



Shropshire Council
Legal and Democratic Services
Shirehall
Abbey Foregate
Shrewsbury
SY2 6ND

Date: 22nd September 2014

Committee:

Decision Making by Portfolio Holder for Business Growth, ipe and Commissioning (North)

Date: Tuesday, 2 September 2014

Time: 11.30 am

Venue: Room 1S 131, Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND

You are requested to attend the above meeting.
The Agenda is attached

Claire Porter
Head of Legal and Democratic Services (Monitoring Officer)

Members of Decision Making by Portfolio Holder for Business Growth, ipe and Commissioning (North)

Steve Charmley

Your Committee Officer is:

Penny Chamberlain Principal Committee Officer

Tel: 01743 252729

Email: penny.chamberlain@shropshire.gov.uk

AGENDA

1 **Market Policy** (Pages 1 - 12)

The Portfolio Holder for Business Growth, ip&e and Commissioning (North) will consider a report by the Director of Commissioning.

Contact – George Candler (01743 255003)

Note: Portfolio Holder Decision Making Sessions are not open to the public. However members of the public are welcome to submit a request to address or ask a question of the Member making the portfolio decision. Any request should be submitted in writing to the Chief Executive at The Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND. This is to ensure that the individual member has sufficient time to decide whether or not to hear such persons and if so the arrangements to be made. If you would like further details please telephone 01743 252729 or email penny.chamberlain@shropshire.gov.uk



Portfolio Holder Decision
Making Session and date/time

2nd September 2014 at 11.30
am

Item

1

Public

SHROPSHIRE COUNCIL MARKET RIGHTS POLICY, MARKET DRAYTON

Responsible Officer Tim Smith, Area Commissioner North
e-mail: Tim.smith@shropshire.gov.uk Tel: (01743) 252411

1. Summary

At its meeting of 2 May 2012 Cabinet agreed to the transfer of the market rights for Wem, Ellesmere and Whitchurch to the respective town councils. This has subsequently been successfully completed. The market rights are now only retained by Shropshire Council at Market Drayton and following a tender process the management of Market Drayton market was contracted to LSD Promotions Limited with effect from 2nd May 2012.

At its meeting of 14th November 2013 Cabinet strengthened Shropshire Council's position with regard to its exercise of rights to the market in Market Drayton. In particular it adopted the provisions of Part 111 of the Food Act 1984; this enables the Council to widen the scope of the rights granted by its historic charter to allow it to, amongst other things, decide the days and place of the markets which may otherwise be limited by the charter provisions. The Council also adopted Section 37 of Local Government (Miscellaneous Provisions) Act 1982; the adoption of Section 37 enables the Council to require that anyone intending to hold a rival temporary market including car boot sales, should provide the Council with at least one month's advance notice.

The report also advised that the Council should adopt a Market Rights Policy including an enforcement policy to support the protection of its right to defend its markets rights and to ensure good practice in Market Drayton. Cabinet approval is now sought for this policy.

2. Recommendations

Reasons for decision:

To confirm the Council's Market Policy for Market Drayton including licensing and charging arrangements.

The Portfolio Holder is asked to:

1. Approve a new Market Rights Policy to support the protection of the Councils right to defend its market rights in Market Drayton.
2. Provide the Area Commissioner North or equivalent senior officer with delegated authority, in consultation with local Members and other key stakeholders, to authorise and supervise the introduction of new markets in Market Drayton and to take all necessary action to finalise any contractual arrangements relating to such markets
3. Under delegations agreed by Council on 17 July 2014 as part of the Council's Charging Policy, note and agree the introduction of charges as detailed within the report which are recommended by the Director of Commissioning. These charges will be reported to Council as part of the 2015/16 fees and charges report later in this financial year.

REPORT

1. Risk Assessment and Opportunities Appraisal

The adoption of the market policy is intended to safeguard the Council's markets and their commercial viability. Without the agreement of a policy the Council may have difficulty in defending its right to protect its markets from "rival" and "unregulated" commercial markets that could potentially be set up in direct competition to the Council's markets.

The implementation of the policy provides potential additional work for Council staff and Members in terms of assessing, issuing and enforcing licenses, but we have tried to keep this to a minimum. Furthermore it is unclear at this stage how many applicants the Council will receive for market licenses, although this is anticipated to be very few.

2. Financial implications

A charge will be made for the issuing of licenses for commercial markets on a "cost recovery" basis. Costs have deliberately been kept to a minimum through the adoption of a "light touch" within which the onus is on the applicant to show that they meet all the necessary market licence requirements. Where licenses are issued for markets to take place on council premises further charges may be made. No charges will be made for markets held solely for charitable purposes.

Charges have been set with reference to existing market charges within Whitchurch, Ellesmere and Wem as follows:

- Minimum charge of £45.00 per market application - based on five pitches each 6 ft. long
- Rising by a further £8.00 per pitch – based on a 6 ft. pitch

Any potential liability to the Council will be mitigated through the requirement for market operators to indemnify the Council and to hold appropriate insurances as part of the issue of licenses.

Should there be enforcement issues at a later stage the policy states that within these circumstances the council may seek the recovery of costs.

3. Background to the adoption of a Market Rights Policy

Subsequent to previous Cabinet decisions Shropshire Council has transferred the rights to provide and administer markets for Ellesmere, Whitchurch and Wem to the respective Town Councils.

As the market rights are being retained with respect to the market in Market Drayton, Shropshire Council has been advised that it should introduce a Market Rights Policy including an enforcement policy to support the protection of its right to defend its markets rights. This is because, where a local authority enjoys the benefit of market rights and has established a market, then the local authority is entitled to hold that market without interference from another market unless an adequate defence exists. This means that the local authority may have a right of action against anyone attempting to set up a rival market without consent or where it can be proven that the rival market deprives the local authority of the benefit of its market.

The common law rule is that a local authority is entitled to a right of protection to its markets within a distance of six and two-third miles radius of where the markets are held. This distance may, in certain circumstances, extend over the boundaries of other local authorities.

The implementation of a European Services Directive in December 2009 makes it clear that any local authority seeking to rely on its rights to take action should have a clear policy framework in place that sets out the basis on which the local authority seeks to take action and provides a clear policy framework for the existence of a markets rights policy. In the absence of this Shropshire Council might struggle to assert its claims to its market rights and to prevent the operation of rival markets that might injure the weekly market.

A market policy for Market Drayton has been consulted on with:

- The National Association of British Market Authorities,
- Local elected Members
- Market Drayton Town Council
- Market Drayton Community Partnership
- Market Drayton Chamber of Trade
- LSD Promotions Ltd
- LSD Promotions Ltd – Wednesday and Saturday Street Market
- Barbers Auctioneers – Livestock Market

The draft Market Policy which is included within Appendix 1 applies equally to commercial and charitable markets but exempts markets held solely for charitable reasons from a charge.

4. Conclusions

The policy's primary concern is to safeguard the quality of the markets and their on-going commercial viability and value. In doing this the policy reflects the fact that Shropshire Council and its predecessor bodies has a proud history of operating the markets in Market Drayton and considers them to be a vital part of the social and economic fabric of the town.

<p>List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information) Transfer of Market Rights for Ellesmere, Wem and Whitchurch markets, Cabinet report 2 May 2012 Markets in North Shropshire: Update, Cabinet report 14 November 2013</p>
<p>Key Decision: Yes</p> <p>Included within Forward Plan: Yes</p> <p>If a Key Decision and not included in the Forward Plan have the General Exception or Special Urgency Procedures been complied with: N/A</p>
<p>Human Rights Act Appraisal The contents of this report are compatible with the Human Rights Act 1998</p>
<p>Environmental Appraisal None</p>
<p>Risk Management Appraisal N/A</p>
<p>Community / Consultations Appraisal The proposal to introduce a new market policy for Market Drayton has been consulted on with local Members, the Town Council and other stakeholders.</p>
<p>Financial Implications A charge will be made for issuing market licenses to commercial markets and this will be kept under regular review. Some officer time will be required to administer and monitor the issue of licenses</p>
<p>Cabinet Member: Cllr Steve Charmley, Business Growth, ip&e and Commissioning (North)</p>
<p>Local Members Cllrs David Minnery, Roger Hughes and <u>John Stuart Cadwallader</u></p>
<p>Appendices: Appendix 1 Shropshire Council Market Rights Policy, Market Drayton</p>

Declaration of Interest

- I have no interest to declare in respect of this report

Signed Date

NAME:

PORTFOLIO HOLDER FOR:

- I have to declare an interest in respect of this report

Signed Date

NAME:

PORTFOLIO HOLDER FOR:

(Note: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter.)

For the reasons set out in the report, I agree the recommendation(s) in the report entitled

Signed

Portfolio Holder for

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and pro-forma is returned to Democratic Services for processing.

Additional comment :

.....

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Note: If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, Head of Legal and Democratic Services, Chief Executive and the Head of Finance, Governance and Assurance (S151 Officer) and, if there are staffing implications the Head of Human Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Portfolio Holder: Your decision will now be published and communicated to all Members of Council. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication.

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Appendix 1

Shropshire Council

Market Rights Policy, Market Drayton

22 August 2014

Purpose of Market Policy

The purpose of this policy is to safeguard the quality of the markets and their on-going commercial viability and value. Shropshire Council (“the Council”) and its predecessor bodies have a long history of operating the markets in Market Drayton and consider them to be a vital part of the social and economic fabric of the town.

This Market Policy sets out the Council’s powers to manage and license markets within Market Drayton and its intention to license (“Market License”) all markets in the future through an application process. Markets held solely for charitable purposes will be exempt from any charges associated with it but will still require a license. For the purposes of this policy markets where only the pitch charges are donated to charity or a donation is made to charity will be considered as commercial markets.

The Council reserves its right to set up additional markets within the Market Drayton area at any time. Applications received from alternative market operators to run temporary markets within the Market Drayton area will be considered in light of the impact that such markets may have on the Council’s existing or planned future markets.

Background & Introduction

The Council enjoys the benefit of the right to operate, license and if necessary protect through legal action its markets from disturbance by rival markets set up within a 6 and 2/3 mile radius of Market Drayton (regardless of whether this is within Shropshire or not).

The right to hold markets in the town of Market Drayton were originally granted by Royal Charter from Henry III in 1247. The Council’s market rights were acquired by Deed from the successors in title to the Lords of the Manor to whom the original charter was granted. The charter allowed markets to be held in the town on a Wednesday in each week.

In order to strengthen the Council’s historic market rights the Council has adopted Part III of the Food Act 1984. Amongst other things this enables the Council to decide for itself the days and places of the markets and prevents the Council from being limited by the terms of the Charter as to when markets may be held.

Currently the commercial markets operated in and around Market Drayton under the control or with the consent of the Council comprise:

1. A street market (held in Cheshire Street and the High Street) held on Wednesdays and Saturdays.
2. An indoor market which is held in the Council owned market hall situated off Frogmore Road car park on Wednesdays and Saturdays.
3. A livestock market which is operated from the Agricultural Centre off Adderley Road.

To assist the Council in the protection of its market rights it has also adopted Section 37 of the Local Government (Miscellaneous Provisions) Act 1982. The adoption of Section 37 enables the Council to require that anyone intending to hold a temporary market (within a radius of 6 and 2/3rds of a mile), including car boot sales, should provide the Council with at least 28 days advance notice. Anyone intending to operate or permit a temporary market who fails to provide such notice will be guilty of an offence and may be liable to prosecution.

Further to this Policy, any temporary market that takes place within a radius of 6 and 2/3rds of a mile of Market Drayton will require a Market License from the Council. This Market License will be required irrespective of:

- i) the intended location of the proposed temporary market;
- ii) any permission granted by the owner of the land of the proposed temporary market site;

Any temporary market that takes place without such a Market License will be in breach of the law and may be subject to legal action.

Definition of a market within this policy

A temporary market is defined as a “concourse of buyers and selectors numbering five or more stalls, stands, vehicles or pitches”. Therefore if an event has less than five traders it will not be considered to be a market and will fall outside of this Policy.

This Policy is concerned with the licensing, setting up and operation of all temporary markets, including commercial markets, e.g. farmers’ markets, continental markets, seasonal markets and car boot or table top sales, and charitable markets, e.g. for social, sporting or political purposes and including church or school events, Christmas fayres, jumble sales, etc.

Licensing application, charging and other considerations

Details of the application process can be obtained from:

Shropshire Council
Community Engagement Team
Shirehall
Abbey Foregate
Shrewsbury
SY2 6ND
01743 253077
communityenablement@shropshire.gov.uk

Applications should be returned to this address.

The following information should be included within the application:

- The full name, address and contact details of the person intending to organise and to be responsible for the market
- The days on which it is proposed that the market shall be held and its proposed opening and closing times
- The site on which it is proposed to hold the market
- The full name and address of the owner of the site if they are not the person intending to hold the market
- Details of the nature of the market, whether commercial or charitable, the types of goods to be offered the number of stall, its layout, etc.
- Declaration of compliance with all statutory requirements and considerations including Health and Safety, Food Safety, Trading Standards and Planning. The applicant may be requested to provide a copy of their Risk Assessment
- Confirmation of adequate insurance in place or intention to obtain this prior to holding the market as detailed below

Regardless of the nature and type of the market (commercial or charitable) organisers shall make the necessary provisions to ensure compliance with all statutory requirements including planning consents. Organisers are also responsible for gaining the landowners permission.

Each application will be judged on its merit broadly having due regard to the balance of markets within Market Drayton, their commercial viability and their quality. Criteria by which market applications shall be evaluated will include:

- Nature and quality of detailed proposal, commercial or charitable intentions
- Any impact of the proposed market to established markets managed or licenced by the Council
- Evidence of insurance (or intention to obtain subject to the license being issued)
- Plans for the disposal of refuse and for leaving the site in a clean, tidy and undamaged condition

Applications should be received at least 28 calendar days before the proposed event. Any applications received within this period will not be considered.

In the event that a Market License is granted to an applicant to hold a market, the Council shall not be held liable for any damage or personal injury relating to or arising from the market howsoever caused and the applicant will be required to indemnify the Council against all claims, demands, costs, expenses, damages, etc. (whenever and however made) and will be required to produce evidence of a minimum of £5 million public and product liability insurance and where appropriate, employers liability and professional indemnity insurance.

The responsibility for making a decision on applications is delegated to the Area Commissioner (or other senior officer as advised) and a Local Elected Member, who will respond within 10 working days of a valid application being received. If the application is successful, the applicant will be advised of the charges (charges will only apply to commercial markets) and a market rights license will be issued. The Market License will detail the standards to be followed and responsibilities for both the operator and the Council.

The Council does not wish to subsidise the licensing of markets and will seek to recover its costs through the application of charges (for commercial markets). Charges will be kept under review by the Council and will be available from the address above.

Applicants should also note that in the event of the market operator wishing to use Shropshire Council owned premises or land they may be required to pay a separate site fee.

Permission for a temporary market is not given until a Market License has been issued by the Council (and the license fee paid if appropriate).

Monitoring, Non-Compliance and Enforcement

Markets and their operation may be monitored by the Council to ensure compliance with this Policy and the terms of any license issued.

If applicants/market operators do not comply with this Policy and the terms of their license the Council reserves the right to take action to resolve the issue including legal action if necessary. Actions may result in the Council's withdrawal of a license and the recovery of any costs (including legal costs) associated with defending its market rights and taking enforcement action against the applicant/market operator.

Comments, compliments and complaints

If a person wishes to appeal against a decision to allow or refuse an application with respect to a temporary market then such appeal may be submitted to the local Shropshire Council Members for Market Drayton and to the appropriate Shropshire Council Cabinet Portfolio Holder via the address referred to above.

The Council will deal with comments, compliments or complaints using its existing policy. If you wish to make a comment, compliment or complaint about any Market Rights Licensing matter please write or email providing us with your contact details and as much information as you can.

For further details of Shropshire Council's market policy and the application process visit:
www.shropshire.gov.uk
or contact the Community Enablement Team

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