

LICENSING HEALTH AND SAFETY AND GENERAL PURPOSES COMMITTEE**20 SEPTEMBER 2017**

REPORT TITLE	REGULATION OF STREET TRADING
REPORT OF	MANAGING DIRECTOR FOR DELIVERY

REPORT SUMMARY

The purpose of this report is for Members to consider the regulation of street trading in New Brighton and the adjoining coastal thoroughfares.

RECOMMENDATION/S

Members are asked to consider proposing a resolution to re-designate some of the streets in New Brighton and the adjoining coastal thoroughfares as Licensed Streets in accordance with the details set out in Appendix 2 of this report.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 The designation of streets as Licence Streets will provide the Council with a more effective control of street trading within the area of New Brighton.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 There is no provision for other options to be considered.

3.0 BACKGROUND INFORMATION

- 3.1 Street Trading is regulated by the Local Government (Miscellaneous Provisions) Act 1982 Part 3, Schedule 4. This legislation provides the Council with the power to allow street trading through a Street Trading Licence or a Street Trading Consent or alternatively to prohibit street trading.
- 3.2 The legislation provides that a District Council may by resolution designate any street in their district as:-
- a) a prohibited street
 - b) a licence street
 - c) a consent street
- 3.3 Streets designated as prohibited streets prevent any form of street trading and the Council do not consider any application for street trading in such a street. A person who engages in street trading in a prohibited street commits an offence.
- 3.4 Where a street is designated as a Licensed Street a trader would require a Street Trading Licence to trade lawfully in such streets. Where a street is designated as a Consent Street a trader would require a Street Trading Consent to operate lawfully.
- 3.5 A person commits an offence if they engage in street trading in a Licence Street without a Street Trading Licence or in a Consent Street without a Street Trading Consent
- 3.6 The matters to be considered by a District Council when determining whether to grant a Street Trading Licence or a Street Trading Consent are different. The grounds for refusing a Street Trading Licence are as follows:
- a) there is not enough space in the street for the applicant to engage in the trading in which he desires to engage without causing undue interference or inconvenience to persons using the street;
 - b) there are already enough traders trading in the street from shops or otherwise in the goods in which the applicant desires to trade;
 - c) the applicant desires to trade on fewer days than the minimum number specified in a resolution that may be passed by the council;

d) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;

e) the applicant has at any time been granted a street trading licence by the council and has persistently refused or neglected to pay fees due to the council for it or charges due to the council for services rendered by the council to them in their capacity as licence holder;

f) that the applicant has at any time been granted a street trading consent by the council and has persistently refused or neglected to pay fees due to them for it;

g) that the applicant has without reasonable excuse failed to avail themselves to a reasonable extent of a previous street trading licence.

3.7 In respect of a Street Trading Consent, the legislation provides that the Council may grant a Consent if they think fit. The legislation does not set out the same grounds for refusal of a Street Trading Consent as it does for a Street Trading Licence.

3.8 In July 2006 an Order was made under the Local Government (Miscellaneous Provisions) Act 1982, designating certain streets within the Borough as Prohibited Streets and all other streets as Consent Streets for the purpose of regulating street trading. The effect of this Order is that no trading is permitted within a Prohibited Street and that trading is only permitted in a Consent Street with the Council's permission.

3.9 The functions of street trading have recently become the responsibility of the Licensing Section of the Council who have undertaken a review of this current policy.

3.10 It has been identified that whilst the legislation provides that a council may categorise its streets as prohibited, licensed or consent streets, Wirral Council currently has only two designations. This means that if a Street is not designated as a prohibited street and included in the list shown in Appendix 1 it is a consent street. The consequence of this is that the council may not use the powers provided in the legislation to refuse an application for street trading that is provided when a street is designated as a licensed street. These powers are set out in paragraph 3.6 of this report.

3.11 Members will be aware that the increasing development of New Brighton is attracting interest from businesses wishing to operate various attractions. This has included a number of businesses wishing to trade in the streets of New Brighton.

3.12 The order designating Prohibited and Consent Streets covers all streets and beaches that are owned by the council. Although technically consents can be issued for trading in any Consent Street, historically applications have only been considered for static food and catering vans within predominantly commercial or industrial areas, most typically business parks and trading estates. Under existing legislation, an application can be legitimately received in relation to trading in any street or beach within the borough other than in a Prohibited Street.

- 3.13 The current criteria for evaluating applications does not adequately take into account coastal and retail locations that are adequately served by existing businesses in these locations.
- 3.14 Whilst encouraging street vendors, the council also seeks to create an environment that compliments premises based trading, is sensitive to the needs of residents, provides diversity and consumer choice, enhances the character, ambience and safety of local environments and complies with the relevant legislation. A review of the existing policy in respect of street trading should assist the council to create a street trading environment in the area of New Brighton which reflects the above.
- 3.15 In order to designate a street as either a prohibited street, a licence street or a consent street the Council must pass a resolution. Before passing a resolution the council must publish a notice of their intention to pass such a resolution in a local newspaper circulating in the area, serve a copy of the notice on the Chief Officer of Police for the area in which the streets are to be designated and on any Highway Authority responsible for the streets. The notice must provide for representations to be made within a period not less than 28 days.
- 3.16 After the Council have considered any representations relating to the proposed resolution they may pass such a resolution if they think fit. Following this determination the council must publish a notice that they have passed such a resolution in two consecutive weeks in a local newspaper circulating in the area. The first publication shall not be later than 28 days before the date specified in the resolution for the coming into force of the designation.
- 3.17 Members are asked to consider proposing a resolution to designate the streets in New Brighton and the adjoining thoroughfares as set out in Appendix 2. In accordance with paragraph 3.15 of this report, should Members resolve to propose such a resolution this intention will be published in a local newspaper and notice will be given to the Chief Officer of Police. Following a 28 day period of consultation any comments received will be reported back to this Committee.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are cost implications to the Council in undertaking this legal duty and this is recognised in the legislation which gives provision for the Council to recover the costs of administering the scheme and to ensure compliance through the charging of fees.

5.0 LEGAL IMPLICATIONS

- 5.1 A decision of this Committee may be subject to legal challenge.

6.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS

- 6.1 There are implications to the Council in undertaking this legal duty and this is recognised in the legislation which gives provision for the Council to recover the costs of administering the scheme and to ensure compliance.

7.0 RELEVANT RISKS

- 7.1 There will be a lack of effective control of street trading in the areas identified in New Brighton and the adjoining coastal routes.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 Consultation will be undertaken in accordance with paragraphs 3.15 and 3.16 of this report.

9.0 EQUALITY IMPLICATIONS

- 9.1 There are no specific implications arising from this report.

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APPENDICES

Appendix 1 – List of Prohibited Streets

Appendix 2 - Details of proposed Licensed Streets in New Brighton and adjoining coastal thoroughfares

SUBJECT HISTORY (last 3 years)

Council Meeting	Date