

Ward: ALL

Portfolio: COMMUNITY HEALTH

FROM: CLLR NIGEL TAYLOR **Date:** 26 SEPTEMBER 2016

SUBJECT: IMPLEMENTATION OF STREET TRADING CONTROLS

<p>Summary:</p>	<p>Street trading means selling items in a street, and can range from ice cream vans operating to fruit and vegetable stalls trading. These traders can bring benefits to the community, but a lack of proper regulation can bring problems.</p> <p>Mendip adopted the legislation to control street trading on 16th May 1994. Councils must then 'designate' the places to be controlled to exercise their powers.</p> <p>Through effective implementation of controls we hope to:-</p> <ul style="list-style-type: none">• administer this law in a way that everyone can understand.• make clear how our approach is beneficial to our district.• offer a professional and accessible service for businesses, individuals and residents alike. <p>Our primary aims in doing so are to:-</p> <ul style="list-style-type: none">• Prevent obstruction of roads and footways and so promote the safety of people using them.• Enhance the character and offer of our local towns, but not to the detriment of our existing businesses.• Balance any genuine benefits created by this trading against any adverse effects of nuisance or annoyance to the local community. <p>We propose to designate all streets in the Mendip District area as consent streets. We also propose a draft fees structure to administer the regime and a draft Street Trading Policy.</p> <p>We have now completed two phases of consultation on our proposals:-</p> <ol style="list-style-type: none">1. Creating a new Street Trading Policy.2. Designating the entire administrative area of Mendip District Council for the purpose of controlling street trading through the issue of consents.3. Providing a draft scale of charges for this service.
------------------------	--

	<p>The Council will rescind any existing designations of streets for street trading purposes.</p> <p>Licensing Board considered the responses from both phases of consultation and makes recommendation to Full Council to carry through this work.</p> <p>As it is a new service covering the whole district, it seems appropriate that Full Council consider the matter for final approval.</p>
<p>Recommendation:</p>	<p>Members are asked to approve the following:-</p> <ol style="list-style-type: none"> 1. The draft Street Trading Policy attached at ANNEX 1. 2. The draft schedule of charges for the service attached at ANNEX 2. 3. Confirmation of the Council's intention to designate all the streets in the Mendip District Council area for the purpose of street trading control through the issue of consents. This would be carried out in manner set down in ANNEX 3. 4. The rescinding of any current designations of streets that might be in force. <p>Members are asked to provide delegated authority to the Principal Licensing Officer in conjunction with the Chair of Licensing Board to make any minor amendments that might be required. This would allow any mistakes or minor omissions to be corrected, where appropriate.</p> <p>In addition, the Council must publish its intention to designate the streets in this manner and then consider any responses it receives. Delegated authority is requested for Licensing Board to consider any responses and to make that final decision whether to designate the streets after that statutory period. This means that once Full Council approves the above matters, then in accordance with ANNEX 3, the Council will give notice of its intention to designate all of our streets. It must consider any comments made during the statutory period of one month that follows.</p>
<p>Direct and/or indirect impact on service delivery to our customers and communities</p>	<p>We do not currently deliver a street trading licensing service. This has led to problems for local businesses, where unregulated street trading has taken place in our towns. It is imperative that we provide this service for the benefit of our local businesses and our local communities.</p> <p>There will be an increased demand on the Licensing Team, particularly in the initial period. There will be a revenue stream from the service. However, we do not know the level of demand for this particular service.</p> <p>The consultation process has given an indication of the demand for this service. This allows us to better plan for the launch of the</p>

	<p>service.</p> <p>The Licensing Service will be outsourced to Capita from 1st January 2017 as part of the 5 Councils partnership.</p>
Financial Implications:	<p>The most important financial considerations are the following:-</p> <ul style="list-style-type: none"> • Licence fees would be charged for applications, although the Council can agree exemptions or waivers for certain classes of application. • Street trading fee income must only be spent on delivering that service. This must also be considered before exemptions or waivers are agreed. • The current staffing level for the Licensing Service may not be sufficient to deliver the new service, but fee income could fund additional staff.
Legal Implications:	<p>The Council must comply with all legal requirements in designating streets. Procedural mistakes/ errors in designating streets could invalidate decisions. Subsequently the Council could be challenged on fees if it levied them without legal power to do so.</p>
Crime and Disorder Implications:	<p>None presented.</p>
Equalities Implications:	<p>An Equality Impact Assessment is produced, and is attached at ANNEX 4.</p>
Risk Assessment and Adverse Impact on Corporate Actions:	<p>If these powers are not used properly this could damage the reputation of the Council. This is because the problems associated with unregulated traders are unlikely to be dealt with through other legal processes.</p> <p>There is no good reason for the current 'status quo' to continue, as it is simply not good governance.</p>

INTRODUCTION AND BACKGROUND

Street trading in England and Wales are controlled through the Local Government (Miscellaneous Provisions) Act 1982. Street trading is the act of selling or offering items for sale in a street.

Mendip adopted the legislation to control street trading on 16th May 1994, as most councils have done. However, councils must take a further step and 'designate' the places to be controlled to exercise their powers fully.

Mendip sought to designate specific areas of the district to do just that. The intention was to control street trading in town centre areas only, with town councils to administer the regime and the district enforcing it. This was well intentioned, but led to inconsistencies and ultimately failings in the exercise of this power.

Therefore, we do not currently exert control on street traders. This situation is untenable for many reasons, in particular because existing businesses could be trying to compete with street traders without the same overheads and costs. This seems unfair when the Council could regulate those traders properly and promote the intentions of the legislation.

There could be risks to public safety created by street traders. This could range from stalls located in unsafe positions to faulty goods to poor food hygiene. The Council must act to ensure a level playing field for all of our businesses and to promote the other statutory purposes of the legislation.

Our 'new' service will do the following, as these are the statutory purposes of the controls:-

- Prevent obstruction of roads and footways and so promote the safety of people using them.
- Enhance the character and offer of our local towns, but not to the detriment of our existing businesses.
- Balance any genuine benefits created against any adverse effects of nuisance or annoyance to the local community.

However, to achieve this we must designate the places to be controlled. This means rescinding any current designations, and passing a new resolution to designate the areas to be controlled. There is an argument that we need not revoke the previous decisions. However, to ensure we comply fully with all requirements we will do this in parallel with the new designation process and so will follow the same process of notification of our intentions.

CONSULTATION

We have now carried out two phases of consultation on our plans. We have done the following:-

1. We publicised our plans on our website throughout each phase of consultation.
2. We held two open public sessions to explain our plans at Wells Town Hall.
3. We held a similar session in Shepton Mallet.
4. Hard copies of the paperwork have been left at Council Access Points.
5. All Members and Parish Clerks have been emailed the information with a link for further information.
6. A sweep of the district was done to contact the majority of our current roadside food traders.

7. Notification of this process was given to the Police, Highways and other internal departments/ managers.
8. Email notification was given to registered food businesses.
9. The Mendip Food Team circulated information where appropriate in the course of their visits to businesses.

From the first phase in April this year we received a great deal of comment, much of it against our proposals.

Licensing Board considered that feedback in early May and agreed to set up a Working Party to consider our plans and this feedback in more detail. After a short delay, the Group met on 11th July 2016 and consisted of Councillors Peter Bradshaw, John Coles, Edward Drewe and David Van Dyke. The Group was supported by the Principal Licensing Officer and Licensing Officer, Jack Godley; and Councillors Nick Cottle and Simon Davies who were part of the Group, but unavailable to attend the final date.

The Group agreed to make significant changes to the Street Trading Policy and Fees Schedule. They did this following careful consideration of the representations against our plans. Following the meeting a small number of other consequential amendments were made by officers.

We then entered the second phase of consultation on the amended proposals. This process started on 21st July and ran for five weeks until 25th August. However, the level of adverse feedback to the proposals has reduced significantly. These responses are attached at ANNEX 5.

In the first phase of consultation we received over sixty representations. In the second phase, we have received less than ten, many of which are supportive of our revised plans. We did receive a small number of representations in May based on the first drafts that we had produced, but which were not considered at Licensing Board as they were received after the meeting. These responses were considered by Licensing Board when it met following the second phase of consultation. Board Members were made aware that the comments received related to the previous version of the Policy which is no longer being proposed.

NEXT STEPS

In addition, the Council must publish its intention to designate the streets and then consider any responses it receives. Licensing Board will consider any responses and make that final decision whether to designate the streets after that statutory period. This means that once Full Council approves the above matters, then in accordance with ANNEX 3, the Council will give notice of its intention to designate all of our streets. However, it must consider any comments made during the statutory period of one month that follows.

After considering any final comments made to it, it should then actually approve the designation of all streets to take effect following the minimum statutory period. The Council will give notice of this fact, and this notice would confirm the start date for street trading control across the Mendip District area.

(To this end, application forms and guidance will be available from the council's website from 6 weeks prior to the above start date. This will allow service users to make their applications in good time prior to the start date for the regime. Provided an application is received prior to the start date in December, then it will be deemed as granted, and the person could trade until such time as the application is properly determined. This should assist service users, particularly in the lead up to the busy festive period).

KEY ISSUES

The level of negative feeling regarding our redrafted proposals has reduced dramatically, but some concerns remain. These issues were considered by Licensing Board, and led to further changes being made to the final drafts. These are as follows:-

- A further local exemption is added for 'managed shopping centres' to account for trading that might be done at Clarks Village and other privately managed shopping centres.
- The criteria for applicant's photographs is changed slightly.
- Statutory declarations for applicants are removed, and replaced by relevant wording on application forms to deter dishonesty.
- More detail on application types is now provided.
- The grounds for considering applications are clearer and expanded.
- More detail is provided on how the Council will consider the issue of competition.
- Clarity on gas safety issues is provided.
- Consultation periods are amended for applications.
- Further information static consents at commercial events is provide.

The Licensing Board approved the draft policy subject to those changes on 7 September 2016. Members also made it clear that they want to see guidance for applicants and other parties to the process.

REASONS FOR RECOMMENDATION

The recommendations below ensure that in the future the Council offers a professional and efficient street trading licensing service to businesses, individuals and the public. In doing so, it will promote the statutory purposes of the legislation for the benefit of all.

Some of the problems that currently exist, which we aim to mitigate are the following:-

1. Those that wish to trade have no security of tenure and another trader can take their 'pitch' without warning or notice.
2. Existing businesses have no protection from temporary traders that set up in their town.
3. Local people and businesses have no say in the type of traders that set up in their towns.
4. There are very few or no checks don on temporary traders in Mendip.

RECOMMENDATION

Members are asked to approve the following:-

1. The draft Street Trading Policy attached at ANNEX 1.
2. The draft schedule of charges for the service attached at ANNEX 2.
3. Confirmation of the Council's intention to designate all the streets in the Mendip District Council area for the purpose of street trading control through the issue of consents. This would be carried out in manner set down in ANNEX 3.
4. The rescinding of any current designations of streets that might be in force.

Members are asked to provide delegated authority to the Principal Licensing Officer in conjunction with the Chair of Licensing Board to make any minor amendments that might be required. This would allow any mistakes or minor omissions to be corrected, where appropriate.

Certain discretionary fees for the Licensing Service have been reviewed recently. With the exemption of the street trading fees, they have been approved by Licensing Board (as provided for in the constitution). It seemed appropriate to bring the fees for this service to Full Council, as it is considering the implementation of the regime as a whole.

The designation of streets could also have been dealt with by Licensing Board, as per the Constitution. However, as it is a new regime being adopted across Mendip it seemed appropriate to bring all these matters to Full Council together.

Contact Officer: Jason Kirkwood
Ext No: 334
E-mail: jason.kirkwood@mendip.gov.uk

Background Papers

- ANNEX 1 – DRAFT Street Trading Policy
- ANNEX 2 – DRAFT Schedule of fees for the service
- ANNEX 3 – Timeline and actions to implement the regime and draft public notice
- ANNEX 4 – Equality Impact Assessment
- ANNEX 5 – Second phase consultation responses