

DESIGNATION OF STREETS UNDER THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

Responsible Officer Mandy Beever – Transactional and Licensing Team Manager
e-mail: Mandy.beever@shropshire.gov.uk Tel: 01743 251702

1. Summary

- 1.1 The purpose of the report is to seek the Committee's approval for the designation of streets as Prohibited, Licence and Consent in accordance with Local Government (Miscellaneous Provisions) Act 1982.
- 1.2 The administration of Street Trading includes the determination of Prohibited, Licence and Consent Streets, the setting of fees, the administration of licenses and consents, and enforcement in the event of non-compliance.
- 1.3 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').
- 1.4 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. Responsibility for the function emanating from Section 3 and Schedule 4, Local Government (Miscellaneous Provisions) Act 1982 in respect of Street Trading has been delegated to Bishops Castle, Ludlow, Oswestry and Shifnal Town Councils.
- 1.5 In practice Ludlow Town Council proactively administers and enforces the function. Bishops Castle and Shifnal Town Councils retain the function. Oswestry Town Council has requested that Shropshire Council resumes the function.

- 1.6** Work has been undertaken to rationalise and align Street Trading controls across the whole administrative area of the Council. This has led to proposed amendments to designated streets. In addition, a revised Street Trading Policy is currently being drafted in response to a public consultation that was undertaken between the 30 January 2017 and the 26 March 2017; this will form the subject of a future report to the committee and will include the agreed designated streets.

2. Recommendations

- 2.1** That the Committee approves, with any necessary amendments, the designation of streets as set out in **Appendix B** of the report.
- 2.2** That the Committee instructs the Transactional and Licensing Team Manager to publish and serve the relevant notices, setting out the designation of streets, as required by Section 2 of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
- 2.3** That where there are representations that object to the designation of streets as set out in **Appendix B** the Committee instructs the Transactional and Licensing Team Manager to bring a further report before the Committee to enable those representations to be considered in accordance with Section 2 of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
- 2.4** That where no representations or only supporting or neutral representations are received, the Council resolves through delegated authority granted to the Strategic Licensing Committee, to pass a resolution designating the streets as set out in **Appendix B** with effect from 1 April 2018 and further instructs the Transactional and Licensing Team Manager to make the necessary arrangements as set out within Section 2 of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 to give effect to the designations.

REPORT

3. Risk Assessment and Opportunities Appraisal

- 3.1** The Council adopted the Street Trading provisions under the Local Government (Miscellaneous provisions) Act 1982 for the whole of the Shropshire Council administrative area on the 26 January 2017.
- 3.2** Following the formal adoption, it is now necessary to ensure that the streets have the appropriate designation. For this purpose a consultation process was undertaken. Initially this related to a revised Street Trading Policy together with a review of the existing designated streets. This was to determine whether the existing Prohibited and

Consent Streets were fit for purpose; particularly given the very different economic climate within which Street Trading is now undertaken in comparison to when the legislation was originally adopted over thirty years ago.

- 3.3** A decision has subsequently been taken to separate the development of the policy from the designation of specific streets and as a result this report focuses on the designation. However, the responses to the consultation, as set out at **Appendix A**, relate to both on the basis that separation was impractical without losing the necessary context.
- 3.4** The responses to the consultation and officer comments are set out at **Appendix A**.
- 3.5** Ellesmere Town Council requested a number of amendments to their existing consent streets and that Church Lane, Love lane and St John's Hill become prohibited streets.
- 3.6** Oswestry Town Council requested all of the current consent streets in the town centre to become prohibited streets. In addition, the Town Council has requested that Shropshire Council resumes the function of the administration and enforcement of Street Trading that was previously delegated to it in 18 July 2013.
- 3.7** Shrewsbury Town Council responded in support of converting Consent Streets to Licence Streets on the basis that this would provide greater control over Street Trading applications. Officers support this change as Licence Streets provide a more robust basis on which to undertake sufficient checks for safeguarding purposes. Licence Streets provide for greater scrutiny as to the suitability of applicants thus strengthening the Councils ability to satisfy its safeguarding responsibilities by further protecting children, young persons and adults with care and support needs from harm. This also provides Street Traders with a fairer and more just system that allows them to challenge decisions that are made by the Council. Consequently, it is proposed to convert Consent Streets to Licence Streets and amend the proposed Policy to discourage the designation and use of Consent Streets.
- 3.8** Shrewsbury Town Council has requested that St Mary's Closed Church Yard, the entrance to Porthill Bridge off Porthill and the area adjacent to the Footbridge Access Ramp on the Frankwell Carpark be designated as Licenced Streets and that Street Trading activity be co-ordinated with other town centre events by way of only allowing Street Trading Activity to be permitted when the trading activity forms part of another planned event under the Shrewsbury Town Council's Premises Licence.
- 3.9** Highways England (HE) is the responsible authority for the Strategic Road Network (SRN) in Shropshire this includes the M54 motorway and A5, A49, A458 and A483 trunk roads. HE has requested that all SRN roads for which they hold responsibility become Licenced Streets.

This is in support of their work to ensure the safety and effective operation of the SRN. HE has indicated that this will encourage prospective businesses to invest in higher quality facilities and properly maintain the upkeep of their trading location.

- 3.10** HE advised that it would be beneficial if the introduction of Licenced Streets was extended across the county to all A and B class roads to provide a consistent approach to licensing and enforcement. This request was discussed with Shropshire Council's Highways and Transport Service. Shropshire Council's Highways and Transport Service supported this request and expressed a wish for all A and B roads for which they have responsibility to become Consent/Licenced Streets.
- 3.11** Shropshire Council's Highways and Transport Service also specified that the Lay-by near to the Wolfshead Roundabout on the old A5 at Nesscliffe and all of Battlefield Way in Shrewsbury be designated as Consent/Licenced Streets.
- 3.12** In consideration of the requests identified in paragraphs 3.8 to 3.10 a further consultation was undertaken with businesses trading from the roadside. This consultation was undertaken between the 7 August 2017 and the 25 August 2017. Where it was possible to identify and locate the businesses concerned a letter was hand delivered explaining the impact of the proposed changes and set out the way in which traders could respond to the consultation.
- 3.13** A number of telephone enquiries and one written response sought clarification and officers provided appropriate responses. A further response concerned the fee payable; this will be taken forward as part of the fee setting process.
- 3.14** As a result of the consultation responses it is proposed that the streets will be designated as set out in **Appendix B**.
- 3.15** Given the safeguarding responsibilities that the Council has, it has been recognised that the Consent Street provisions potentially limit the Council's ability to adequately scrutinise the suitability of applicants and undertake sufficient checks for safeguarding purposes. Consent Streets also limit the Street Traders' right to challenge the decision made by the Council. Consequently, as part of the consultation process active consideration was given to converting Consent Streets to Licence Streets and to amending the draft Policy to discourage the designation and use of Consent Streets in the future. Responses received were largely silent in this respect; however, support for this approach was provided by Shrewsbury Town Council and no direct opposition was expressed.
- 3.16** Consequently, the drive for this change now comes from officers of the Council based on the positive impact that the change will bring in relation to the human rights of both applicants and their customers,

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). As a result, it is proposed that any street already designated as a Consent Street will become designated as a Licensed Street; this includes the newly designated streets proposed as part of the consultation responses.

- 3.17** Moving towards the designation and use of Licence Streets will have a positive impact on 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 recommendations contained in this report are compatible with the provisions of the Human Rights Act 1998 and are unlikely to result in any adverse Human Rights Act implications.
- 3.18** An Equality and Social Inclusion Impact Assessment (ESIIA) has been carried out and informed by the feedback from the consultation process. Currently the overall conclusions from the ESIIA are that the impact on the 'Protected Characteristic Groups and Other Groups in Shropshire' are in the 'low positive or negative impact' category. The ESIIA has been drafted throughout this process and will continue to be updated and brought before the Strategic Licensing Committee with the Street Trading Policy Report.

4. Financial Implications

- 4.1** There are direct financial implications associated with the recommendations. This relates to the costs associated with the legal requirement to publish details of the resolution on three occasions in a local newspaper. There is also officer time required to undertake the whole process. The officer time and associated costs can be recovered through the licence/consent fees that are determined by the cost recovery fee setting process.
- 4.2** 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. In 2016/17, 8 applications were received and 8 issued, with associated licence fees of £2,063. If the Committee accept the proposals as set out at **Appendix B** to this report there is likely to be an increase in Street Trading applications and associated licence fees that will be set on a cost recovery basis. This is due to the shift from town centre controls towards controlling all SRN and A and B Roads.

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.
- 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 Licence Streets were designated. As a consequence, there are currently no Licence 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, licence 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, Licence 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 and Transport Service or Highways England 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. However, based on the responses from the consultation there is no appetite for this function to be delegated to a more local level.

6. Additional Information

- 6.1** The recommendations make it clear that the resolution to designate the streets will only become effective where there are no objections received as part of the legal process. If objections are received this will come before the Committee for a final decision.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Local Government (Miscellaneous Provisions) Act 1982 s.3 and Schedule 4

Local Government Act 1972 s101 (1) (b)

Strategic Licensing Committee, 9th December 2010: Street Trading – Delegation of Powers to Ludlow Town Council

Strategic Licensing Committee, 5th June 2013: Street Trading – Delegation of Powers to Oswestry Town Council

Strategic Licensing Committee, 25th January 2017: Street Trading Policy Consultation

Cabinet Member (Portfolio Holder)

Councillor Robert Macey - Portfolio holder for Planning and Regulation

Local Member

Applicable to all Members

Appendices

APPENDIX A – Consultation Responses and Officer Comments

APPENDIX B – Table of existing streets and proposed amendments/additions