

Cheltenham Borough Council

Cabinet 15 January 2013 & Council 22 February 2013

Draft Policy on Measures to Control Street Scene Activities in Cheltenham

Accountable member	Cabinet Member Housing and Safety - Councillor Peter Jeffries
Accountable officer	Director of Wellbeing & Culture – Sonia Phillips
Ward(s) affected	All
Key Decision	No
Executive summary	<p>On the 17th of April 2012 Cabinet approved a draft policy on measures to control street scene activities in Cheltenham for the purpose of consultation.</p> <p>A 12 week consultation was undertaken and 8 responses were received. This report outlines the feedback received, policy amendments and a Cabinet resolution to approve and recommend for adoption the amended draft policy by Council.</p>
Recommendations	<p>We therefore recommend that Cabinet approve the following recommendations to Council:</p> <ol style="list-style-type: none">1. Note the consultee comments submitted,2. Adopt the amended draft policy to take effect on the 1st of April 2013.
Financial implications	<p>The additional income that will be generated from the policy will ensure that the Council will be able to recover its administrative and, where permitted, enforcement costs to ensure the service remains cost neutral.</p> <p>Contact officer: Sarah Didcote, sarah.didcote@cheltenham.gov.uk, 01242 26 4125</p>
Legal implications	<p>The Council is responsible for the regulation of a number of activities within the borough of Cheltenham. Although there is no statutory requirement to have a policy in place to facilitate the discharge of these functions a policy will assist the Council in fairly and properly exercising its power in relation to determining applications. It will also assist applicants and holders of consents and/or permissions in understanding the procedures adopted by the Council.</p> <p>Contact officer: Sarah Farooqi, sarah.farooqi@teWKesbury.gov.uk, 01684 272693</p>

HR implications (including learning and organisational development)	<p>No direct HR implications arising from this report.</p> <p>Contact officer: Julie McCarthy, julie.mccarthy@cheltenham.gov.uk, 01242 26 4355</p>
Key risks	As outlined in Appendix 1
Corporate and community plan Implications	<p>Cheltenham is able to recover quickly and strongly from the recession.</p> <p>Attract more visitors and investors to Cheltenham.</p> <p>Cheltenham's natural and built environment is enhanced and protected.</p>

1 Background

- 1.1 On the 17th of April 2012 Cabinet approved a draft policy on measures to control street scene activities in Cheltenham for the purpose of consultation. The draft policy contained new and updated proposals relating to the control of street trading, charitable collections and objects placed on the public highway within the borough.
- 1.2 A copy of the draft policy is attached at **Appendix 2**.

The Current Policy

- 1.3 The Council's current policy on the licensing of street activities and objects on the highway was approved by Council on the 27th January 1997 and was further reviewed in 1998/99 and amended by Council on the 1st March 1999.

The Need for Revision

- 1.4 The need to revise the Council's current adopted policy has been driven by a number of factors;
- The current policy is limited in scope to the town centre without clearly delimiting the town centre. There is therefore a need to extend the scope of the policy to cover the entire borough and secondly to clearly define the town centre.
 - Despite the fact that the current policy has been in place since 1999 it has been unable to effectively deal with the proliferation of unlicensed 'A' boards in the borough.
 - The Council's priorities, plans and strategies for the borough have changed since 1999.
 - There have been changes in law and guidance that need to be reflected in the Council's policies.
 - The need to have clear and transparent policies governing all street activities and objects on the highway. There has been criticism that the Council's current policies are not sufficiently clear in terms of objectives and principles to be applied when determining applications. This has in the past adversely affected the Council's reputation.
 - To enable the Council to provide effective control measures to manage all street activities and objects on the highway and to ensure that they meet the required quality standards, pose no risk to public health, safety & protection and do not prejudice the Council's efforts to improve the image, perception and attractiveness of the Town.
 - To implement recommendations made by Cheltenham & Cotswold Audit Partnership. (para 4.4)

2 Consultation

- 2.1 A 12 week consultation on the draft policy was undertaken between the 18th of May 2012 and the 3rd of August 2012. In addition to writing to all of the stakeholders below, the consultation document was available on the Council's website, through notices displayed in the reception area of the Municipal Offices and the consultation was published via the licensing section's twitter account.

- 2.2 Consultation was undertaken with the following people, bodies and stakeholders:

- Gloucestershire Constabulary
- Gloucestershire Highways
- Gloucestershire Fire & Rescue Service
- Cheltenham Business Partnership
- Charity Commission
- Cheltenham Crime and Disorder Partnership
- Environmental Health Department

- Planning Department
- Members of the Council
- Community Protection Manager
- Integrated Transport & Sustainability
- Cheltenham Borough Council Directors
- Parish Councils & Neighbourhood Groups
- Cheltenham Chamber of Commerce
- Existing Consent Holders
- The public, via the Council's website

3 Consultation Feedback

3.1 Responses were received from the following persons and organisations;

- Chair of Charlton Kings Parish Council - Environment Committee
- Mark Nelson, Cheltenham Borough Council Planning Enforcement Manager
- Neals Yard Remedies, Cheltenham
- Mr Copner, director of Soho Coffee, Cheltenham
- Mr Goode, Vinyl Vault, Cheltenham
- Mr Will Capstick & Mr Bambos Shaona (Licensed street traders)
- Clerk of Prestbury Parish Council
- Cheltenham Borough Council's Licensing Committee
- Licensing Officers

Street Trading and Charitable Collections

3.2 In all there was general support for the draft policy proposals relating to street trading and charitable collections with only 2 of the 8 respondents making specific comments relating to the aforementioned parts.

3.3 Charlton Kings Parish Council expressed concern that the proposed £5 million public liability insurance is too high particularly for smaller charities. The £5 million limit is a standard Council requirement and the level the Council considers appropriate. As a result the requirement to have £5 million public liability insurance cover has been a requirement for several years and is therefore not a new requirement. For these reasons, it is not considered that the draft policy be changed at this stage.

3.4 The Parish Council further commented that the stipulated documents required by charities seemed excessive and much of the documents listed are publicly available on the internet. It finally mentioned that smaller charities are not required to have their accounts externally audited.

3.5 Officers consider the stipulated documents to be the minimum documents required to ensure that the charitable collection is conducted in a fair and open manner. For the benefit of Members, a breakdown of the documents and an explanation of why they are considered necessary are provided below;

(a) the aims and objectives of the organisation including any supporting documents, e.g. constitution and/or articles of association;	This is to ensure that the charity applying for a collection is a properly constituted charity that is entitled to a collection permit.
(b) details of street collection permits approved or refused (other than within the borough's area);	This involves merely answering a question on the application form. Normally, supporting documents will not be sought to verify this as officers will contact other authorities who may

	have refused permits.
(c) a copy of the organisation's most recently audited accounts;	This is to ensure that the charity complies with the statutory requirements to apportion a certain section of their income for the purposes relating to the application to collect money. The policy does not stipulate that these must be externally audited.
(d) if the application is made on behalf of a charity a letter of authorisation; any other relevant information requested by the Council;	This is to ensure that fraudulent applications are not made.
(e) for transitory collections, details of the proposed routes must be provided with the application; and	This is for the benefit of both the applicant and officers to ensure that all ancillary arrangements associated with the transitory collection has been undertaken, for example, road closures, conflict with existing consents etc.
(f) statement of due diligence.	The legislation does not currently prescribe what percentage of income from charitable collections must be apportioned to the cause stated on the application form. Official guidance from the Institute of Fundraising does not recommend that Councils set percentages. Instead a statement of due diligence, which sets out the charity's commitment to spend income on good causes, is recommended as a better way to ensure sufficient portions of funds are put towards good causes.

- 3.6** The Parish Council has requested a rewording of paragraph 3.7 in part 2 to include certain charities. The intention of the paragraph is to be broad enough to include collections "in conjunction with animal charities" so officers do not consider it necessary to reword the paragraph to include specific charities as it is sufficiently broad to include the recommendations made by the Parish Council.
- 3.7** Mr Capstick and Shaona suggested that the restrictions on mobile ice-cream sellers on trading in parks and near schools should be lifted.
- 3.8** There are issues with lifting trading restrictions in parks and nearer school entrances.
- 3.9** Currently, mobile ice-cream sellers are not permitted to trade within 75 meters of the gates of all schools on both sides of the road in any direction during the period half an hour before school opening to one hour after closing during school terms. This is necessary to ensure that safety of children during the times specified since these are also peak traffic times around schools. It is therefore not proposed that the above restriction be lifted.
- 3.10** In reference to lifting restrictions in relation to public parks;
- A number of sole trading rights exist with Fosters in relation to Imperial Gardens and Pittville Park.

- There are traders in existence with Council permission already trading in most parks from cafes and stalls,
- The Council has received some complaints from residents over noise emanating from chimes playing for extended periods,
- There is some concern over pedestrian safety where, for example, the mobile ice-cream seller is parked across the road from the park, and
- The vast majority of roads surrounding parks, particularly in the town centre, have some form of parking restrictions applicable which will mean that mobile ice-cream sellers will be unable to park legitimately anywhere near public parks.

3.11 Officers have included an additional requirement for traders who trade from vehicles to also provide the vehicle's insurance document and the latest valid MOT certificate.

3.12 For the reasons above, it is not recommended that the restrictions in relation to trading in public parks be lifted.

3.13 Part 2C has been updated to reflect the Council's agreement with the Public Fundraising Regulatory Association to regulate direct debit collections.

3.14 Since the conclusion of the consultation, the Department for Business, Innovation and Skills have issued new guidance on compliance with the EU Services Directive. Charitable collections fall within the scope of the directive and to ensure the policy complies with the directive, it was necessary to remove the following sections from the draft policy;

- Under paragraph 3.1 – "Priority will be given to applications falling within the following categories and in the order of priority:
 1. Charities who have not received permits in the previous year.
 2. Local Charities as opposed to National Charities."
- Under paragraph 3.3 – "Preference will be given to charities/organisations that have not received permits in the previous year."

Objects on the Highway

3.15 Although there were no substantial issues raised with regards to street trading and charitable collections, the proposals relating to objects on the highway and in particular 'A' boards prompted more response.

3.16 Charlton Kings Parish Council expressed concern that part 3, paragraph 3.3(d) of the policy, that reads "The 'A' board is placed directly outside the premises, immediately adjacent to the front of the premises or in the case of premises that do not have a street frontage, immediately adjacent to the entrance to the premises" would disadvantage premises not situated on main thoroughfares.

3.17 Officers consider the retention of this condition to be necessary to ensure the Council is able to effectively manage and control 'A' boards in terms of their location and avoiding obstruction of the highway. Business are able to apply for directional 'A' boards if they feel their premises is located in such a location that it would not be of any use to place one directly outside their premises. Furthermore, the Council will encourage businesses to share the use of the 'A' board therefore it may be beneficial for a number of disadvantaged premises to submit a joint application for a directional 'A' board. These will be determined on a case to case basis.

- 3.18** Mr Chris Copner, director of Soho Coffee, made a number comments relating to the fees associated with the licensing of 'A' boards. Fees are subject to a separate consultation and not relevant to the scope of this report. Notwithstanding this, it may be helpful for Members to know that, should the new policy be adopted, fees are likely to be reduced because less administration and enforcement resources will be required.
- 3.19** Mr Phillip Goode from Vinyl Vaults also expressed concern over the fact that the new proposed plans would not benefit his business due to the fact that it is located in a basement.
- 3.20** In reference to Mr Goode's comments, the draft policy does make provision for his situation under part 3, paragraph 3.3(d) of the policy, that reads "The 'A' board is placed directly outside the premises, immediately adjacent to the front of the premises or *in the case of premises that do not have a street frontage, immediately adjacent to the entrance to the premises.*" [Italics Added]
- 3.21** Finally, comments were received from Mark Nelson, Enforcement manager for Built Environment. There was some concern over planning implications relating to the proposed new rules for 'A' boards. Following discussions with colleagues in Planning over the concerns, it was agreed that an Outdoor Advertising Protocol be introduced in respect of 'A' boards in conservation areas. As a result, an additional sentence has been inserted under part 3, paragraph 3.3 stating "The Conditions of Consent are subject to the Revised Outdoor Advertising Protocol attached at Appendix I of this policy."
- 3.22** The protocol retains the needs test for 'A' boards in designated conservation areas whereas the new proposed policy will apply to all other areas.

Rationale

- 3.23** The Council's corporate strategy sets out a priority to ensure Cheltenham's natural and built environment is enhanced and protected. The Revised Outdoor Advertising Protocol seeks to strike a balance between promoting the Council's corporate priorities where it is deemed necessary, in this case conservation areas, whilst on the other hand lifting unnecessary regulation and burdens elsewhere.
- 3.24** Whilst the effect of introducing the advertising protocol is that there will be fewer 'A' boards that will be licensed than initially anticipated, the factors that drove the need for review will still be achieved (para. 1.4).
- 3.25** Clearer rules under which 'A' boards would be licensed means that most applications can be determined by officers instead of referring all new applications to the Licensing Committee which has cost and resource implications.
- 3.26** There are currently only 7 licensed 'A' boards in the borough which means a significant amount of enforcement resources are required to deal with those not licensed. Despite the fact that the advertising protocol would reduce the number of legitimate 'A' boards that could be licensed, there is still a fair proportion of premises inside the conservation area and outside that would qualify for consent under the proposed new policy. An increased number of licensed 'A' boards would result in less enforcement resources required but also the additional income generated can support the enforcement of the illegitimate 'A' boards under common law principles (Manchester City Council [R] v King [QBD] 1991).
- 3.27** It is very difficult to quantify the anticipated increased number of additional 'A' boards that would be licensed under the new proposed policy for a number of reasons associated with transitional arrangements from old to new policies. Nonetheless, officers anticipate that an additional 40-50 'A' boards would be licensed in the first year if the draft policy is adopted.
- 3.28** The culmination of all of the above factors will result in clearer, more streamlined and cost

effective service delivery in terms of the licensing of 'A' boards which has not been the case since at least 1999 when the current policy was adopted.

4 Outcomes

Street Trading

- 4.1 The current policy on permitted street trading has been changed to reflect the Council's priorities. The new draft policy will permit street trading where it enhances the town's reputation as a tourist and leisure destination. It is envisaged that through applying the new proposed policy, that street trading will make a positive contribution towards the vibrancy and attractiveness of the town as an already well established tourist and leisure destination.

Objects on the Highway

- 4.2 Although there has been some discussion already in terms of the rationale behind the proposed new policy on 'A' boards, the remit of objects on the highway is wider to also include, amongst others, tables and chairs.
- 4.3 Whilst the draft 'A' board policy seeks to retain the town's architectural attractiveness and street amenity, the policy also continues to encourage the use of tables and chairs outside premises as it recognises that Cheltenham has a well established café culture which also contributes towards the vibrancy and attractiveness of the town as a place to visit and live.

5 Equalities Impact Assessment

- 5.1 An equalities impact assessment has been carried out in to ensure that the proposals set out in the draft policy does not adversely affect different groups in the community.
- 5.2 Although objects placed in the highway may have an impact on people using wheelchairs or people with a disability affecting their sight, officers believe that reasonable precautions have been put in place to ensure this group of people will not adversely be affected. For example, the proposed policy for 'A' boards sets out clear rules regarding access provisions, minimum pavement width, size and construction of objects to ensure that persons in wheelchairs, pushchairs or partially sighted will have ample room to use the highway without being obstructed.
- 5.3 No other aspects of this policy has been identified that would adversely affect equality practice.

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Appendices	<ol style="list-style-type: none"> 1. Risk Assessment 2. Draft Policy on Measures to Control Street Scene Activities 3. Consultee Feedback
Background information	<ol style="list-style-type: none"> 1. Documents and minutes of Cabinet Meeting 17th of April 2012 2. Current Town Centre Policy 3. Internal Audit Report (Final) Licensing 2011-2012 (Final Issue Date: 27/09/2011)

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	Failure to review the Council's current policy could adversely affect the Council's reputation for the reasons mentioned in the report.	Licensing & Business Support Team Leader	17.4.12	2	4	8	Accept	Adoption of revised policy.		Licensing & Business Support Team Leader	
	Failure to review the Council's current policy could result in the Council being unable to effectively control the activities that fall within the scope of this review.	Licensing & Business Support Team Leader	17.4.12	2	4	8	Accept	Adoption of revised policy.		Licensing & Business Support Team Leader	
	Failure to review the Council's current policy will result in the Council being unable to fully recover its cost of administering and enforcing some of the activities that fall within the scope of the policy.	Licensing & Business Support Team Leader	17.4.12	3	5	15	Accept	Adoption of revised policy.		Licensing & Business Support Team Leader	
	Failure to review the Council's current policy will result in the licensing section being unable to comply with its internal audit recommendations.	Licensing & Business Support Team Leader	15.1.13	2	5	10	Accept	Adoption of revised policy.		Licensing & Business Support Team Leader	
Explanatory notes											
<p>Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)</p> <p>Likelihood – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)</p> <p>Control - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											