

**West Northamptonshire Council**  
**Taxi and General Licensing Committee**

**24 January 2023**

**Approval of a draft designation of streets for the purpose of Street Trading and a draft Street Trading licensing policy and approval to commence public consultation.**

**Report of the Assistant Director – Regulatory Services**

This report is public

**Purpose of report**

To ask the Committee to commence the creation of a West Northamptonshire Council Street Trading licensing regime under the Local Government (Miscellaneous Provisions) Act 1982 (“the 1982 Act”) and to approve a draft designation of streets for the purposes of Street Trading and a draft Council Street Trading policy, both of which will then be the subject of a statutory and public consultation process and a further report to Committee.

**1.0 Recommendations**

The Committee is recommended to:

- 1.1 Resolve that Schedule 4 of the 1982 Act shall henceforth apply to the District area of West Northamptonshire Council for the purpose of regulating street trading in accordance with the Act.
- 1.2 Resolve to approve the draft Council Street Trading Policy (**Appendix A**) for statutory and public consultation, the results of which will be the subject of a further report to Committee with a view to formally making a Council Street Trading Policy.
- 1.3 Resolve to agree in principle the draft designation of streets (**Appendix B**) for statutory and public consultation, the results of which will also be the subject of a further report to Committee with a view to it formally making a resolution regarding the designation of streets within the Council’s area for the purposes of Street Trading.

**2.0 Introduction**

- 2.1 The draft Council Street Trading licensing policy at **Appendix A** simplifies and updates the three predecessor councils' street trading policies, which remain in force until expressly replaced by West Northamptonshire Council, due to the operation of local government reorganisation legislation, and to ensure consistency of approach with regard to Street Trading throughout the West Northamptonshire Council area.
- 2.2 A fair, clear and consistent West Northamptonshire Council Street Trading licensing regime, underpinned by a single, unified policy, will ensure that the Council can put in place controls to protect the public and provides a level playing field for street traders. It will allow the Council to attach conditions to consents or licenses in relation to food hygiene and make sure that licence holders keep the licensed sites clean.

### **3.0 Report Details**

- 3.1 Section 3 of the 1982 Act states that a District council, such as West Northamptonshire Council, may by resolution specify that Schedule 4 of the Act applies to their district and the date from which it will apply.
- 3.2 Schedule 4 of the 1982 Act enables a District Council to regulate street trading within its area. It requires any individual that sells, exposes or offers for sale any article in a street, to obtain a licence or consent from that District Council, which can charge reasonable fees for the issue of either.
- 3.3 Street Trading licensing under the 1982 Act applies to a person who wishes to sell goods or articles, which includes food and living things, from a mobile unit e.g. ice cream vans, fruit and vegetable vans, hot and cold food and drinks, butty/sandwich trailers, flower sellers etc.
- 3.4 District Councils can opt to control street trading by designating streets or parts of streets as either;
  - Prohibited streets in which street trading is not allowed,
  - Licence streets in which licences to trade are required or
  - Consent streets where consent requirements operate.

The former Northampton Borough and Daventry District areas currently have a mix of prohibited and consent streets, whilst the former South Northants District area only has consent streets.

- 3.6 Street designations may be rescinded or changed from one type to another at any time by following the legal process set out at Schedule 4 of the 1982 Act. However, there is no intention to change the approach of West Northamptonshire Council with regard to the currently Prohibited streets in the former Northampton Borough and Daventry District areas, which will retain that designation.

- 3.7 For the rest of the Council's area, including the South Northants area, the proposal is that all streets will be designated as Consent streets. This will still give the Council control over who can and cannot trade in the street and prevents traders from being able to trade without any authorisation from the Council.
- 3.8 The currently in-force Daventry District Street Trading policy allows trading to take place on private land without the requirement for a consent to do so. This is remedied in the new draft policy so that the former Daventry District area falls in line with the other former District areas and a Consent will be required to trade on both public and private land, as can be seen from the draft policy at **Appendix A**.
- 3.9 Street Trading can contribute to town centre vitality (for example street food and café culture) and economic growth. A more vibrant street trading and café culture can attract visitors to our towns. By designating streets as Consent streets, rather than a blanket Prohibition, each case can be considered on its own merits, subject to police and highways consultation.

### **Consent and Prohibition**

- 3.10 Under paragraph 10 of schedule 4 of the 1982 Act, it is an offence to engage in street trading;
- 1.4 in any Prohibited Street,
  - 1.5 in any Licence or Consent Street without authorisation from the relevant District council and
  - 1.6 in contravention of the principal terms of a street trading license.
- 3.11 The offence of trading without consent or license, or trading in an area which is prohibited, therefore carries the same penalty, which is a maximum £1000 upon conviction in a Magistrates' Court. The burden of proof to demonstrate legality of the activity remains with the trader, although the offence has a statutory reasonable precaution/due diligence defence.
- 3.12 If the Council investigates a complaint of illegal trading it will investigate whether the trader has Consent in the same way that it will investigate whether the trader is operating in a Prohibited area.
- 3.13 The aim is to make street trading controls in West Northamptonshire transparent for all who seek to trade in the street in the District and for officers who are required to enforce the law as set out in the 1982 Act. In summary the new policy will help to:
- Provide a simpler and clearer regime for the entire West Northamptonshire Council area, which will be easier for new applicants to understand;
  - Remove ambiguity and uncertainty for Licensing Officers making decisions concerning Street Trading Consent applications;
  - Ensure that there is a level playing field for all Street Trading businesses throughout the West Northamptonshire Council area, by making it subject to the same Street Trading Licensing regime, rather than three separate regimes;
  - Remove the "private land" exemption from the Street Trading licensing regime as it currently applies in the former Daventry District area and

- Ensure greater Council greater control of safety, waste disposal, noise and (for food vendors) hygiene for all street traders in the District, irrespective of location, through the attaching of suitable conditions to consents.

3.14 This report is the initial stage of the statutory consultation process set out at Schedule 4 of the 1982 Act. The Council cannot lawfully pass a resolution designating any street in its District as either a Prohibited, License or Consent street unless: -

- (i) It has published notice of its intention to pass such resolution in a local newspaper circulating in its area.
- (ii) It has served a copy of that notice: -
  - (a) on the chief officer of Police for the area in which the street to be designated by the resolution is situated and
  - (b) on any highway authority responsible for the street (which in any event is West Northamptonshire Council).

3.15 Provided that the Committee is satisfied with draft Street Trading Policy and draft street designations, at **Appendices A and B**, the above consultation process can commence and written representations will be invited from the chief officer of the Police, as well as from members of the public.

3.16 As soon as practicable after the expiry of the consultation period, the Council must consider any such representations relating to the proposed street designation resolution. It may then, if it thinks fit, pass such a resolution. As a result, a further report will be presented to the Committee in due course setting out the results of the consultation process.

3.17 If the Committee eventually makes a street designation resolution, the Council must then publish a notice in two consecutive weeks in a local newspaper circulating in its area before the resolution can come into force. The first publication must not be later than 28 days before the date specified in the resolution for the coming into force of the designation.

## 4.0 Conclusion and Reasons for Recommendations

4.1 The Committee is recommended to:

- (i) Resolve that Schedule 4 of the 1982 Act shall henceforth apply to the district area of West Northamptonshire Council for the purpose of regulating street trading in accordance with that Act.

This is **recommended** in order to create a single West Northamptonshire Council Street Trading licensing regime, rather than continuing to rely upon the three different and inconsistent predecessor council regimes.

- (ii) Resolve to approve the draft Street Trading Licensing Policy (**Appendix A**) for public consultation, the results of which will be the subject of a further

report to Committee, with a view to formally making a Council Street Trading Licensing policy.

This is **recommended** for the reasons set out at paragraph 3.13 above.

- (iii) Resolve to agree in principle the draft designation of streets (**Appendix B**) subject to public consultation, the results of which will be the subject of a further report to Committee with a view to formally making such a resolution on behalf of the Council.

This is **recommended** for the reasons set out at 4.1 (i) and paragraph 3.13 above.

- (iv) Refuse to make any or all of the resolutions at 4.1 (i), (ii) and (iii) above.

This is **not recommended** because that will result in the absence of a single, unified West Northamptonshire Council street trading licensing regime and will mean that the Council will have to continue to rely upon the three different and inconsistent predecessor council regimes. Licensing Officers would be restricted in their powers to inspect and enforce the provisions of the 1982 Act consistently throughout the District and may not be able to efficiently recover the costs of doing so, given the continued applicability of three different approaches to this. They would also be unable to deal effectively with complaints about unlicensed street traders in a consistent manner throughout the entire Council area.

## **5.0 Consultation**

- 5.1 If the Committee passes the above resolutions, Officers propose to consult with stakeholders, the public and relevant agencies, in accordance with the requirements of Schedule 4 of the 1982 Act.

## **6.0 Implications**

### **6.1 Financial and resource implications**

- 6.1.1 There are no financial implications arising directly from this report.

Comments checked by Dawn Leader, Strategic Finance Business Partner,  
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### **6.2 Legal implications**

- 6.2.1 Whilst the three predecessor council Street Trading licensing regimes remain in force, until replaced by a single, unified West Northamptonshire Council regime, because of the effect of the local government reorganisation legislation under which the Council was created, maintaining this status quo arguably carries potential legal risk for the Council.
- 6.2.2 The primary potential legal risk in not creating a single, unified Street Trading licensing regime is an increased risk of Magistrates' Court appeals against License and Consent decisions, on the grounds of the application of inconsistent rules and

policies, and by extension decision making, in different locations within the wider District area, arguably for historical reasons only.

- 6.2.3 Replacing the three currently in-force regimes with a single, unified Street Trading licensing regime would eliminate that potential legal risk.

Comments provided by James Chadwick, Senior Licensing and Litigation Solicitor.

### 6.3 **Comms implications**

*Checked by Becky Hutson, Head of Communications, 01327 302404, communications@westnorthants.gov.uk*

## 8.0 **Decision Information**

### **Wards Affected**

All wards

### **Links to Corporate Plan and Policy Framework**

Not applicable

### **Lead Councillor**

Councillor David Smith

### **Document Information**

<b>Appendix No</b>	<b>Title</b>
Appendix A	Draft West Northamptonshire Council Street Trading Licensing Policy.
Appendix B	Draft 1982 Act Schedule 4 Streets Designation.
<b>Background Papers</b>	
None	
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