

STROUD DISTRICT COUNCIL
COMMUNITY SERVICES AND LICENSING
COMMITTEE

AGENDA
ITEM NO

6

23 JANUARY 2020

Report Title	PROPOSAL TO CHANGE STROUD DISTRICT COUNCIL'S STREET TRADING RESOLUTION
Purpose of Report	To provide information that will allow Committee to consider a proposed new street trading resolution and an amended street trading policy.
Decision(s)	<p>The Committee RESOLVES to:</p> <p>a. APPROVE an intention to adopt a new street trading resolution as set out in Appendix C</p> <p>b. RESOLVES to authorise Licensing Officers to publish formal notice of the Council's intention to adopt the resolution and to undertake a 28-day formal consultation</p> <p>c. RESOLVES to approve for formal consultation the draft amended street trading policy as set out in Appendix D.</p>
Consultation and Feedback	<ul style="list-style-type: none"> • There was an initial consultation on Stroud District Council's street trading policy between June and August 2019. • Feedback from this led to the proposal in this report to change the Council's street trading resolution and to make further changes to the policy. These proposals were consulted on informally between November and December 2019 • There is a statutory requirement for a public notice and 28 days formal consultation once Committee have approved an intention to change the resolution. This will take place in February 2020.

Financial Implications and Risk Assessment	<p>A minimal loss of income has been indicated (p.2.7) however this can be offset with a saving on Officer time.</p> <p>Adele Rudkin, Accountant Tel: 01453 754109, Email: adele.rudkin@stroud.gov.uk</p> <p>Risk Assessment The Licensing Section has been given legal advice that the current street trading policy needs updating. Failure to do this could lead to judicial challenge of any decision based on the current policy</p> <p>Rachel Andrew, Principal Licensing Officer</p>
Legal Implications	<p>The proposed new street trading resolution provides for comprehensive application of the street trading regulations throughout the District whilst allowing for limited exemption in cases where trading is undertaken on land which can be controlled by a public authority or registered charity; it avoids the use of individual waivers which do not have proper legal authority within the terms of the legislation.</p> <p>Alan Carr, Solicitor Tel: 01453754357 Email alan.carr@stroud.gov.uk</p>
Report Author	<p>Rachel Andrew, Principal Licensing Officer Tel: 01453 754401 Email: rachel.andrew@stroud.gov.uk</p>
Performance Management Follow Up	<p>The Council must keep its policy under review and make such revisions to it at such times as it considers appropriate.</p>
Background Papers/ Appendices	<p>Appendix A – Summary of responses from first consultation on street trading policy</p> <p>Appendix B – Summary of responses from informal consultation on a new street trading resolution and further amended street trading policy</p> <p>Appendix C – Draft new street trading resolution</p> <p>Appendix D – Draft amended street trading policy</p>

1 Background

- 1.1 Stroud District Council has adopted powers under the Local Government (Miscellaneous Provisions) Act 1982 so that any person selling articles in the 'street' must obtain a street trading consent from the Council.
- 1.2 In the legislation 'street' is defined as any road, footway or other area to which the public have access without having to pay an entrance fee.

- 1.3 Under the legislation the Council must make a resolution designating which areas in the district street trading consent applies to. Stroud District Council's current resolution designates all streets and land in the district.
- 1.4 Stroud District Council also has a policy which explains the Council's approach for managing street trading and the process for applications and making decisions.
- 1.5 In 2018 Legal Officers advised the Licensing Team that legal interpretations of street trading legislation have changed over time. Their opinion now is that some parts of Stroud District Council's current street trading policy, which have been in place since 2000, are not actually permissible under street trading legislation. These are:
- The waiver for markets. In accordance with our current policy all current markets in the district, including Stroud Farmers Market, have been granted a waiver from needing street trading consent.
 - The exemption for community and charitable events. In accordance with the current policy events such as village fetes and goodwill events do not need street trading consent.
- 1.6 In 2019, taking account of the above advice, Licensing Officers drafted a revised policy which removed the waivers and exemptions and replaced these with a new market consent and a new 'light touch' procedure for community events. A draft policy was approved by Community Services and Licensing Committee on 30th May 2019 and was consulted on between 3rd June 2019 and 2nd August 2019.
- 1.7 During the consultation a number of comments were received from Members, Town and Parish Councils and Market Trusts who expressed serious concern that removing the above waivers and exemptions, and replacing them with a market consent and a light touch community event consent, would have significant impact on local events, such as village fetes and community markets, to the detriment of the community. A schedule summarising comments made during this first consultation is Appendix A.
- 1.8 Following the consultation Licensing Officers, with support from Legal Officers, reviewed the options to address the above concerns. It was concluded that the way forward is for Stroud District Council to make a new resolution and re-designate the areas within the district that will need street trading consent.

2 Stroud District Council's Street Trading Resolution

- 2.1 Stroud District council's current resolution was adopted in 2000. It states that trading on all streets and land in the district, which the public have access to without payment, need street trading consent. The current resolution specifically states that this includes all County, District and Town and Parish Council owned land.
- 2.2 The proposal is to change the resolution to designate all streets and land that the public have access to without payment, **excluding any land owned and managed by public authorities or registered charities**, other than public highways.

- 2.3 This will mean that trading on any land owned and managed by Gloucestershire County Council, Stroud District Council or Town and Parish Councils (with the exception of Highways managed streets, pavements and laybys) **will not** need street trading consent. Similarly, any trading on streets or land owned and managed by a registered charity, such as charitable trusts, **will not** need street trading consent.
- 2.4 The proposed new Resolution will mean that events such as village fetes and local markets held on Town and Parish Council land, or land managed by registered charities, such as playing field trusts and market place trusts, will not need street trading consent.
- 2.5 Stroud Farmers Market will not need street trading consent for stalls in the Cornhill Market (land which is managed by Stroud District Council). However, the stalls that are in the streets around the Cornhill Market will need street trading consent.
- 2.6 Trading on the highway, or on private land that the public have access to without payment, for example store car parks, will continue to need street trading consent.
- 2.7 Some individual traders who currently trade on registered charity land or Council land will no longer need street trading consent. The number of traders that this will affect is minimal but it will result in a small reduction in income. However, this will be offset by a saving in Officer time.
- 2.8 Any adverse impact of trading on Council or registered charity land, such as obstruction or nuisance, will no longer be controlled through street trading consents. However, any impacts can instead be controlled by the relevant Council or charity who manages the land.
- 2.9 A draft new resolution was put out for informal consultation between 4th November 2019 and 20th December 2019. The consultation included all Town and Parish Councils, all organisations and persons that made comment during the first consultation on our street trading policy and all current traders and markets. Comments made during this informal consultation on the resolution are shown in a summary of informal consultation comments which is Appendix B. In general, the comments support the proposed new resolution and policy. Stonehouse Town Council made comment about the proposed discretion to waive the fee for the short term consent for community and charitable events provided the event only takes place one year. The Town Council have asked if the yearly restriction could be removed to reduce impact on community events. The policy has been amended to remove this restriction but retain the provision that it is at the discretion of the Head of Health and Wellbeing as to whether the fee for a particular application for a short term consent will be waived.
- 2.10 The draft new resolution for Committee to consider is Appendix C
- 2.11 Street trading legislation lays down a statutory procedure for making or changing a resolution. Once a draft resolution is approved a Council must place a statutory notice in a newspaper giving public notice of the Council's intention to change the resolution and giving a period of no less than 28 days during which objections can

be made. The Council must also give notice to the Police and the Highways Authority. The Council must then consider any objections made before resolving to adopt the resolution. Following this the Council must place statutory notices in a newspaper for two consecutive weeks giving public notice of adoption of the resolution.

3 Stroud District Council's Street Trading Policy

- 3.1 The draft street trading policy that was consulted on during the first consultation has been further amended to reflect the proposal to change the resolution. Additionally, further amendments have been made to the policy to take account of other comments made during the first consultation.
- 3.2 The amended draft policy was included in the informal consultation on the proposed new resolution. Further comments on the policy made during this informal consultation are shown in Appendix B.
- 3.3 The amended draft policy continues to have a new market consent and a new 'light touch' procedure for community events. This will apply to markets and events which, under the proposed new resolution, will need street trading consent. For example, markets and community events held on the highway or on private land.
- 3.4 The draft amended policy is Appendix D. The document shows the original proposed changes highlighted in red and further changes reflecting the proposed new resolution and comments from the first consultation in green.

4 Next Steps

- 4.1 If Committee decides that it wishes to adopt a new resolution the Council must comply with the following statutory process.
 - At this meeting Committee approves an intention to adopt the draft new resolution and amended policy.
 - On 29th January 2020 Officers will place a statutory notice in a newspaper and at the Council Offices giving public notice of the Council's intention to change the resolution and giving 28 days for objections. The notice must also be served on the Police and Highways Authority.
 - On 26th March 2020 Committee will consider any objections to the resolution and, if satisfied, resolve to adopt the resolution and adopt the final policy.
 - In April 2020 Officers will place statutory notices in a newspaper for two consecutive weeks giving public notice of adoption of the new resolution.
 - On 1st May 2020 the new resolution and revised policy will be implemented.

5 Conclusion

- 5.1 Legal advice is that parts of Stroud District Council's current street trading policy are not legally permissible under street trading legislation. These parts are waivers for markets and exemptions for community and charitable events.
- 5.2 The initial proposal was to amend the policy by replacing the waivers and exemptions with a market street trading consent and a 'light touch' community event street trading consent. During consultation earlier in 2019 there were strong objections from Town and Parish councils and Market organisers who felt the proposed changes to the policy would have a detrimental effect on community markets and events.
- 5.3 It is now proposed to amend the Council's street trading resolution to re-designate the areas of streets and land within the district that need street trading consent.
- 5.4 The proposed new resolution will exclude land owned and managed by Councils' and registered charities. This will mean that many local markets and community events will be on land that will not need street trading consent.
- 5.5 Further amendments have been made to the street trading policy to reflect the proposed new resolution and other comments made during the first consultation.
- 5.6 The proposed new resolution and amended policy has been consulted on informally during November and December 2019.
- 5.7 If Committee decides to approve a new resolution there is a statutory process which includes a public notice in a newspaper stating an intention to adopt a resolution and formal public consultation for 28 days.