
REPORT FOR: CABINET

Date of Meeting:	19 November 2015
Subject:	Street Trading
Key Decision:	Yes
Responsible Officer:	Venetia Reid-Baptiste, Divisional Director of Commissioning Services
Portfolio Holder:	Councillor Graham Henson, Portfolio Holder for Environment, Crime and Community Safety
Exempt:	No
Decision subject to Call-in:	Yes
Wards affected:	All
Enclosures:	Appendix A – Proposed Street Trading Policy and Proposed Street Trading Guidance and Application Form Appendix B – Steps to be taken to adopt street trading provisions Appendix C – EqIA Appendix D – Details of areas proposed for designation (maps and town centre frontages) Appendix E – Details of Shop Frontages

Section 1 – Summary and Recommendations

This report sets out proposals to designate certain streets in the borough for street trading purposes and seeks member approval to take the necessary steps to consult on this, as well as seek authority to consult on the proposed street trading policy.

Recommendations:

Cabinet is requested to:

- Approve the proposed designation of streets for consultation purposes.
- Approve the draft street trading policy for consultation purposes.
- Authorise the Divisional Director of Commissioning Services to take all necessary steps to publish and consult on the proposed resolution (s) to designate streets and on the proposed street trading policy including the standard conditions for street trading licences.
- Note that the outcome of the consultations will be reported back to Cabinet with any amendments considered appropriate for final approval.
- Note the guidance and application form that accompanies the street trading policy.
- Note that fees and charges for street trading will be dealt with separately for approval.

Reason: (For recommendation)

The Council has already adopted the Part III Street Trading provisions under the London Local Authorities Act 1990 ('the Act'). However, streets within the borough have not as yet been designated for street trading purposes.

It is now proposed that certain streets are designated in order to enable effective management and control of street trading across the Borough. Appendix D outlines the areas proposed for designation. These will be consulted on and the responses received will be reviewed and presented back to Cabinet before a final designation decision is made. The areas proposed for designation focus on the Metropolitan, Major and District Centres as defined in the Harrow Local Plan.

To support this, and to ensure transparency, it is recommended that the council adopt a street trading policy. These will also be consulted on and feedback received will be presented back to Cabinet.

Section 2 – Report

1. Introduction

- 1.1. Harrow Council is committed to maintaining a vibrant economy for the benefit of those who live, work and conduct business in the borough.
- 1.2. Street trading (subject to certain exceptions and additional inclusions) is defined in the London Local Authorities Act 1990 (“the Act”) as the selling or the exposure or offer for sale of any article (including a living thing); and the purchasing of or offering to purchase any ticket; and the supplying or offering to supply any service in a street, for gain or reward.
- 1.3. A street trading licence is a licence granted under Part III of the Act valid for the period specified in the licence - not less than six months and not more than three years.
- 1.4. A temporary licence is a licence granted under Part III of the Act valid for a single day or for such period as may be specified in the licence not exceeding six months.
- 1.5. In July 2000 members voted to adopt the Part III Street Trading provisions under the London Local Authorities Act 1990 (‘the Act’) and resolved that the appointed day for the borough of Harrow would be 30 November 2000. Notice of the appointed date was published in the Harrow Times on 24 August 2000. Therefore the Part III provisions have applied to the Harrow administrative area since 30 November 2000.

Designation of licence streets

- 1.6. Although the provisions of the Act were appointed as applicable to the borough, streets in the borough have not been designated for street trading purposes. Temporary Licences have been issued where appropriate. It is now proposed that certain streets in the borough are designated as Licence Streets, as this would enable effective management and control of street trading across the Borough.
- 1.7. If approved by members, officers will take the necessary steps to have certain streets designated, which will include publishing and consulting, before this comes back to Cabinet for final approval of designations.
- 1.8. A notice of intention to designate particular streets will need to be published in a local newspaper in respect of the proposed streets for designation. The notice will give a minimum of 28 days from date of publication for representations to be made.
- 1.9. Officers will also need to consult the Chief Officer of Police for the Harrow area and the Highways Department.

1.10. The outcome of the consultation will be reported back to Cabinet for consideration.

Street trading policy

1.11. It is important that a robust street trading policy is in place to support this activity in the borough. The draft policy (Appendix A) supports economic growth and regeneration initiatives to better meet the needs of the residents and businesses in the Borough. The policy supports the council's vision of working together to make a difference for Harrow.

1.12. The policy enables the council to:

- Take leadership in supporting and promoting street trading activity in the Borough;
- Ensure that there is consistency when making decisions; providing equal chance of fair trade to all residents and businesses;
- Deliver high quality services by responding to changing needs through constant evolution and innovation; and
- Introduce operating efficiency in carrying out the Council's duties.

1.13. The policy covers the regulation of:

- Markets
- Street trading pitches
- Mobile Traders
- Tables and chairs
- Shop fronts

1.14. Alongside the application form, guidance notes have also been produced to assist those wishing to apply under the street trading regime – see appendix A.

2. Options considered

Designate certain streets in the borough as 'Licence Streets' and adopt a street trading policy.

2.1. Designating streets in the borough would enable the council to better manage and control street trading across the Harrow area. This would help prevent unlicensed trading, risks to health and safety of the public, and a lack of cohesiveness in the overall retail offer within the Harrow area. By designating streets this would help prevent the illegal use of forecourt space for the trading of goods and enable the effective enforcement of this activity where it does take place.

2.2. A formally adopted street trading policy recognises the importance of licensed businesses to the local economy and the character of the area whilst ensuring that those activities do not cause nuisance or annoyance to the people in the area. The policy will guide the council when it considers applications for street trading licences and informs

applicants of the parameters within which the council will make decisions and how their needs will be addressed. The council aims to provide a clear, consistent service for users. At the same time, it aims to protect the safety of highway users, to prevent nuisance/danger and to regulate the location and number of street traders.

2.3. This option is preferred by officers.

2.4. If streets are not designated as licence streets, street trading would not be managed or controlled in the borough effectively. This could lead to illegal trading and a lack of cohesiveness in the overall retail offer within the Harrow area. This could lead to un-licenced trading and risks to health, safety and the economic welfare of the public at large or to individuals. Without an agreed street trading policy, there would be a lack of clarity about what to expect from the street trading service, the application process and how decisions are made. This option is not supported by officers.

3. Resources

3.1. Current staffing will be used and there is no requirement for additional staffing as a result of the changes proposed in this paper.

4. Community & Consultation

4.1. If agreed by Cabinet, as noted earlier in this report, there will be a public consultation in respect of the proposed (resolution to) designate licence streets in the borough and also in respect of the proposed street trading policy. The Act also requires that the Commissioner of Police for the area and the Highways authority are consulted too. Internal consultation has taken place on the draft policy, guidance and application form. Consultation will be borough-wide.

5. Performance Issues

5.1. This policy will be reviewed in light of developing practice, guidance and changing legislation as necessary and in any event every three years. At the time of review consultation will take place with appropriate parties. Monitoring the effectiveness of the policy will include measures such as:

- Number of applications received and considered
- Footfall in markets being maintained or improved
- Markets and stalls continuously improving (e.g. appearance, quality of goods on offer, ability to meet local need or particular demand)
- Reduction in levels of complaints

5.2. The Public Protection Team will be responsible for monitoring this policy.

6. Environmental Implications

- 6.1. The approach to street trading noted in this report is expected to lead to a positive environmental impact. It should promote a vibrant economy and a mixed economy of provision across the borough to better meet the needs of residents and businesses. Together with an aim to protect the safety of highway users, to prevent nuisance and to regulate the number and location of street traders.

7. Risk Management Implications

- 7.1. This policy is not included on the Directorate or any other corporate risk register. The proposed designation of streets and the street trading policy are proposed to help ensure that street trading across the Harrow area is regulated effectively including protecting the safety of highway users and preventing nuisance, and ensuring a clear process is in place.

8. Legal Implications

- 8.1. In July 2000 members voted to adopt the Part III Street Trading provisions under the London Local Authorities Act 1990 ('the Act') and resolved that the appointed day for the borough of Harrow would be 30 November 2000. Notice of the appointed date was published in the Harrow Times on 24 August 2000. Therefore the Part III provisions have applied to the Harrow administrative area since 30 November 2000.
- 8.2. Part III of the London Local Authorities Act 1990 ('the Act') provides a regime for the licensing of street trading for a participating borough.
- 8.3. As noted earlier in this report, the provisions of Part III of the Act were adopted by the London Borough of Harrow with a resolution that the appointed day for the borough would be 30 November 2000.
- 8.4. Section 24 of the Act sets out how streets (or part of a street) can be designated as a 'licence street' if a council wishes to licence street trading in its area:

"24 Designation of licence streets

[(1) If a borough council consider that street trading should be licensed in their area they may from time to time pass any of the following resolutions—

- (a) a resolution (in this Part of this Act referred to as a "designating resolution") designating any street within the borough as a "licence street";
- (b) a resolution specifying in relation to any such street or any part of a street any class or classes of articles, things or services which they will, or other than which they will not, prescribe in any street trading licence granted by them in respect of that street;

and may from time to time by subsequent resolution rescind or vary any such resolution: ...”

8.5. However, before passing a resolution to designate a street(s), it is a requirement that the council must consult with the Commissioner of Police of the Metropolis on the proposal. When passing a designating resolution for a street, the earliest the designation can take effect is one month after the passing of the resolution and so the date specified in the resolution has to take this into account (section 24(3)).

8.6. Section 24(4) and 24(5) of the Act also goes on to state:

“24 Designation of licence streets

...

(4) A borough council shall not pass a resolution or rescind or vary a resolution under this section unless—

(a) they have published notice of their intention to do so in a local newspaper circulating in their area;

(b) they have served a copy of the notice on the highway authority for that street (unless they are that highway authority); and

(c) where subsection (5) below applies, they have obtained the necessary consent.

(5) This subsection applies—

(a) where the resolution relates to a street which is owned or maintainable by a relevant corporation; and

(b) where the resolution designates as a licence street any street maintained by a highway authority;

and in subsection (4) above “necessary consent” means—

(i) in the case mentioned in paragraph (a) above, the consent of the relevant corporation; and

(ii) in the case mentioned in paragraph (b) above, the consent of the highway authority.

8.7. The section lists who are relevant corporations and this includes Transport for London.

8.8. The notice of intention required by section 24(4)(a) has to contain a draft of the resolution and invite representations in writing to be made to the council (within a period not less than 28 days after publication). After the period for representations the council should, at the earlier opportunity, consider the representations and thereafter (subject to any changes that are felt appropriate as a result of the representations) the council can pass the resolution to designate the street(s). A notice has to be published in a local newspaper for two consecutive weeks confirming the passing of the resolution, but the first publication cannot be later than 28 days before the day specified in the resolution for the coming into force of the designation.

8.9. Section 25 of the Act sets out requirements for making a street trading licence application.

- 8.10. A council can make regulations that prescribe the procedure for determining applications and if it wishes to do so, before making such regulations, there needs to be consultation with any body that appears to the council to represent licence holders, and consider representations received within 28 days.
- 8.11. Section 27 of the Act provides that a council can set regulations that prescribe standard conditions that apply to a street trading licence. However, again there is a prescribed process to do this.
- 8.12. Section 27 states:

“27 Conditions of street trading licences

...

(3) The borough council may make regulations prescribing standard conditions which they may attach to the licence on the occasion of its grant or renewal.

(4) Before making regulations under subsection (3) above, the borough council shall—

(a) publish notice of their intention to do so in a local newspaper circulating in their area, and such notice shall—

(i) contain a draft of the resolution to which it relates; and

(ii) state that representations relating to it may be made in writing to the borough council within such period, not less than 28 days after the publication of the notice, as may be specified in the notice; and

(b) consult the licence holders or a body or bodies representative of them.

(5) As soon as practicable after the expiry of the period specified under subsection (4) above, the borough council shall consider any representations relating to the proposed regulations which they have received before the expiry of that period.

(6) After the borough council have considered those representations they may if they think fit make regulations as mentioned in subsection (3) above and shall notify the licence holders or a body or bodies representative of them of the making of such regulations.”

- 8.13. Section 31 of the Act allows the council to grant temporary licences for any street, regardless of whether it is licenced or not, and section 32 of the Act permits the council to charge fees and charges in respect of street trading licences on a cost recovery basis, subject to certain consultation requirements.
- 8.14. Street trading without the required licence is an offence under section 38 of the Act and carries a maximum fine not exceeding level 3 on the standard scale, which currently is £1000. Section 34 also sets out further offences.

9. Financial Implications

- 9.1. The proposed activity including publication and consultation on the draft street trading policy outlined in this report will be carried out within the existing budget allocation.

- 9.2. The Council has power to charge fees and charges under s32 of the Act.
- 9.3. Subject to the decision to designate Licence Streets in Harrow fees and charges will be set on a full cost recovery basis. The fees and charges will then be reviewed annually and adjusted if appropriate. Fees must be paid in advance. There is right to a refund of a fee if the application to renew is refused. Under the Act, if the licence is revoked a refund can be made for part of the fee paid for grant or renewal. If the licence is revoked other than under the Act or is surrendered a refund of whole or part of any fee can be paid.
- 9.4. Applicants for charity/community markets may apply to the council for a reduction or waiver of market licence fees.

10. Equalities implications / Public Sector Equality Duty

The Equality Act 2010 outlines the provisions of the Public Sector Equality Duty which requires public authorities to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it

The relevant protected characteristics are age, race, disability, gender reassignment, pregnancy and maternity, religion or belief, sex and sexual orientation. The duty also covers marriage and civil partnership, but to a limited extent.

The broad purpose of this duty is to integrate considerations of equality into day to day business and keep them under review in decision making, the design of policies and the delivery of services so that the potential impact on any protected groups is identified and steps taken to mitigate or remove them.

An Equalities Impact Assessment (EqIA) has been carried out in relation to the street trading policy and is attached to this report (Appendix C). The EqIA did not identify any (potential) adverse or disproportionate impact on any of the protected groups. Following consultation, the EqIA will be reviewed as the comments will feed into it. This will then be reported back to Cabinet too.

Council Priorities

The council's vision:

Working Together to Make a Difference for Harrow

The policy supports all of the council's priorities, but in particular,

Making a difference for communities – the policy promotes effective regulation of street trading across the borough.

Making a difference for local businesses – the policy recognises the importance of licensed street trading to the local economy and character of the area.

Section 3 - Statutory Officer Clearance

Name: Jessie Man	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 29 October 2015		
Name: Paresh Mehta	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 30 October 2015		

Ward Councillors notified:	NO, as it impacts on all Wards
EqIA carried out:	YES
EqIA cleared by:	Hanif Islam

Section 4 - Contact Details and Background Papers

Contact: Hanif Islam, Policy & Performance Manager, 020 8424 1548, Hanif.islam@harrow.gov.uk

Background Papers: None

**Call-In Waived by the
Chairman of Overview
and Scrutiny
Committee**

NOT APPLICABLE

[Call-in applies]