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**REPORT FOR: CABINET**

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**Date of Meeting:** 10 March 2016

**Subject:** Street Trading Policy

**Key Decision:** Yes

**Responsible Officer:** Tom McCourt, Corporate Director of Community

**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  
Appendix F – Consultation Results  
Appendix G – Final Resolution

## **Section 1 – Summary and Recommendations**

At the 19 November 2015 Cabinet meeting, Members approved the draft street trading policy and the proposed designation of streets for consultation purposes and noted that the outcome of the consultation would be reported back to Cabinet with any amendments considered appropriate, for final approval.

This report presents the findings from the consultation. It also seeks member approval to designate streets.

### **Recommendations:**

Cabinet is requested to:

1. Note the outcome of the consultation undertaken.
2. Approve the street trading policy for adoption.
3. Following consultation with the Portfolio Holder for Environment, Crime and Community Safety delegate authority to the Corporate Director – Community Directorate to make amendments to the policy.
4. Approve the designating resolution to licence streets for street trading purposes to come into effect on 1 May 2016.

### **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.

The above recommendations are made:

To ensure that the views of residents and businesses are considered and amendments made to the draft policy as appropriate following consultation.

To approve the designation of licence streets for street trading purposes.

## **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. The street trading policy aims to support economic growth and regeneration initiatives to better meet the needs of the residents and businesses in the borough, and support the council's vision of working together to make a difference for Harrow.

1.3. The policy enables the council to:

- Take leadership in supporting and promoting economic activity in the Borough;
- Demonstrate transparency and integrity when dealing with street market matters;
- 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

1.4. The policy covers the regulation of:

- Markets
- Stalls and Pitches
- Mobile Traders
- Tables and chairs
- Shop fronts

1.5. 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.

1.6. A street trading licence is a licence granted under Part III of the Act and valid for the period specified in the licence - not less than six months and not more than three years.

1.7. 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.

1.8. 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. This gave the council the capacity to progress the management of street trading across the borough.

## **2. Background**

- 2.1 Street trading has always formed part of life in Harrow. It provides valuable employment opportunities for local people as well as providing convenience for customers to the borough. Markets can help reinforce the economic strength of the areas in which they are located, increasing footfall and drawing in custom for other retailers. The development of this policy presents an opportunity to encourage small independent businesses and traders and increase employment opportunities, and at the same time maintaining sensible levels of public protection and complimenting trading from permanent businesses.
- 2.2 The policy sets out the council's approach and requirements for street trading and provides transparency and consistency of approach. The grant of a licence for street trading does not override the need for licensees to comply with other legal requirements such as planning permission etc.
- 2.3 The policy also links directly to two of the council's priorities. These are:
  - Making a difference for communities: by improving an area for its residents, visitors and businesses.
  - Making a difference for local businesses: by supporting economic development.
- 2.4 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.
- 2.5 To achieve this, a notice of intention to designate licence streets for the purposes of street trading was published on 17<sup>th</sup> December 2015 and consulted on. No representations were received. The next step is for Cabinet to give approval for a final resolution for streets to be designated. If passed, the designating resolution will be published in a local newspaper in accordance with the requirements of section 24(10) of the London Local Authorities Act 1990. This must be advertised for 2 consecutive weeks in a local newspaper and the first of those publications must not be later than 28 days before the date specified in the final resolution for the designation to come into force (s24(11)).
- 2.6 Following this process, the designations take effect on the day specified in the designating resolution which may not be earlier than

the expiration of 1 month beginning with the day on which the designating resolution is passed (s24(3)).

- 2.7 A designating resolution may from time to time be rescinded or varied by a subsequent resolution, subject to consultation requirements (s24(1)).
- 2.8 Under the Act, streets may be designated as a “licence street” for street trading purposes. A “street” is defined under the Act to include a) any road or footway; b) any other area, not being within permanently enclosed premises, within 7 metres of any road or footway to which the public obtain access without payment, c) any part of such road, footway or area; d) any part of any housing development provided or maintained by a local authority under Part II of the Housing Act 1985. If a street is designated as a “licence street” then an application can be made by a person over 17 for a licence to trade on that street. To trade without a street trading licence is an offence as noted earlier. Licence streets are designated by the council following a statutory procedure under the Act.
- 2.9 Standard conditions will be attached to all licences which will include the holder’s responsibility to maintain public safety, prevent nuisance and generally preserve the amenity of the locality. Additional conditions may also be attached which are specific to certain types of street trading/market activities.

### **3. Consultation and Council Response**

- 3.1 Following the Cabinet meeting in November the council has undertaken consultation (from 4th November 2015 to 5th January 2016) on the draft street trading policy and has reviewed the responses received. The Community Engagement team publicised the web-link through the Community Champion network, as well as publicising it on the Harrow Council website, and through community groups. Street Trader Associations were also consulted.
- 3.2 Four written responses were received from individual respondents. Feedback from the written responses included the need for effective enforcement and the importance of the conditions attached to licences. Appendix F sets out details of the feedback received and the council response. Having reviewed the consultation results, no changes are proposed to the policy.
- 3.3 The notice of intention to designate licence streets for the purposes of street trading was published in the Harrow Times on 17 December 2015 requesting representations to be made by 15<sup>th</sup> January 2016. The Commissioner of Police for the area and the Highways Authority have also been consulted. No representations have been received.

## **4. Options considered**

### **4.1 Designate streets & adopt the street trading policy**

Designate streets in the borough through the approval of and publication of a final resolution. In addition adopt the street trading policy to support this. 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 unauthorised use of forecourt space for the trading of goods and enable the effective enforcement of this activity where it does take place. Both approvals sought are required (subject to any amendment) as they operate together.

4.2 This option is preferred by officers.

### **4.3 Approve none of the above**

4.4 If streets are not designated as licence streets, street trading would not be managed or controlled in the borough effectively. This could lead to unauthorised 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 adopted 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.

## **5. Resources**

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

## **6. Community & Consultation**

6.1 Consultation has taken place with key service managers to ensure that the policy aligns with service areas. Consultation has also taken place with the wider community of Harrow and the results form the basis of this report. The notice of intention to designate licence streets for the purposes of street trading has been published with an opportunity for representations to be made. In addition, the Commissioner of Police for the area and the Highways Authority have also been consulted. Internal consultation has taken place on the draft policy, guidance and application form.

## **7. Performance Issues**

7.1 The street trading 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

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

## **8. Environmental Implications**

8.1 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.

## **9. Risk Management Implications**

9.1 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.

## **10. Legal Implications**

10.1 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.

10.2 Part III of the London Local Authorities Act 1990 ('the Act') provides a regime for the licensing of street trading for a participating borough.

10.3 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.

10.4 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: ...”*

10.5 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)).

10.6 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.”*

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

10.8 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.

- 10.9 Section 25 of the Act sets out requirements for making a street trading licence application.
- 10.10 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.
- 10.11 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.
- 10.12 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.”*

- 10.13 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. Fees and charges in relation to street trading went to full Council for consideration and approval on 25 February 2016.
- 10.14 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. There are offences under the Act for which Fixed

Penalty Notices (FPNs) can be used, the penalty amounts being set via London Councils.

## **11. Financial Implications**

- 11.1 The proposed activity outlined in this report will be carried out within the existing budget allocation. The council has power to charge fees and charges under s32 of the Act and approval of these is by Council.
- 11.2 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.
- 11.3 Applicants for charity/community markets may apply to the council for a reduction or waiver of market licence fees.

## **12. 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 has been reviewed and no changes have resulted.

## **Council Priorities**

The council's vision:

## Working Together to Make a Difference for Harrow

The policy supports the council 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.

The policy also supports the themes, but in particular,

Build a Better Harrow – by promoting effective regulation of street trading across the borough.

Be More Business-like and Business Friendly – 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: 10 February 2016		
Name: Paresh Mehta	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 12 February 2016		

<b>Ward Councillors notified:</b>	<b>NO, as it impacts on all Wards</b>
<b>EqIA carried out:</b>	<b>YES</b>
<b>EqIA cleared by:</b>	Hanif Islam/Dave Corby

## **Section 4 - Contact Details and Background Papers**

**Contact:** David Corby, Environmental Services Manager –  
Community Engagement, [dave.corby@harrow.gov.uk](mailto:dave.corby@harrow.gov.uk) – 020 8424  
1758

**Background Papers: None**

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

**NOT APPLICABLE**

*[Call-in applies]*