be a need to review the current Street Trading fees. This review is planned to take place once Street Trading is referred to the Food and Licensing Service. That way any changes to the administration process can be considered and reflected in the fees set.

6.3 The Constitution is under a formal review and the revised version takes into account that the Food and Licensing Service will be assessing and issuing Street Trading Consents and/or Licences in the future. The following delegations will apply once the revised Constitution is approved (grey highlight indicates changes):

Activity	Delegation
To assess applications for Street Trading.	Licensing Enforcement Officers and Food Safety Officers

To determine the applications and issue Consents and/or Licences and determine the fees.	Food and Licensing Service Manager
To consider representations/appeals against officer refusals and variations to conditions for Street Trading Consents and/or Licences.	Licensing and Enforcement Sub - Committee
Authorised to discharge any function of Full Council/Committee or Executive for Street Trading	Corporate Director for Services and Neighbourhoods
Receive reports, determine and approve policy in relation to street trading	Licensing and Enforcement Committee
Sub-delegate functions relating to Street Trading Consents	Full Council

- 6.4 The application process for Street Trading Consent applications will not change; however, given the amendments to the delegated authority, there will no longer be an appeal process to the 'Full' Licensing and Enforcement Committee where an application is refused. The Food and Licensing Manager will decide upon applications that have received objections and notify the applicant if their application is refused.
- 6.5 Currently, applicants have the option to make an appeal to the Licensing and Enforcement Committee against Officer refusals to grant applications for Street Trading Consents. Members are recommended to delegate this function to the Licensing and Enforcement Sub-Committee, and also recommend to Full Council that they delegate the approval of Street Trading Policies to the (Full) Licensing and Enforcement Committee.
- 6.6 Street Trading is an important component of Gloucester's City Centre. It can have some very positive benefits by adding colour, animation and vitality to Gloucester's shopping streets complementing the "high street" shopping offer. However, inappropriate street trading can have negative impacts such as detracting from the brand of the City as a shopping destination, causing obstructions and impacting on other traders.
- 6.7 Members are referred to the recommendations under paragraph 2.1 of this report.

7.0 Financial Implications

- 7.1 Under the Provision of Services Regulations 2009, any charges provided for by a competent authority which applicants may incur under an authorisation scheme must be reasonable and proportionate to the cost of the procedures and formalities under the scheme and must not exceed the cost of those procedures and formalities.

7.2 Fees and Charges will be determined by the Food and Licensing Service Manager, in consultation with the Financial Services Manager.

(Financial Services have been consulted in the preparation this report.)

8.0 Legal Implications

8.1 The legal implications are detailed in the main body of the report.

(Legal Services have been consulted in the preparation this report.)

9.0 Risk & Opportunity Management Implications

9.1 Risks associated with public safety and crime prevention will now be fully appraised through proposed consultation process.

10.0 People Impact Assessment (PIA):

10.1 A full predictive impact assessment has not been undertaken for this report because the deletions recommended for the criteria to assess street trading consents will not have any actual or potential negative impact on customers and staff. This revision will support the provision of services in Gloucester by ensuring a fairer and more accessible application process. Therefore, a full PIA was not required.

11.0 Other Corporate Implications

Community Safety

11.1 Community Safety will be considered within context when each application is considered.

Sustainability

11.2 None

Staffing & Trade Union

11.3 None

Background Documents:

European Services Directive 2006/123/EC

BIS Guidance for Business on the Provision of Services Regulations October 2009

Provision of Services Regulations 2009

Schedule 4, Local Government (Miscellaneous Provisions) Act 1982