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Committee Update – Street Trading Policy & Designation of Streets

Report summary:

Report setting out the background to and the request for public consultation to be undertaken on changing the current Street Trading policy being due for review after its introduction in 2017

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

- (1) That the Committee authorise public consultation in accordance with the legislative requirements on proposals to:
 - (a) Rescind all the Council's previous resolutions to designate streets as 'Prohibited Streets' and 'Consent Streets' within the District, and
 - (b) Resolve to designate all 'streets' in East Devon as 'Consent Streets' as defined in Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 save for certain streets in Sidmouth (listed in Appendix D) which shall be 'Prohibited Streets' except during a set period of time each year.
- (2) Commence public consultation on the Council's revised Street Trading policy and to set application fees to be charged for Consent to be granted.
- (3) That the Committee receive a further report that will consider any subsequent representations received during the public consultation exercise and makes further recommendations to be adopted by the Council.

Reason for recommendation:

To review the amended draft policy and allow public consultation to commence to designate all streets in East Devon as 'Consent Streets' for purposes of street trading

Officer: Steve Saunders, Licensing Manager (Governance and Licensing)

Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities

Tourism, Sports, Leisure and Culture

Equalities impact Low Impact

Climate change Low Impact

Risk: Low Risk;

Links to background information

Link to [Council Plan](#)

Priorities (check which apply)

Better homes and communities for all

A greener East Devon

A resilient economy

Report in full

1 Background

- 1.1 This is the Council committee with responsibility for Street Trading being defined as “the selling or exposing or offering for sale of any article (including any living thing) in a street”. Section 3 and schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982) permits local authorities to adopt provisions to control street trading, which this council adopted from 1 December 1982. Streets in the district are designated as either ‘Prohibited’ streets or ‘Consent’ streets where trading may occur upon application and prior approval.
- 1.2 The current Street Trading policy was adopted in 2017 following extensive public consultation. Although the council adopted the legislation in 1982, the majority of the streets in East Devon were uncontrolled and were not designated either way until 2017. In 2009 Sidmouth Esplanade was designated as a ‘Consent Street’ for one week annually and the Council also adopted its initial Street Trading policy in that year.
- 1.3 The Street Trading policy has proved effective over the last five years when the majority of East Devon became Consent streets, although some Sidmouth locations retained the status of being Prohibited streets where applications cannot be considered. Controls can be imposed on any consent granted by way of conditions and the ability to issue a consent is at the discretion of the Council, as is the ability to revoke a consent. A location designated as a Consent street does not automatically qualify for trading as those being narrow, unsuitable or unsafe will not be appropriate to grant trading consent.
- 1.4 It is a criminal offence to trade from a prohibited street or from a consent street without consent although there are some exemptions which permit certain activities (e.g. such as charitable street collections, news vendors and pedlars).
- 1.5 Councils are permitted under the legislation to change any designations at any time through a statutory process, including publication of notices inviting comments prior to any changes being made. The process of changing the designation has the legal requirement for public newspaper notices for each designated change which extends timescales to achieve this.
- 1.6 It is now timely to review the Street Trading policy after five years. Application fees were briefly set in 2017 by this Committee and removed in 2018 due to issues of fee duplication on EDDC land owned with charges in existence for hiring the land. Application fees have remained under consideration by this Committee and now is an appropriate time to do so upon reviewing the policy and to consider need for charging application fees.

2 Proposed changes to the Street Trading Policy

- 2.1 The popularity of street vendors has grown with more outdoor markets and summer food and drink events than previously. The ongoing availability of street food during the period of Coronavirus provided options for the public during challenging times with availability of offerings still growing. That is contrary to the economic downturn as start-up costs can be lower than property based businesses. More trader start-ups are evident when other forms of employment are ending. The need to continue managing the proximity of Street Trading units in relation to premises based businesses is a factor within existing policy. The operating costs and overheads for premises are higher than those of street based vendors.
- 2.2 The intention today is to seek approval to begin public consultation on the updated Street Trading policy. The locations in Sidmouth remaining as prohibited streets since 2009 are also under consideration following engagement with Sidmouth Town Council and the EDDC Events Team. The proposal is to consult on extending the period of time each year when seasonal craft items and non-food/drink trading may occur on The Esplanade, being currently restricted to one week during Sidmouth Folk Festival. The change of designation from Prohibited to Consent streets is also a factor that is now to be considered as applications cannot be accepted for trading in those areas.
- 2.3 Officers working knowledge has grown considerably over the last five years and proposed changes to the policy have been identified through need, experience and good practice in other authorities. Checks and procedures that are in place for each application can identify risks and issues of suitability on each occasion. Control of the regime is being managed and the amendments are necessary to maintain appropriate control whilst enhancing trading opportunities in locations where it is suitable and occurs safely.
- 2.4 Ultimately, the aim is to retain a street trading environment which complements premises based trading, is sensitive to the needs of residents, provides diversity of consumer choice, and seeks to enhance the character and ambience of local environments and provide overall economic benefits.
- 2.5 Designation as a Consent street does not automatically give blanket approval for street trading as applicants still need to apply on each occasion with each being considered on their own merits. A draft of the revised Street Trading policy for consultation is attached at **Appendix A**. Changes based on learning and experience over the last five years are provided in red font in **Appendix B** to assist the Committee today. Using Appendix A for consultation, the responses received will be fully considered and taken into account, as far as possible, for issues that may be sensible to add and to address in policy.
- 2.6 This policy is in draft and further changes may be required. The recommendation ultimately is one of progressing the district wide 'consent street' regime, by consulting on the draft policy to be brought back for consideration and to be adopted through statutory procedures. The recommended changes to the Street Trading Policy enhance current standards with the amendments including:
- General layout and inclusion of an Index
 - Removal of duplication
 - Site safety
 - Control of mobile trading
 - Increased information for land use and permission
 - Suitability of Applicants
 - Addition of Conviction Policy (determining suitability)
 - Improved application procedures
 - Relevance of Public Space protection Orders (PSPO's)
 - Inclusion of applications fees
 - Inclusion of EDDC Safety Advisory Group
 - Enhanced measures for Environmental Factors
 - Removal of Sidmouth Folk Week trading (falling under hire of land)
 - Amended Conditions

❑ Amendment to the Designated Prohibited Streets

- 2.7 The draft Policy does not propose to change the process how consultation will be carried out nor how any responses will be dealt with. The procedures and decisions on how applications are taken has worked effectively over the previous period.

3 Prohibited and Consent Streets

- 3.1 The current list of Prohibited Streets are listed at **Appendix C** to this report. The majority of the streets appearing in the appendix were designated in changes from 1983/84 and in 2009 when Sidmouth Esplanade was re-designated as a 'Consent Street' for the period of one week during the Sidmouth Folk Week festival. A maximum of 60 seafront pitches may operate selling items of a craft and clothing during that week upon prior approval.
- 3.2 Sidmouth Town Council responded to the 2017 consultation by requesting the previously prohibited location of The Ham Recreation Field be included as a Consent location for street trading. The Ham had begun hosting popular food and music events, being a public area managed by the town council and it was designated as Consent Street in 2017 although the prohibited streets in Sidmouth remained.
- 3.3 As outlined in 2.2, both Sidmouth Town Council and EDDC Events Team have expressed an interest to extend the period for trading that is currently restricted to one week on The Esplanade. The consultation proposes to extend seasonal trading on Sidmouth Esplanade to accommodate a longer, seasonal period of trading from 1st May to 1st September annually, the prohibition then returning outside that period.
- 3.4 The proposed change of designation to the list of Prohibited Streets is shown at **Appendix D** to this report.
- 3.5 Current trading arrangements during the week of Sidmouth Folk Week prevents sales of food, drink or alcohol because of the close proximity to outlets already selling items of a similar nature, with the conflict on other nearby food outlets identified under previous consultations. The proposal is to continue to provide sales of craft items and non-food/alcohol should extending the trading period be a consideration with the prohibition returning all other times of the year.
- 3.6 Provision of food on the Esplanade beside and above the seafront is not necessary and increases likelihood of litter joining the sea and the beach. It would remain in contradiction to the Street Trading policy by conflicting with local businesses in the immediate vicinity. Use of glass or plastic eating/drinking utensils is not proposed inline with the responses of previous consultations undertaken. The risks of sale or consumption of alcohol beside the higher seawall and tidal waters are factors that remain and continue to reflect the sale of craft items on the seafront.

4 Application Fees

- 4.1 A number of different departments have been involved in administrating Street Trading, with the licensing team managing trader applications since 2008. The council's Environmental Health teams manage food hygiene ratings being consulted on each new application and renewal. Streetscene's Events team has been established over the last five years and officers work closely across all services involved. Trading arrangements for seafront trading on Sidmouth Esplanade during Sidmouth Folk Week has also been successfully managed since 2008 with the Events team taking responsibility from licensing over the last two years.
- 4.2 The post that was provided in the licensing team in 2017 for Street Trading has been fully validated when aligned against the growth of street trading. The post holder has responsibilities for delivering other areas of work too, including those under the Licensing Act and the resourcing need should be assessed each year. Whilst current staffing levels ensure

that the regime is managed effectively, the demographic of East Devon with trading over every season across large a geographic area may require an increase in staff hours in line with the success of street trading. In addition to new applications, the officer work involves trader inspections along with enforcement of unregulated and illegal trading.

- 4.3 The implementation of fees to administer applications will be beneficial as street trading in the district is unlikely to diminish. The effect of the designation of so many streets will continue to require resourcing in the licensing team to meet expectations and to maintain a safe, effective regime.
- 4.4 The legislation permits the council to recover its costs in running the licensing scheme from the fees charged, although no licensing regime is permitted to make a profit. The fee regime proposed at **Appendix E** will support the recovery of costs that are incurred by officers managing each application and consulting authorities prior to granting consent. The calculation of the proposed fees are based upon the time of a Scale 5 officer delivering the work from point of receipt of each acceptable application through to consultation and granting consent. If approved, the level application fees will be reviewed annually. The requirement to charge Consent fees will be kept under review future.
- 4.5 Charging for pre-application advice has been considered as all applicants make initial contact for a variety of reasons, often regarding the suitability of locations and times. However charging for pre-application advice may cause some traders to avoid those fees and to commence trading without submitting an application.
- 4.6 Charges for hiring locations owned by East Devon District Council are the responsibility for the Events team. Other charges set by EDDC such as those for land contract leases, concessions or for pitches in Queens Drive space are the responsibility of other departments and fall outside the requirements of street trading.

5 The Next Step

- 5.1 The consultation will be widely undertaken to include all Town and Parish Councils within the district, the Highways Authority and agencies, along with seeking responses from traders, businesses and the public.
- 5.2 All responses will be collated and reported back to this Committee at its next meeting upon which, the first public notice will be required to provide notice of any changes. Then if the Committee resolves to confirm their decision to change the Street Trading designation, a further final advertisement process will be required. A notice must be placed in the local press for two consecutive weeks to give notice of the Council's decision and of the date it comes into force.
- 5.3 If this Committee gives approval to change and to designate the district as a Consent street, the legislation requires a legal notice advertising the proposal to pass the resolution at a future meeting before final determination can be reached. The legal notice will be required for a period of 28 days and being necessary to change the current designation of any prohibited locations and consent locations.
- 5.4 The proposed full timetable of all consultation and public notices is provided at **Appendix F**.

Financial implications:

Costs incurred of delivering the proposal to the public to be covered by existing advertising budget by means of public notice to be advertised in the newspaper.

If the approval of the reinstatement of application fees are re-introduced this will provide Street Trading income to the scheme.

Legal implications:

There are no legal implications requiring comment