

## **ADOPTION OF STREET TRADING POLICY UNDER THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982**

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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** 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.
- 1.4** Ludlow Town Council is the only Town Council who currently undertakes the administration and enforcement of Street Trading.
- 1.5** The administration of Street Trading includes the determination of Prohibited, License and Consent Streets, the setting of fees, the administration of licenses and consents, and enforcement in the event of non-compliance.
- 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 and a new Street Trading Policy ('the Policy') which have been out for public consultation. The consultation was undertaken during the period of 30 January 2017 and the 26 March 2017.

- 1.7 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. Recommendations

- 2.1 That the Committee agrees, with any necessary modifications, that the proposed Street Trading Policy 2018 to 2023, as set out in **Appendix A**, is adopted by the Council and implemented with effect from 1 April 2018.

## 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 purpose of the report is to seek the Committee's support for the formal adoption of the Policy.
- 3.3 Street Trading provisions are local in nature. Currently delegations exist in relation to Ludlow and Oswestry Town Councils. The consultation process has explored the opportunity to further delegate the responsibility for the Street Trading function to Parish and Town Councils. Street Trading is currently undertaken in a very different economic climate than that which existed when the legislation was originally adopted over thirty years ago by the previous District and Borough Councils.
- 3.4 The responses to the consultation and officer comments are set out at **Appendix B**. There was no appetite from the Town and Parish Councils to take on responsibility for the Street Trading function and Oswestry Town Council has requested that Shropshire Council resumes the function that was delegated to it in July 2013. Ludlow Town Council will continue the administration and enforcement of Street Trading as set out in the streets listed in **Appendix C**.
- 3.5 Shrewsbury Town Council was the only consultee who responded regarding 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.

- 3.6** The Highway Authority for the Strategic Road Network (SRN) (Highways England) expressed support for the Policy. In addition, they made a request for the M54, A5, A49, A458 and the A483 trunk roads and attached lay-bys to be included in the list of Licence Streets designated for Street Trading. Furthermore, that a ‘blanket protection of all A and B roads was taken across the county’ to ensure a consistent approach.
- 3.7** In response to the request made by the SRN contact was made with Shropshire Council Highways in regard to the A and B roads for which they have responsibility. Shropshire Council Highways agreed with the SRN’s desire for a consistent approach to be taken and requested that all A and B roads and attached lay-bys coming under their administration were adopted.
- 3.8** The adoption of the Policy will also 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.
- 3.9** **Appendix C** contains the list of the streets designated as prohibited, licence or consent which come into effect from 1 April 2018.
- 3.10** The proposed Policy contains the application processes and requirements to obtain both a Street Trading Licence and Consent. The Consent process/requirements purposefully mirror those set out for a Licence Street. It is recognised that the Council may face a challenge on the robust nature of the proposed application process in relation to Consent Streets; however, the Act sets out that ‘the Council may grant a Consent if they think fit’ and in order to make this judgement it is deemed necessary and proportionate given the need to ensure applicants are suitable under the Council’s safeguarding responsibilities.
- 3.11** The Act provides a broad basis to request such ‘particulars as the Council may reasonably require’ in order to determine whether or not to grant or renew a Street Trading Licence. It is on this basis that Officers consider the information requested as part of the application process to be entirely lawful.
- 3.12** An Equality and Social Inclusion Impact Assessment (ESIIA) has been carried out and informed by the feedback from the consultation process. 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 is set out at **Appendix D**.

- 3.13** Compliance with the ‘Environmental Impact’ conditions that will be attached to Street Trading Licence/Consents will have a positive impact on the environment.

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

- 4.1** There are direct financial implications associated with the recommendation. This relates to the costs associated with the legal requirement to publish details of the resolution on four 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.

#### **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 1982. 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 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
- 5.3** 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 Council’s Highways Service or the Highway Authority for the Strategic Road Network (SRN) (Highways England) where the land is a highway.
- 5.4** 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.

- 5.5** 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.
- 5.6** 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.
- 5.7** 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 a separate report will be brought before the Strategic Licensing Committee.
- 5.8** 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** Formal consultation was undertaken for a period of 30 January 2017 to 26 March 2017. However, a period of informal engagement with key stakeholders was also undertaken from May to December 2016 to assist in the initial draft of the Policy.
- 6.2** A further period of informal engagement with existing businesses with permission to trade from land owned by Shropshire Council Highways Service and Highways England was undertaken during the month of August 2017. The additional consultation was undertaken to ensure that existing businesses were made aware of the request made by Shropshire Council Highways Service and the Highway Authority for the Strategic Road Network (SRN), to adopt motorways, all major trunk roads, A and B roads across the administrative area of Shropshire Council.

**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, 4<sup>th</sup> October 2017: Street Trading Adoption of Streets.

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

Strategic Licensing Committee, 25<sup>th</sup> 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 – Proposed Street Trading Policy 2018 to 2023

APPENDIX B – Consultation Responses and Officer Comments

APPENDIX C – List of the streets designated as prohibited, licence or consent which come into effect from 1 April 2018

APPENDIX D - Equality and Social Inclusion Impact Assessment (ESIIA)