



<u>Committee and Date</u>
Strategic Licensing Committee
25 January 2017

<u>Item</u>
8
Public

## STREET TRADING POLICY CONSULTATION PROPOSALS

**Responsible Officer** Mandy Beever – Transactional and Licensing Team Manager

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### 1. Summary

- 1.1 The control of Street Trading is currently based on the regimes that existed within the previous District and Borough councils (South Shropshire District Council, North Shropshire District Council, Shrewsbury and Atcham Borough Council, Oswestry Borough Council and Bridgnorth District Council) prior to the formation of Shropshire Council ('the Council').
- 1.2 Street Trading is a function of the Council. However, under provisions in the Local Government Act 1972, the Council can delegate the responsibility for the function to Town and Parish Councils.
- 1.3 The administration of Street Trading includes the determination of Prohibited, Licensed and Consent Streets, the setting of fees, the administration of licenses and consents, and enforcement in the event of non-compliance.
- 1.4 Work has been undertaken to rationalise and align Street Trading controls across the whole administrative area of the Council. This has led to a draft Street Trading Policy ('the Policy') that members are now being asked to consider and approve for public consultation.
- 1.5 The aim of the Policy is to ensure that the Council can properly regulate those who trade in the street and not from within a business premises.

### 2. Recommendation

- 2.1 That the Committee approves, with any necessary amendments, the proposed Street Trading Policy 2017 – 2022 as set out in **Appendix A** and instructs the Transactional and Licensing Team Manager to commence an 8 week public consultation from 30 January 2017 to the 26 March 2017.

## REPORT

### 3. Risk Assessment and Opportunities Appraisal

- 3.1** The preparation and publishing of the Policy is not a legal requirement. However, it will help to ensure that the Council can properly regulate those who trade in the street and not from within a business premises. It will create transparency for all stakeholders providing the manner in which the Council intends to regulate Street Trading.
- 3.2** The main purpose of the report is to seek approval for a formal consultation. It is proposed to undertake the consultation through the Councils website and directly with relevant stakeholders including existing Street Traders, Parish and Town Councils, Highways England and Shropshire Council Highways Service.
- 3.3** Street Trading provisions are local in nature. Currently delegations exist in relation to Bishops Castle, Ludlow, Shifnal and Oswestry Town Councils. The consultation process will explore the opportunity to further delegate the responsibility for the Street Trading function to Parish and Town Councils. In addition, views will be sought to determine whether the existing Prohibited and Consent Streets are fit for purpose given the very different economic climate within which Street Trading is now undertaken compared with the climate that did exist when the legislation was originally adopted over thirty years ago by the previous District and Borough Councils.
- 3.4** Historically, the District and Borough Councils opted to designate streets as Consent rather than Licence Streets. Having considered the legislation and the practical implications of implementation it is recognised that the Consent Street provisions are administratively more straightforward and less burdensome on both the Council and applicants. However, it does limit the Street Traders right to challenge decisions that are made by the Council and limits the Councils ability to adequately scrutinise the suitability of applicants.
- 3.5** Given the safeguarding responsibilities that the Council clearly has, it is recognised that the Consent Street provisions limit the Council's ability to undertake sufficient checks for safeguarding purposes. Consequently, as part of the consultation process active consideration will be given to converting Consent Streets to Licence Streets and amending the draft Policy to discourage the designation and use of Consent Streets.  
Moving towards the designation and use of Licence Streets will have a positive impact on the Human Rights, including The Right to Life (Article 2), Right to a Fair Trial (Article 6) and Right to Respect for Private and Family Life (Article 8), of both applicants and their customers. On this basis, the recommendation contained in this report is compatible with the provisions of the Human Rights Act 1998 and is unlikely to result in any adverse Human Rights Act implications. However, this will be given further consideration as part of the consultation process.
- 3.6** The draft Policy currently proposes that the application process and requirements to obtain a Street Trading Consent mirror those required by the Street Trading

Licence. This approach will be important if the Council decides to retain Consent Streets. The Council may face a challenge on the robust nature of the proposed application process; however, it is deemed proportionate given the need to ensure applicants are suitable under the Councils safeguarding responsibilities.

- 3.7 An Equality and Social Inclusion Impact Assessment (ESIIA) is being considered and the feedback from the consultation process being proposed will form a key element to inform the ESIIA.
- 3.8 There is no anticipated environmental impact associated with the recommendation.

#### **4. Financial Implications**

- 4.1 There are no direct financial implications associated with the recommendation; however, there is clearly officer time required to undertake the process. The officer time and associated costs can be recovered through the consent/licence fees that are determined by the cost recovery fee setting process.
- 4.2 Licence fees will reduce if more Town and Parish Councils seek to take on responsibility for the Street Trading function. The extent of this cannot be determined until the end of the consultation. However, in 2014/15 Shropshire Council received 35 Street Trading applications and issued 31, with associated licence fees of £5,165. In 2015/16, 18 applications were received and 12 issued, with associated licence fees of £4,891.
- 4.3 If the function is undertaken by Town and Parish Councils, this will release staff resources to allow an improved focus on the complex details associated with other licensing regimes.

#### **5. Background**

- 5.1 The legal controls relating to Street Trading are contained in Section 3 and Schedule 4 of the Local Government Miscellaneous Provisions Act 1980. These include the designation of streets, setting of fees, the administration of licences and consents, and enforcement in the event of non-compliance.
- 5.2 Street Trading legislation is adoptive by the District, Borough or Unitary Councils for their particular areas. Where a local authority has adopted the legislation, it can then determine which streets if any, within its area are to be designated as Licence, Consent or Prohibited streets.
- 5.3 The former South Shropshire District Council, North Shropshire District Council, Oswestry Borough Council and Shrewsbury & Atcham Borough Council adopted the provisions and designated specific streets as Prohibited and Consent. These streets have remained as Prohibited and Consent by virtue of the Unitary Council process and are detailed in the draft Policy.

- 5.4** Bridgnorth District Council did not adopt the legislation and hence there are no designated streets in what was Bridgnorth District Council administrative area.
- 5.5** Under the previous District and Borough councils no Licenced Streets were designated. As a consequence, there are currently no Licenced Streets in the Shropshire Council Administrative Area.
- 5.6** Street trading means the selling or exposing or offering for sale of any article (including a living thing) in a street. Streets are designated as either prohibited, licenced or consent and they are defined as:
- ‘Prohibited Street’ means a street in which street trading is prohibited.
  - ‘Licence Street’ means a street in which street trading is prohibited without a licence granted by the council.
  - ‘Consent Street’ means a street in which street trading is prohibited without the consent of the council
- 5.7** Where a street has not been designated as either Prohibited, Licenced or Consent, the Council has no regulatory responsibility under Street Trading legislation and therefore, no permissions are required from the Council. However, Street Traders must always seek permission to use the land from the land owner. This includes Shropshire Councils Highways Service where the land is a highway.
- 5.8** It is illegal to trade in those streets designated as Prohibited Streets and the Council cannot subsequently give permission without removing the prohibition. In order to trade legally in a Licence or Consent Street, traders must apply for a Street Trading Licence or Consent and be granted permission to trade. Within the Council this process is undertaken by the Licensing Team.
- 5.9** Prior to submitting an application the Street Trader must ensure they have permission to use the land from the land owner. The permission to use the land is separate from gaining permission to trade.
- 5.10** Under provisions of the Local Government Act 1972, on the 9 December 2010 the Council delegated to Bishops Castle, Ludlow and Shifnal Town Councils all of its powers emanating from Section 3 and Schedule 4, Local Government (Miscellaneous Provisions) Act 1982 in respect of Street Trading. Similarly, on the 18 July 2013, the Council delegated these powers to Oswestry Town Council. The powers delegated to Oswestry Town Council relate to the Administrative Area of the former Oswestry Borough Council; however, current practice is such that the delegation relates only to the area for which Oswestry Town Council has responsibility.
- 5.11** Where Street Trading provisions are delegated, the decision on where and when Street Trading should be permitted can be exercised more locally. Should

additional Town and Parish Councils express an interest in taking on responsibility for the Street Trading function, this has the potential to enhance the localism of service provision.

- 5.12** Enabling the powers to be exercised at the most local level has clear benefits for Shropshire communities, allowing more informed decisions regarding how Street Trading is conducted according to the nature of the local area.
- 5.13** Whilst the draft Policy aims to provide a clear and consistent approach to the control of Street Trading, for the purposes of the consultation process it also aims to generate feedback in relation to the wider approach that the Council is considering, particularly around further delegation of the function to Town and Parish Councils, the move from Consent to Licence Streets and the increased focus on safeguarding.

## 6. Additional Information

None

<p><b>List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)</b></p>
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<p>Local Government (Miscellaneous Provisions) Act 1982 s.3 and Schedule 4</p>
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<p>Local Government Act 1972 s101 (1) (b)</p>
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<p>Strategic Licensing Committee, 5<sup>th</sup> June 2013: Street Trading – Delegation of Powers to Oswestry Town Council</p>
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<p><b>Cabinet Member (Portfolio Holder)</b></p>
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<p>Councillor Malcolm Price - Portfolio holder for Planning, Housing, Regulatory Services and Environment</p>
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<p><b>Local Member</b></p>
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<p>Applicable to all Members</p>
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<p><b>Appendices</b></p>
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<p>APPENDIX A – Draft Street Trading Policy 2017 to 2022</p>
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