

Date of Meeting 15 March 2023

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Committee Update – Street Trading Policy & Designation of Streets

Report summary:

The report sets out the method and results of the public consultation undertaken in respect of consideration to change some current Prohibited streets to Consent streets and to adopt the revised Street Trading policy to continue administering the regime. This report also sets out the proposed fee structure in respect of application fees for Street Trading Consents to support recovering the cost for carrying out its regulatory responsibilities.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

That the Committee;

1. **Note the results of the public consultation exercise undertaken (Appendix A) and**
2. **Resolves to keep streets as currently designated in East Devon (Appendix B) and**
3. **Approves the Street Trading Policy (Appendix C) and**
4. **Recommends to Council that the fees be applied to all applications received for Street Trading Consent from 1st May 2023 (set out in Appendix C)**

Reason for recommendation:

To inform the Committee of the outcome and results of the consultation undertaken in accordance with the resolution made at its last meeting and to enable the Council to continue to recover the cost of carrying out its responsibilities relating to the administration of Street Trading Consents .

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 The Licensing and Enforcement Committee is the Council committee with responsibility for Street Trading across the district having adopted the Council's Street Trading policy in 2017. The previous report to [Licensing and Enforcement Committee on 07/12/2022](#) set out the need to review the policy with this Committee approving the consultation that was undertaken.
- 1.2. In addition to reviewing the policy, the process also afforded the opportunity to review fee setting arrangements, having been under consideration by this Committee for some years.
- 1.3 In the run up to the policy review, both Sidmouth Town Council and the EDDC Events Team raised their wish to review the current trading prohibition along Sidmouth seafront in place by extending seasonal trading arrangements along the seafront. Following the last full review of policy and trading designations in 2017, Sidmouth remained the only town in the district with Prohibited streets where trading cannot occur even upon application.
- 1,4 The recent consultation was districtwide. Street Trading may only take place upon application, consultation and then only with Consent. The implementation of fees to administer the application and consultation process is necessary as street trading across East Devon is unlikely to diminish and its growth continues. The effect of having the 'Consent' designation for most streets and roads across East Devon since 2017 will continue to require resourcing in the licensing team to ensure that a safe and effective regime is maintained.
- 1.5 Any location holding the status of a 'Consent' designation does not automatically afford a right or expectation to trade from it. There are roads and streets where the conditions, such as narrow width of paths or highway, or the volume of vehicles would prevent Consent being provided due to the risks posed to road users through the presence of a trading unit.
- 1.6 Street Trading is defined by legislation as "the selling or exposing or offering for sale of any article (including any living thing) in a street". "Street" is defined as "including:
 - (a) any road, footway, beach or other area to which the public have access without payment; and
 - (b) a service area as defined in section 329 of the Highways Act 1980, and also includes any part of a street".
- 1.7 Legislation (section 3 and schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982) permits local authorities to adopt provisions to control street trading. This is by way of a regime that permits streets to be designated as Prohibited, Licensed or Consent streets. Streets designated as 'Prohibited' are not permitted to have any street trading occurring on them at any time, even under a road closure or other measures. 'Consent' streets are permitted to have trading occurring on them provided the District Council's Consent is obtained first AND providing each location is suitable. Controls in respect of the trading activity can be imposed on any consent by way of imposition of conditions.

- 1.8 East Devon District Council adopted these provisions with effect from 1 December 1982 (by virtue of the decision of the Policy Committee of 6th October 1982) and has since designated a number of streets in the District as either 'Prohibited' or 'Consent' streets. As provisions were only adopted by the District Council, it is the licensing authority that operates as the Council's regulatory body and determines each street trading application for grant or refusal.
- 1.9 Town and Parish Councils and local Ward councillors are consultees. When an application for new street trading consent is received in their area, relevant responses will be invited. It remains solely for the licensing authority to determine (grant or refuse). The police, highways authority and Environmental health teams may submit regulatory objections during consultation periods and Devon County Council can refuse the right to use any highway.
- 1.10 Honiton and Axminster town markets have long established historic Charter rights that allow them to hold certain legal markets. This means that these markets do not need a street trading consent under that legal exemption.
- 1.11 It is a criminal offence under legislation to trade from a Prohibited street or from a Consent street without a consent. Arranging a road closure in a Prohibited location does not overcome the Prohibited designation to make trading possible and consent still cannot be granted.

2 Public Consultation Methodology

- 2.1 The public consultation exercise commenced on 17 January until 26 February 2023 being districtwide. The procedures followed previous licensing consultations with the requirement for written responses from anyone wishing to contribute. Should this Committee resolve to further change the designation of any street that would require a further statutory process with legal notices being published to inform the public of a further statutory consultation.
- 2.2 The consultation has followed LGA and government consultation principles that included adopting the timeframe to ensure completion within the working timetable of this Committee and by avoiding local elections that will occur this year.
- 2.3 The consultation informed individuals, groups and authorities and allowed sufficient time for other Councils to meet and respond and for relevant authorities to direct details to their necessary services. Residents/citizens have had sufficient time to consider and to respond.
- 2.4 The proposal to introduce application fees are relevant and important for current traders, being those holding trading consent and who may wish to comment, along with those who will apply to trade this year for seasonal events. Case law outlines that it is permissible for local authorities to consider a reasonable fee as necessary for processing the grant or renewal of street trading consents and so notifying consent holders of that was necessary.
- 2.5 The districtwide consultation was conducted as the policy applies to all of East Devon and mobile traders operate under the policy in various villages and towns. To raise awareness and encourage participation the consultation was publicised and sent out in a variety of ways:
 - It was publicised on the council's licensing website.
 - Circulated in the weekly EDDC 'Residents update' newsletter
 - It was further highlighted by other bodies and in local media outlets for the public.
 - A press release sent out to the local media by EDDC Communications team.

The commencement of the consultation was sent by email to:

- All our town and parish councils and EDDC elected members.
- Local organisations that organise street trading in the East Devon.
- All East Devon Chambers of Commerce.
- All street traders who hold Consents or who apply seasonally to hold Consents.
- Statutory bodies that are consulted upon each application

- 2.6 Given the volume of responses expected and duly received, it was neither possible nor appropriate for officers to engage verbally with respondents during the consultation. The level of responses negated any opportunity to respond to written questions or to consider verbal responses. All written responses received during the period are recorded in a full summary at **Appendix A** for the attention and consideration of this Committee.
- 2.7 This council utilises various platforms and tools for engagement with communities which were considered for this consultation. Methods that only offer an opportunity for anonymous responses or where the details of any respondent cannot be readily gathered were not suitable for use on this occasion. General comments provided on other forms of social media are not suitable for the same reason. The web page link to the revised policy and the process for submitting a response were widely circulated and were extensively used to respond.
- 2.8 It has previously been reported that a series of public consultations were conducted in 2016 and 2017 prior to the introduction of the current Street Trading policy given the significance of delivering a new, district wide policy at that time. The current policy has been kept under review since then and the level of engagement was sufficient for its first full review since its implementation.

3 Consultation Responses

- 3.1 At the close of this consultation a total of 301 responses were received by post or by email. Not all respondents have outlined their status whether as businesses, residents, visitors or traders. The majority of responses have focused or have commented upon matters relevant to Sidmouth, in particular with regard to supporting or objecting to lifting presently prohibited locations in the town. 2 responses were received after the last date of the consultation and could not be included.
- 3.2 Overall, 250 responses have been received and recorded in Appendix A as objections to changing the current designations in Sidmouth, amounting to 84% of responses. Those who responded in support of changing the current prohibited locations in Sidmouth amounted to 25 responses, being 8% of all responses. The remaining 8% of responses were relevant to trading in Exmouth or Cranbrook, or raised points that could not be considered as support or objections or being points in general.
- 3.3 Those objecting gave reasons why the designations should not be changed in Sidmouth and have provided detailed responses on many occasions. It was evident that the number of responses received was higher than that of 2017 when first setting the policy.
- 3.4 Responses were not received from three authorities that are statutory consultees for new and renewal trading applications, being Devon and Cornwall Police, EDDC Environmental Health and Devon County Council Highways. No reasons have been reported and it is customary for them not to comment if there are no changes, concerns or objections to raise.
- 3.5 Sidmouth Town Council responded and requested that small areas of the town currently being Prohibited, should be included as Consent locations for street trading, but otherwise the existing designated prohibited locations elsewhere in the town should remain (see point 13 Appendix A). The town council resolved that only supported applications should proceed and otherwise should not be issued (granted) without the town councils express agreement. 1.8 of this report outlines that parish and town councils do not have rights to approve or to refuse an application being invited to comment as consultees. Determination of each application is the responsibility of the EDDC licensing authority under adopted legislation.
- 3.6 Support for the change provided by Sidmouth Town Council was outlined in a response on behalf of Sidmouth Coastal Community Hub who produce Sidmouth Sea Fest (see Point 284 Appendix A).
- 3.7 EDDC Streetscene Events team responded and outlined points to consider amending wording in the Street Trading policy. The earlier proposal to increase seasonal trading periods

for Sidmouth seafront (see 1.3) was not submitted in writing. Absence of that proposal in the response cannot inform the Committee now to consider it on behalf of this respondent.

- 3.8 Cranbrook Town Council responded in support of the continuing street trading policy arrangements in the town. This has followed working collaboration between the town council and the licensing authority to foster a safe balanced approach in the town.
- 3.9 Axminster Chamber of Commerce responded with general support to the policy and outlining its fairness.
- 3.10 Sidmouth Chamber of Commerce responded (see point 288 Appendix A) outlining strong objection to changing trading designations in the town, providing 6 key points along with highlighting its view that the consultation process was flawed.
- 3.11 Only one current trader holding Consent has objected to implementation of application fees (point 24 Appendix A). The arrangements to apply for Consent have been without charge since 2018 and this Committee has been informed of the need to address the costs of managing the application and consultation process. A view was raised (under point 67) outlining the proposed fees will not create a significant difference to recover costs. A further trader not currently holding Consent outlined the burden of paying 'thousands of pounds' in street trading fees being a figure which cannot be attributed in this district (point 229 Appendix A). Despite the proposal to re-introduce fees for accepting and consulting on applications, there has been very few trader responses to this proposal.
- 3.12 The organiser of Sidmouth Folk Festival provided a response (point 227) being relevant to the one week of the annual festival and outlining any further trading on the Promenade may have an impact on businesses
- 3.13 The second response received shortly after the consultation began was from a Sidmouth based business outlining an objection and detailing the impact on their income as a result of street trading in the town (see point 2 Appendix A). Subsequent consultation responses received from numerous current and former businesses in the town have objected and outline the impact to their businesses in the town through street trading.
- 3.14 A significant number of the 250 objections originate from individuals, residents and some voluntary organisations in Sidmouth expressing the impact to the town should the current street designations be changed further to accommodate street trading.

4 Consideration of Changing Currently Designated Prohibited Streets

- 4.1. As a consequence of the consultation and the level of objections received against changing designations in Sidmouth, the Committee may wish to consider whether there is any sufficient justification for changing the current designation for streets.
- 4.2 Ultimately it is a matter for the Licensing and Enforcement Committee to consider any change in light of the consultation responses based on the information contained in the report. The level of opposition received in Appendix A is clear and evident.
- 4.3 If it were considered necessary to resolve to change the current designated locations, that would require a further legislative process to rescind previous resolutions that designate Prohibited streets and to resolve to designate streets as Consent Streets. The level of responses already received through this consultation could be provided again should the Council proceed with publishing formal notices under another statutory consultation. That procedure would come with further costs for arranging publication of newspaper notices.

- 4.4 If it is considered necessary to retain the current designated locations following the consultation, no further process will be required and the areas of Sidmouth that are currently prohibited would remain so under **Appendix B**.

5 Street Trading Policy and Application Fees

- 5.1 As a result of the responses and points raised, further amendments have been made to the Street Trading Policy shown in red font under **Appendix C**.
- 5.2 It is recommended that the revised Street Trading Policy including the proposed application fees are approved by this Committee to allow the regime to be managed.
- 5.3 If the Committee resolves to adopt the revised Street Trading Policy and the proposed application fees set out, that this Committee recommends to Council that the policy and fees be applied to all applications received for Street Trading Consent from 1st May 2023.
- 5.4 The revised Street Trading policy and the proposed fees have now been subject of public consultation with the recommendation being to resolve to implement the revised policy and the fees and to leave the presently listed Prohibited and Consent streets without change.

Financial implications:

If the approval of the reinstatement of application fees are re-introduced this will provide Street Trading income to the scheme. Costs would be incurred if delivering another proposal to the public by means of public notice to be advertised in the newspaper by existing advertising budget. The expected income is £1000 a year.

Legal implications:

The legal framework is set out within the report and there are no legal implications requiring comment.