



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
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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)</p> <p>Transfer of Market Rights for Ellesmere, Wem and Whitchurch markets, Cabinet report 2 May 2012</p> <p>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</p> <p>The contents of this report are compatible with the Human Rights Act 1998</p>
<p>Environmental Appraisal</p> <p>None</p>
<p>Risk Management Appraisal</p> <p>N/A</p>
<p>Community / Consultations Appraisal</p> <p>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</p> <p>A charge will be made for issuing market licenses to commercial markets and this will be kept under regular review.</p> <p>Some officer time will be required to administer and monitor the issue of licenses</p>
<p>Cabinet Member:</p> <p>Cllr Steve Charmley, Business Growth, ip&e and Commissioning (North)</p>
<p>Local Members</p> <p>Cllrs David Minnery, Roger Hughes and <u>John Stuart Cadwallader</u></p>
<p>Appendices:</p> <p>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.