

REGULATORY PANEL**28 APRIL 2023**

REPORT TITLE	APPLICATION FOR A MARKET RIGHTS LICENCE
REPORT OF	DIRECTOR OF LAW AND GOVERNANCE

REPORT SUMMARY

The purpose of this report is for the Regulatory Panel to consider an application received for the grant of a Market Rights Licence. The application is made by Kimberly Harper and relates to the premises known as Heswall Royal British Legion, 78 Pensby Road, Heswall, CH60 7RF.

RECOMMENDATION

The Regulatory Panel is recommended to determine whether or not to grant a Market Rights Licence to allow a permanent market to take place at Heswall Royal British Legion.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION

- 1.1 The Council has the sole right to operate a market in Birkenhead and has the right to prevent other markets taking place within the common law distance of 6 2/3 miles of Birkenhead Market. In accordance with the Council's Market Rights Policy an application for a permanent market must be referred to the Regulatory Panel for consideration.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 The Council do not exercise their rights to control the operation of a market within 6 2/3 miles of Birkenhead Market and do not request an application for a Market Rights Licence. However this is not considered to be an option as it would not be in accordance with the Council's Market Rights Policy. The Regulatory Panel may grant a Market Rights Licence to allow the market to take place as applied for, it may refuse the application or it may allow the market to take place under certain conditions determined by the Regulatory Panel which may include a defined period of time during which the licence has effect.

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 2/3 miles of Birkenhead Market (Defined Area).
- 3.5 On 27 September the Regulatory and General Purposes Committee resolved to adopt a Market Rights Policy. A copy of this policy is attached at Appendix 1 to this report. The policy sets out the criteria to be considered when determining whether to grant a Market Rights Licence. The criteria includes the following:

- The contribution the proposed market will make towards sustainable and local economic growth
- The location of the proposed market in relation to Birkenhead Market
- The similarity of the offer in relation to that of Birkenhead Market in terms of products on sale
- The opportunity for local businesses and organisations to participate in, or benefit from, the market
- The impact on footfall on the High Street and town centre
- The complementarity of the offer in relation to local traders or businesses and how any impact is overcome
- The details of the applicant, for example whether it is a local community group, local charity or other local not for profit organisation
- Feedback from the local community and stakeholders
- The impact of the market on the health and wellbeing of residents and visitors to Wirral
- The impact of the proposed market on net zero carbon principles
- The type, nature and provenance of products to be sold at the market
- The accessibility of the location by public transport/active travel routes
- Alignment with the council's existing policies and strategies e.g. Local Plan, Economic Strategy, Event Safety Advisory Group.

3.6 In accordance with the policy a permanent Market Rights Licence must have a renewal date of no longer than two years.

3.7 The application for a Market Rights Licence is as follows:

Permanent Market Licence:

Sunday to Saturday 10:00 to 16:00

The applicant has indicated that traders will set up from 09:00 and the site will be clear no later than 17:00.

Duration of Licence:

30 April 2023 to 29 April 2025

The applicant has indicated that they wish to start operating a Farmers Market once a month on a Sunday and will then seek to operate different types of Markets in the future on other days of the week.

The application is subject to three separate areas which include two areas in the car park to the premises and an area inside the premises. A copy of the application and the plans of the proposed areas to be licensed will be provided to the Regulatory Panel in advance of the meeting.

3.8 REPRESENTATIONS

The following representations have been received in respect of the above application.

HIGHWAYS

In respect of this application, concerns have been raised by Highways regarding the impact the market will have on the safety of parking and traffic conditions in the area. A copy of the representation from Highways will be provided to the Regulatory Panel in advance of the meeting.

COMMERCIAL TEAM

In respect of this application, concerns have been raised by the Commercial Team regarding the size of the proposed market which may have a negative impact on the town centre and local residents. A copy of the representation from the Commercial Team will be provided.

There have been no representations received from the following stakeholders:

- Local Planning Authority
- Environmental Health
- Asset Management
- Heswall Ward Councillors
- Culture Team
- Public Health
- Birkenhead Market Manager

4.0 FINANCIAL IMPLICATIONS

- 4.1 The Market Rights Policy allows for the payment of a licence fee on the grant of a licence. This fee is based on the size, frequency and potential commercial impact of the proposed market.

5.0 LEGAL IMPLICATIONS

- 5.1 A market is a legally defined term which includes any concourse of buyers or sellers of five or more trading spaces.
- 5.2 Legislation that granted the council the right to have a market in Birkenhead also provides that anyone wishing to operate a market requires the consent of the Council. Common law has determined that exclusive rights should apply to a radius distance of 6 2/3 miles from Birkenhead Market (the Defined Area). The location of the premises subject to this application is situated within the Defined Area.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 The granting of a Market Rights Licence may have an impact on the resources within the Enforcement Team.

7.0 RELEVANT RISKS

7.1 There is a risk that the operation of the proposed market may have an impact upon Birkenhead Market.

8.0 ENGAGEMENT/CONSULTATION

8.1 Consultation has been undertaken in respect of this application in accordance with the Market Rights Policy.

9.0 EQUALITY IMPLICATIONS

9.1 The potential impact has been reviewed and it is considered that there will be no direct impact on any of the protected groups.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 The operation of the proposed market may lead to an increase in footfall and traffic in the surrounding area.

11.0 COMMUNITY WEALTH IMPLICATIONS

11.1 Controlled use of markets can encourage economic and social benefits within communities. Decisions relating to the operation of markets should aim to facilitate positive benefits that such markets can bring to Wirral without creating a negative impact on town centres or local residents.

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APPENDICES

Appendix 1 - Market Rights Policy

BACKGROUND PAPERS

- Application for a Market Rights Licence
- Plans of the proposed licensed areas
- Representation received from Highways
- Representation received from the Commercial Team

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Regulatory and General Purposes Committee	27 September 2022

TERMS OF REFERENCE

This report is being considered by the Regulatory Panel who are delegated to determine such matters in accordance with Section 8.4 of the Regulatory and General Purposes Committee's Terms of Reference referred to in Part 3, Section B of the Council's constitution.

Market Rights Policy

September 2022

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1.0 Background and Introduction

1.1 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

1.2 The definition of a market is “a concourse of buyers and sellers”, with five or more trading spaces. Trading spaces can mean stalls, stands, vehicles, pitches.

1.3 Wirral Council recognises that markets play a fundamental role in our town centres which are continuing to change. Town centres are evolving to reflect changing consumer habits and there is now less reliance on what our local town centres provide in terms of retail.

1.4 As the traditional retail offer subsides, certain sectors are experiencing growth. This can be seen in some areas in the rise of independent businesses and hospitality. The food and beverage sector, and particularly locally produced or sourced food, is also expanding as consumers seeking quality, provenance, sustainable food production methods and a sustainable approach to food shopping becomes more and more important.

1.5 The council continues to play a role in supporting the evolution of our town centres and as part of both the Local Plan and the Economic Strategy, has policies in place to ensure that our town centres continue to thrive and provide for their communities as well as the wider Wirral economy. Town centres will also be a focus for our future housing growth and so need to provide a mix of services and activity that will enable this, not only to meet demand, but also as part of our approach to reach net zero carbon emissions. Markets therefore play a critical role in town centres as they continue to evolve and adapt to current and future trends.

1.6 The council acknowledge the importance of the circular economy and social value, and how it can underpin ‘good’ economic growth in our towns and that this can be supported by the growth of markets. It is recognised that markets provide opportunities and cluster development of socially trading organisations whose businesses contribute to the economy in ways that serves the community more positively and inclusively.

1.7 The council recognises that there are many different types of market activities and, accordingly, the Markets Rights Policy is intended to cater for each type. Section 2 of the Markets Rights Policy deals with the different types of markets and sets out the council's approach when considering applications in respect of such markets.

- 1.8 Birkenhead Market is owned by the council and it is the council's role to protect the commercial success of the market and make commercially minded decisions that support its traders. Legislation that granted the council the right to have a market in Birkenhead also provides that anyone wishing to operate a market requires the consent of the council. Common law has determined that exclusive rights should apply to a radius distance of $6\frac{2}{3}$ miles from Birkenhead Market (the Defined Area). Whilst Birkenhead Market is recognised as the principal market of the borough, the benefits that other types of markets might bring to our town centres, coastal areas and other retail and visitor attractions are recognised.
- 1.9 With this in mind the Market Rights Policy seeks to provide a balanced approach, ensuring that the council continues to protect Birkenhead Market as the principal market of the borough, whilst enabling other markets to contribute to the economic growth of Wirral.

2.0 The Application of the Market Rights Policy

- 2.1 The legal definition of a market, being "a concourse of buyers and sellers" with five or more trading positions that is freely open to the public, shall apply when determining the nature of any event.
- 2.2 This policy recognises that community groups have long run market events to support their aims and ambitions. It is not intended that one-off fundraising events such as table-top and book fairs, summer fairs and cake sales will be subject to a Markets Rights Licence.
- 2.3 It is further recognised that there are many different settings where 5 or more stalls may set up to operate at one location. Where such markets have no impact on Birkenhead Market the council would wish to support and encourage such activity and it is not the intention of Wirral Council to exercise its Market Rights. For market activity which meets **all of** the following criteria, a Markets Rights Licence **will not** be required:
- Operates for no more than 2 consecutive days a year at any one time,
 - Occurs no more than 12 times a year at the same location
 - Has no more than 30 stalls, and
 - Has no significant impact on the trading activities of Birkenhead Market.
- 2.4 Notwithstanding this, the council reserves the right to invite an application for any market held within the Defined Area.

3.0 Market Rights Licence

- 3.1 A Market Rights Licence grants permission to operate a market within the council's Defined Area. It is required regardless of whether the market location is a public or

private premises, indoors or outdoors, and is in addition to any other permission that may be required. A Market Rights Licence is required before a market can take place. For the purposes of this policy, markets operating exclusively online from an address within the Defined Area are not included.

- 3.2 Markets will only be licensed following a successful application and the payment of relevant fees. The licence will set out details of the responsibilities of the Market Rights Licence Holder (The Licence Holder) under the Market Rights Licence.
- 3.3 Licences may be granted for individual markets, including those trading over more than one consecutive day, or for several individual markets within a year. Where the market operates on a more regular or permanent basis, a bespoke licence agreement may need to be negotiated.
- 3.4 Licensed markets will be monitored by council officers to ensure that all the conditions of the licence are being adhered to. Any licence breach or deviation may result in the removal of the Market Rights permission and the subsequent closure of the market.

4.0 Criteria to be Considered

- 4.1 In considering whether to grant a licence, applications will be considered against a number of criteria. The criteria will reflect the need to support Wirral's town centres and high streets, as well as the broad objectives of the Market Rights to protect Birkenhead Market. Applications will be evaluated against criteria before a decision is taken. The criteria include but is not limited to the following factors:
 - The contribution the proposed market will make towards sustainable and local economic growth
 - The location of the proposed market in relation to Birkenhead Market
 - The similarity of the offer in relation to that of Birkenhead Market in terms of products on sale
 - The opportunity for local businesses and organisations to participate in, or benefit from, the market
 - The impact on footfall on the High Street and town centre
 - The complementarity of the offer in relation to local traders or businesses and how any impact is overcome
 - The details of the applicant, for example whether it is a local community group, local charity or other local not for profit organisation
 - Feedback from the local community and stakeholders
 - The impact of the market on the health and wellbeing of residents and visitors to Wirral
 - The impact of the proposed market on net zero carbon principles
 - The type, nature and provenance of products to be sold at the market

- The accessibility of the location by public transport/active travel routes
- Alignment with the council's existing policies and strategies e.g. Local Plan, Economic Strategy, Event Safety Advisory Group.

4.2 Valid applications will also be assessed according to the following:

- The date, time and frequency of the market
- The number of individual trading spaces
- The premises or land proposed for the market, it's suitability and proximity to other markets
- The implications on the highway network
- Operational and safety management plans
- Operator experience, reputation and quality standards provided

4.3 In respect of any consent the Market Operator must have adequate insurances in place (including a minimum of £5 million public liability insurance) and ensure that all stallholders have their own adequate insurances in place, also including a minimum of £5 million public liability insurance. Where individual stallholders do not have their own public liability insurance cover in place the insurance cover held by the Market Operator should cover the activities of these stallholders.

5.0 Types of Market Rights Licences

5.1 Licences available for issue are dependent upon operational requirements of the applicant. The licences available are:

Type of Licence	Description
Short Term Market Licence	A single market in a single location operating once for a period of not more than 14 continuous days in a calendar year.
Medium Term Market Licence	Two or more individual markets operating for not more than 28 days in a calendar year or a single market operating for more than 14 continuous days but not more than 28 days in a calendar year.
Permanent Market Licence	A Market operating indefinitely or for more than 28 days in a single calendar year.

Short Term and Medium Term Market Licence application procedure

5.2 The following stakeholders will be consulted on all applications and be given a consultation period of 10 working days:

- Local Planning Authority
- Environmental Health
- Asset Management
- Highways
- Ward Councillors
- The Officer Responsible for Birkenhead Market
- Commercial Team
- Culture Team
- Public Health

5.3 Details of the application will be published on the council's website.

5.4 The Licensing Officer responsible for the case shall have absolute discretion to include any other stakeholders they believe necessary.

5.6 On receipt of all comments from stakeholders if no objections are received and there are no material considerations then the Licensing Officer may issue a Market Rights Licence. The Licensing Officer shall have discretion to place such obligations and conditions on the licence as are reasonable in all the circumstances.

5.7 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 shall be entirely at the discretion of the Regulatory Panel.

5.8 If the Regulatory Panel resolves to approve the application, the applicant shall be informed by a Decision Notice and be required to pay the Issue Payment. A licence shall be issued by a Licensing Officer within 7 days of the Issue Payment being paid.

5.9 If the Regulatory Panel resolves to refuse the application, the applicant shall be informed by a Decision Notice issued by a Licensing Officer within 7 days.

Permanent Market Licence application procedure

5.10 All applications for a permanent Market Rights Licences shall be considered by the Regulatory Panel.

5.11 The following stakeholders will be contacted on all applications and be given a consultation period of 28 days:

- Local Planning Authority
- Environmental Health

- Asset Management
- Highways
- Ward Councillors
- The Officer Responsible for Birkenhead Market
- Commercial Team
- Culture Team
- Public Health

5.12 Details of the application will be published on the council's website.

5.13 The Licensing Officer responsible for the case shall have discretion to include any other stakeholders they believe would reasonably be required to complete a holistic evaluation of the application.

5.14 After 28 days or after all stakeholders comments are received if earlier, the Licensing Officer shall prepare a report detailing the comments and any material considerations.

5.15 The applicant will be expected to engage with local businesses in the vicinity of where it is proposed for the market to take place.

5.16 The decision shall be entirely at the discretion of the Regulatory Panel.

5.17 A Permanent Market Rights Licence shall be issued subject to a renewal date of no longer than two years.

5.18 If the Regulatory Panel resolves to approve the application, the applicant shall be informed and be required to pay a licence fee. A licence shall be issued by a Licensing Officer within 7 days of the licence fee being paid. The Regulatory Panel shall have discretion to place such obligations and conditions on the licence as are reasonable in all the circumstances.

5.19 If the Regulatory Panel resolves to refuse the application, the applicant shall be informed by a Decision Notice issued by the Licensing Officer within 7 days.

6.0 Right of Appeal

6.1 There is only a right of appeal for the applicant. Other parties cannot appeal a decision. Appeals must be received within 21 days of receipt of the Decision Notice. Appeals received after this deadline shall be void.

6.2 There is no right of appeal for a decision of the Regulatory Panel who are democratically elected members. An Officer decision shall remain valid unless overturned or varied by the Regulatory Panel.

- 6.3 The burden is upon an applicant to demonstrate that their grounds of appeal comply with this policy and require action by the Regulatory Panel.
- 6.4 Applicants can appeal:
- A condition and/or obligation of an Issued Market Rights Licence
 - A decision to void a Market Rights Licence
- 6.5 Appeals must be received by the council within 14 days of the date on the decision notice.
- 6.6 The decision shall remain effective until the determination of the appeal by the Regulatory Panel.
- 6.7 The Appeal should be submitted in writing to licensing@wirral.gov.uk. The subject line should clearly state APPEAL followed by your application number.
- 6.8 The written appeal must include:
- Your name, address and contact telephone number
 - The comprehensive grounds for your appeal
 - Any evidence you wish to be considered
- 6.9 This email must include all documentation you wish to be considered as if the appeal is decided by written representations there shall be no further opportunity to provide representations.
- 6.10 The Chair of the Regulatory Panel shall have absolute discretion as to whether to handle an appeal by written representations or attendance at a Regulatory Panel meeting.
- 6.11 In the case of an appeal dealt with by way of written representations a Licensing Officer shall have 14 days from the receipt of an appeal to submit a response, a copy of which shall be served on the applicant.
- 6.12 Where the Chair of the Regulatory Panel decides attendance at a meeting is necessary both the applicant and a Council Officer shall have opportunity to make representations before the Panel makes a decision. The Regulatory Panel may reserve their decision to be made in writing at a later date if further consideration of the evidence is necessary. The Regulatory Panel may at the Chair's discretion seek further clarification or advice from stakeholders on their relevant area of expertise if necessary.
- 6.13 A failure to provide evidence at the point of application cannot be remedied by an appeal. An appeal producing evidence which should have been submitted during the

application process shall be considered on the knowledge and evidence available to the Officer at the point of decision.

6.14 There shall be no award of costs for an appeal and no cost for making an appeal.

7.0 Monitoring and Compliance Visits

7.1 A Markets Rights Licence is an independent permission. Applicants should be aware they may need other permissions or licences in addition to obtaining a Markets Rights Licence for example:

- Planning permission
- Listed building consent
- A licence to serve alcohol
- A licence to serve hot food and drink beyond 11.00 pm
- Permission of the landowner
- Any other permission or licence required by law

7.2 The council will require the Licence Holder to assume full responsibility for all operational aspects of the market operation, including regulatory and legislative requirements including but not limited to: health and safety management, planning consent where appropriate, site management and the relevant insurance(s) required for the market.

7.3 All licensed markets will be monitored by the council from time to time and without notice to the market operator to ensure that all the operator's obligations and conditions are being adhered to.

7.4 An operator must comply with all lawful directions of a Licensing Officer. Access and right of inspection by Local Authority Officers should not be hindered or prevented without lawful reason.

8.0 Non-Compliance and Enforcement Action

8.1 Unless exempt it is unlawful for a market to take place within the Defined Area without a Market Rights Licence and the council may take enforcement action against any market operating without a licence or permission from the council.

8.2 The council may take legal action against any individual or organisation in breach of the council's Market Rights. In pursuing any enforcement action, the council shall seek to recover all costs.

8.3 The council will consider the most appropriate remedy in pursuing enforcement action this may include the use of an injunction, a claim for damages (restitutionary and/or otherwise) or any other remedy available.

8.4 A failure to comply with the conditions of a licence shall be a material consideration in deciding future applications.

9.0 Voiding of a Market Licence

9.1 A failure to comply with the obligations and conditions of a Market Rights Licence will make the Market Rights Licence immediately voidable. Should the council void the Market Rights Licence following a breach of the Market Rights Licence the council may recover all costs in voiding the Market Rights Licence and taking enforcement action.

9.2 If the council decide the best course of action is to void a licence during enforcement action a Licensing Officer shall serve a Decision Notice on the Licence Holder. The market shall be deemed unlawful from the date on the Decision Notice. This means all trading and market activity must cease immediately. On receipt of a Decision Notice voiding a Market Rights Licence the Licence Holder must return the licence to be stamped void.

9.3 If a licence is issued not in accordance with this policy a Licensing Officer may void the licence and reconsider the application correctly. In instances where voiding is considered for an error made by the council steps should be taken to minimise the impact on the applicant if trading has commenced.

9.4 A void licence will be returned to the Licence Holder clearly displaying the word VOID.

10.0 Market Rights Licence Payments and Fees

10.1 Market Rights Licenses are subject to the payment of fees, which relate to processing and issuing documents, as well as the monitoring, regulation and enforcement of the Market Rights policy and licence as well as the commercial impact of the market.

Application Fee

10.2 The costs of processing an application for a Market Rights Licence will be recovered from an application fee which must be submitted with the application. Applications which are not submitted with the relevant fee shall not be considered until the fee has been paid.

Licence Fee

10.3 If an application is successful the issue of a Market Rights Licence may be conditional on the payment of a licence fee payment. A Market Rights Licence

shall not be issued until cleared funds are received in respect of the licence fee payment. This fee will be based on the size, the frequency and potential commercial impact of the market.

10.4 There shall be no refunds of any fees or payments.

11.0 Further information

11.1 For advice organising an outdoor event visit the [Event Safety Advisory Group](#) page on the council's website.

11.2 For advice regarding [Street Trading](#) visit the council's website.

11.3 For advice regarding [alcohol licensing](#) visit the council's website.

11.4 For advice regarding [Planning Permission](#) visit the council's website.

11.5 To trade at [Birkenhead Market](#) email the Market Manager at bhminfo@wirral.gov.uk.

11.6 Further information about markets can also be found at:

[National Market Traders Federation](#)

[NABMA - The Voice of Markets](#)

[Mission4Markets](#)

[Markets Matter](#) - Institute of Place Management (IPM) 2015

Appendix 1 – The Defined Area



Birkenhead Market Charter

Scale:

1:30,000

Date:

12.02.2019

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