

REGULATORY AND GENERAL PURPOSES COMMITTEE**14 SEPTEMBER 2022**

REPORT TITLE	MARKET RIGHTS POLICY
REPORT OF	DIRECTOR OF LAW AND GOVERNANCE

REPORT SUMMARY

The purpose of this report is for the Committee to approve a Market Rights Policy a draft of which is attached at Appendix 1 to this report.

The Wirral Plan sets out a number of priorities for the council to consider and the contents of this report supports the priority of working for a prosperous, inclusive economy – helping businesses to thrive and creating jobs and opportunities for all.

This matter affects all Wards within the Borough.

RECOMMENDATION

The Regulatory and General Purposes Committee is recommended to consider and approve the draft Market Rights Policy attached at Appendix 1 to this report.

SUPPORTING INFORMATION

1.0 REASONS FOR RECOMMENDATION/S

1.1 Currently there is no policy as to how the council's Market Rights shall be administered and the council should make the most of all of its interests and assets. Whilst there is no statutory requirement to have a Market Rights Policy the benefit of having a policy is that it would provide transparency, consistency when considering applications to hold markets. An approved policy will also reduce the risk of challenges to decisions relating to markets.

2.0 OTHER OPTIONS CONSIDERED

2.1 The council could elect not to utilise its Market Rights. This option has been rejected as there may be an occasion when the council wishes to enforce its rights in the future but without a clear policy and procedure that decision could be at risk of challenge. Having clear guidance for decision making mitigates the risk of judicial review on individual decisions.

3.0 BACKGROUND INFORMATION

3.1 Wirral Council has the right to operate a market by virtue of:

- The Birkenhead Improvement Act 1833
- The Market and Fairs Clauses Act 1847
- The Birkenhead Corporation Act 1881

3.2 The Birkenhead Improvement Act 1833 authorised and empowered the Commissioners (predecessors to the Local Authority) to open and establish a Market in Birkenhead. The consequence of the legislation is that the council has the right to hold a Market granted by statute.

3.3 The Market and Fairs Clauses Act 1847 introduced a protection to markets preventing any other person holding a market within the common law distance.

3.4 The Birkenhead Corporation Act 1881 incorporated the Market and Fairs Clauses Act 1847. This means that the council has the right to prevent other markets taking place within the common law distance of $6\frac{2}{3}$ miles of Birkenhead Market (Defined Area).

3.5 There is no statutory requirement to enforce the council's Market Rights. However, by adopting a clear policy the council will have a clear audit trail if its discretion is exercised.

3.6 The adoption of a Market Rights Policy provides a framework which has a number of benefits which include:

- The protection of traders operating in Birkenhead Market.
- An opportunity for relevant stakeholders including Ward Councillors to provide input into applications for markets to be held in the borough.

- The ability to regulate markets through conditions attached to the Market Rights Licence.
- The ability for the council to be compensated for the use of its Market Rights.

4.0 FINANCIAL IMPLICATIONS

- 4.1 The costs of processing an application for a Market Rights Licence will be recovered through an application fee.
- 4.2 The policy allows for the payment of a licence fee on the grant of the Licence. This fee will be based on the size, frequency and potential commercial impact of the proposed market.

5.0 LEGAL IMPLICATIONS

- 5.1 The council's right to hold a market in Birkenhead is contained in the Birkenhead Improvement Act 1833 and the Birkenhead Corporation Act 1881. The 1881 Act incorporated the Market and Fairs Clauses Act 1847 this Act allows for the exclusive right to hold a Market.
- 5.2 There is case law in relation to the exclusive application of Market Rights. These confirm that the Common Law exclusive distance of $6 \frac{2}{3}$ miles applies where the Market and Fairs Clauses Act 1847 has been incorporated unless the Act granting the Market states otherwise.
- 5.3 The Council as the holder of the Market Right can grant permission for a market to exits within its Defined Area.
- 5.2 The granting of a Market Rights Licence does not remove the requirement for an applicant to obtain any other permission such as planning permission, land owner consent or other licensing requirements.

6.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS

- 6.1 The implementation of the policy will be an additional function of the Licensing Team which will have an impact on resources. Licensing Officers will monitor and periodically review the policy and will apply it in a manner which is consistent with other council processes

7.0 RELEVANT RISKS

- 7.1 If a policy is not approved and adopted this could result in a lack of transparency, accountability, certainty and consistency in respect of decision making. It could leave the council open to challenge as to how it exercises its Market Rights which may have a financial impact on the council.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 Consultation took place on the draft policy between 28 September 2021 and 22 December 2021. The draft policy was published on the council website and was

circulated directly to officer representatives of the following: Local Planning Team; Environmental Health; Asset Management; Highways; Culture Team, Regeneration, Asset Management as well as the Manager of Birkenhead Market and to known market operators.

8.2 In response to the consultation the Licensing Authority received feedback from 56 individuals/organisations. A summary of the comments received is shown in the table attached at Appendix 2 to this report. The responses received are attached at Appendix 3 to this report. The issues raised in the responses received relate to concerns about the impact of the policy on charitable organisations wishing to operate markets, the costs associated with having to obtain a licence and concern that applying the council's exclusive right to hold a market would restrict the ability of community groups to hold markets and have a detrimental impact on the economy of Wirral. In response to the concerns raised the draft policy has been amended to clarify those circumstances where a Markets Rights Licence would not be required.

8.3 In relation to each application for a Market Rights Licence the following stakeholders will be contacted for their comments:

- Local Planning Authority;
- Environmental Health;
- Asset Management;
- Highways;
- Ward Councillors;
- The Officer Responsible for Birkenhead Market;
- Culture Team
- Commercial Team
- Public Health
- Any other stakeholders which the Licensing Officer deems relevant

8.4 Following consultation in respect of temporary market applications, if no objections are received and there are no material considerations then the policy would allow Licensing Officers to issue a Market Rights Licence subject to conditions. If objections are received or there are material considerations the officer shall prepare a report outlining the comments of stakeholders and any material considerations and the application will be referred to the Regulatory Panel. The decision whether to grant a Market Rights Licence shall be entirely at the discretion of the Regulatory Panel.

8.5 Following consultation in respect of permanent market applications Licensing Officers will refer all applications to the Regulatory Panel for determination. The decision whether to grant a Market Rights Licence shall be entirely at the discretion of the Regulatory Panel.

9.0 EQUALITY IMPLICATIONS

9.1 The potential impact has been reviewed and it is considered that there will be no direct impact of the Market Rights Policy on any of the protected groups. There may be equality implications in the implementation of the policy and these will be subject to an Equality Impact Assessment at that time.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 Relevant scrutiny of applications will take place to minimise the impact on the environment.

11.0 COMMUNITY WEALTH IMPLICATIONS

11.1 Controlled use of markets can encourage economic and social benefits within communities and the draft policy aims to facilitate the positive benefits that markets can bring to Wirral whilst preventing abuse or over saturation. The aim of the policy is to ensure decisions regarding markets are consistent and transparent.

REPORT AUTHOR: Margaret O'Donnell
Licensing Manager
email: margaretodonnell@wirral.gov.uk

APPENDICES

Appendix 1 Draft Market Rights Policy
Appendix 2 Summary of consultation feedback
Appendix 3 Responses to the consultation

BACKGROUND PAPERS

Birkenhead Improvement Act 1833
Birkenhead Corporation Act 1881
Market and Fairs Clauses Act 1847
Pease and Chitty's Law of Markets & Fairs