



LICENSING AND SAFETY COMMITTEE

9TH SEPTEMBER 2009

REPORT OF THE HEAD OF PUBLIC PROTECTION

STREET TRADING REVIEW – REPORT 2

CHANGE OF DESIGNATION TO CONSENT STREETS

1.0 PURPOSE OF REPORT

- 1.1 This report is one of a series that identifies issues that were previously placed before the Licensing and Safety Committee in a combined report, 'Street Trading Review – Stage 2', on 10th September 2008. The report was recommended by Licensing and Safety Committee for approval by Council on 3rd November 2008. It was considered however, that the wording within the report could have been clearer, and the report was withdrawn for clarification of the recommendations.
- 1.2 Since then there have been other legal considerations to take into account and the effect of the European Services Directive on the Street Trading Policy. Those have been considered and are reflected in these reports together with any amendments proposed at Licensing and Safety Committee on 10th September 2008.

2.0 RECOMMENDATIONS

- 2.1 Licensing & Safety Committee is asked to consider the report and recommend for approval by Council together with suggested amendments,
- a) The following proposals for approval by Council in pursuance of the powers conferred upon it by virtue of Section 3 and Schedule 4 of the Local Government (Miscellaneous Provisions) Act, 1982.
 - b) The Council authorises the commencement of the procedure under Schedule 4 Paragraph 2 of the Local Government (Miscellaneous Provisions) Act 1982 to designate all streets currently designated as licensed for the purposes of street trading as consent streets, other than those designated sites identified in the report in paragraph 2.1d below that are to remain as licensed sites. Such designation coming into force on a date to be determined by Council and that the Head of Public Protection be authorised to make the necessary statutory advertisements (a list of all streets currently designated as licensed streets is attached as **Appendix 1**).

- c) That a further three month consultation period be undertaken to final approval by Council and implementation from 1st April 2010.
- d) That in re-designating the streets from licence to consent, for existing licence holders, the licensing service will not propose any changes to the permit held during its lifetime (including renewals) without the agreement of the permit holder. There are only five current license holders and these are detailed below:-

NAME	LOCATION
F. Smith	Walsall Town Centre
C. Baxter	Walsall Town Centre
B. Singh	Walsall Town Centre
W. Tweddle	Walsall Town Centre
P. Smith	Bloxwich Cemetery

3.0 FINANCIAL IMPLICATIONS

- 3.1 Change of designation of streets must be advertised in a newspaper. Costs should be recoverable from the extra designated sites as detailed in the report entitled List of Designated Street Trader Sites.

4.0 POLICY IMPLICATIONS

- 4.1 Amends Council policy on licence, and consent streets.

5.0 LEGAL IMPLICATIONS

- 5.1 Legal Services have been consulted before recommending any changes to Licensing and Safety Committee.
- 5.2 The Local Government (Miscellaneous Provisions) Act 1982 enables a District Council to control street trading by resolution to “designate any street in their district as a prohibited, licensed street or a consent street”.
- 5.3 Schedule 4 Paragraph 2 specifies several steps to designate or re-designate a street as prohibited, licensed or consent:
- Publish a prescribed notice of intention to pass a resolution designating a particular street in a local newspaper for two weeks. The notice must contain a draft of the resolution to be passed.
 - Serve a copy on the chief officer of police and any responsible highway authority, or, where relevant the British Railway Board and some other statutory bodies.
 - At least 28 days must elapse before the resolution can be passed confirming the proposed designation.

5.7 As part of the consultation process representations were received from Mr Frank Smith, a long standing street trading licence holder for sites located in Walsall Town Centre. Mr Smith made the following points:

- That there had been insufficient consultation with licence holders and there had been none with him personally. Mr Smith would also have welcomed a site visit with licensing officers. Following this suggestion discussions and a site visit took place on 31st July 2008. Mr Smith's comments were noted and are detailed together with any action taken within the feedback of consultation.
- Mr Smith strongly opposed the proposal to replace licences with consents and claimed that such a proposal, if implemented, would contravene Article 6 of the Human Rights Act 1998.

We are advised that the re-designation of streets from licensed to consent does not of itself infringe Article 6 Human Rights Act since, although the right of appeal to the Magistrates is not available for consents, there is recourse to independent legal determination through Judicial Review.

Also the Council cannot ignore the interests of existing traders in adopting a consent scheme and any scheme that was intended to, or had the consequence of, depriving existing traders of their livelihood would raise Human Rights issues.

The intention of the recommendation therefore is to enable progress whilst providing a degree of protection for existing traders. It is proposed that for existing licence holders that their licenses are not converted into street trading consents. In the absence of some exceptional circumstances and/or a change of policy by either the Council or the Licensing Committee that this will remain the case. For the avoidance of doubt this does not in any way bind the Council in perpetuity to the existing scheme.

6.0 EQUAL OPPORTUNITIES IMPLICATIONS

6.1 The Street Trading Review is the subject of an Equality Impact Assessment.

7.0 WARDS AFFECTED

7.1 All.

8.0 CONSULTEES

8.1 Extensive consultation was undertaken in the first phase of the review to obtain general views from across the Borough as to what people from different backgrounds thought the street trading scene should be like. The results showed a level of interest and support for increasing the variety of permitted street activities in the District Centres as well as Walsall Town Centre.

8.2 A list of consultees and a summary of the representations, together with our response and subsequent action, is available for inspection from Licensing

Services. This also includes the results of the consultation at Stage 1. All of these consultations were detailed and reported to Licensing and Safety Committee in the report of the 10th September 2008 Street Trading Review Stage 2.

9.0 BACKGROUND

9.1 The first stage of the Review was reported to Licensing and Safety Committee on 19th March 2008 when it was resolved that the following be approved in principle:-

- a) the revision of licenced streets within the borough be re-designated as consent or prohibited streets as detailed at Appendix 1 of the report;
- b) that the implementation timetable, detailed in paragraph 10 on page 10 of the report, be approved subject to the report being submitted to Development Control Committee on 22nd April, 2008;
- c) that the report be submitted for consideration by all Local Neighbourhood Partnerships.

9.3 The report of 19th March 2008 was submitted to Development Control Committee on 22nd April 2008. Members resolved that the report be noted and that members direct any detailed issues to the Trading Standards Manager. During the course of that meeting it was requested specifically that Willenhall Traders Association be included in any further consultation.

9.4 A report was submitted for consideration by the Local Neighbourhood Partnerships at their cycle of meetings in June, July and August 2008. Officers from the Licensing unit attended the meetings to answer any questions and to take away any initial comments. Contact details were left so that any further comments could be forwarded directly to the licensing unit.

9.5 Other identifiable stakeholders were consulted by direct contact.

9.6 Extensive consultation was also undertaken in the second phase of the review to obtain comment on the proposals formulated from the first stage.

9.7 Consent, Licensed and Prohibited Streets

The council has the power to regulate trading activities in the street through **consent, licence** or **prohibition** and a pattern of the different types of designations has been established as depicted in the local maps that will be made available at the meeting. These have been presented to the Local Neighbourhood Partnerships. A different approach was taken for Walsall Town Centre, which was designated as 'prohibited' for the purpose of street trading, except for certain locations which were designated licensed streets (street being defined as any part of a street). Many local authorities have applied a simpler model of just consent and prohibited streets.

The main difference between licence and consent is the level of control that the council may exert. A summary of the differences is tabled below:

Licence	Consent
1. District council obliged to grant a licence unless the application ought to be refused on one or more of the grounds specified in the Act.	District council under no duty to grant a street trading consent and need not specify statutory grounds for refusal.
2. District council may only revoke or refuse to renew a licence on the statutory grounds.	No statutory limitation on a district council's power to revoke or refuse to renew a street trading consent.
3. Statutory grounds of appeal against the refusal, revocation or variation of a principal term of a street trading licence are contained in the Act.	There is no similar right of appeal against the refusal to grant or renew a consent or against the revocation or variation of a consent.

The statutory grounds for refusal of an application for a licence, or the revocation of, or refusal to renew an existing licence are limited and diminish the ability of the Council to be progressive in setting the street scene. The statutory grounds are limited to such matters as: the fitness of the applicant, availability of space in the street, the existence of sufficient trades of that type.

Therefore, streets designated as "licensed" give special privilege to street traders at the expense of the community. The re-designation of licensed streets to consent streets would allow for new initiatives to be trialled and then amended or withdrawn in the light of experience.

Currently, some streets are designated as a licence street for some of their length whilst the rest is not. There are some licensed streets in high density residential areas, for instance Park Hall, where there appears to be little call for street trading. The logic of some of these proposals is unclear and at best appear to be arbitrary in nature. Maps showing the current street designations for the borough of Walsall will be made available at the meeting.

It is also proposed that the designation of licence streets be changed to consent to increase control over street trading activity. It is proposed to introduce two types of consent:

- Mobile and
- Fixed location

The details of these are presented in the new Street Trading Policy Report.

Current List of Licensed Streets Classified by Ward

Aldridge Central and South

Bakers Lane	Myatt Way
Birmingham Road (Part)	Paddock Lane
Churchill Road	Portland Road
Gretton Crescent	Rookery Lane
High Ridge	Tynings Lane
High Street	Walsall Wood Road
Leighswood Road	Whetstone Lane (Seven acres to Churchill Road)
Myatt Avenue	

Aldridge North and Walsall Wood

Adams Road	Mob Lane
Bradbury close	Paul's Coppice
Chester Road	St Mark's Road
Lazy Hill Road (Walsall Wood Road to Copyhall Grove)	Streets Corner Shopping Precinct
	Walsall Wood Road

Bentley and Darlaston North

Bills Street	New Street
Churchill Road (Cunningham's Road to Cairn Drive)	Queen Elizabeth Avenue (Cunningham Road to Churchhill Road)
Cramp Hill	Rectory Avenue
Crescent Road	Slater Street
Cunningham Road	Victoria Road
Dale End	Waverley Road

Blakenall

Beeches Road (Elm Road to Bloxwich Road)	Harden Road (Walker Road to Junction Goldsmith Road and Oakwood Road)
Blakenall Lane (Chapel Street to Walker Road)	
Broadstone Avenue (Forest Avenue to Warner Place)	Hollomeadow Avenue (Guild Avenue to Broadstone Avenue)
Darhmouth Avenue (Jubilee Close to Junction of Coalpool Lane)	Blakenall Lane (Chapel Street to Walker Road)

Bloxwich East

Buxton Road	Park Road
Church Street	Pinfold
Field Road	Victoria Avenue (high Street to Field Road)
Harrison Street (High Street to Revival Street)	

Birchills and Leamore

Birchills Street	Leamore Lane
Edison Road (Priestley Road to Arkwright Road)	Old Birchills
Forest Lane	Upper Green Lane

Bloxwich West

Central Drive	Reeves Street
Cresswell Crescent (Persore Road to Sneyd Lane)	Sneyd Hall Road (Central Drive to Croxdene Avenue)
Elmore Row	
Nursery Road	Station Street

Brownhills

Castle Street	Shannon Drive
Deakin Avenue	Short Street
Howdles Lane (knaves castle place to Watling Street)	Silver Court Gardens
Kennet Close	Silver Street
New Road	Tamworth Close
Pier Street	The Parade
Severn Road	

Darlaston South

Glyn Avenue	Roberts Parade, Burns Road
Junction of Peacock Road & Hall Street	Wolverhampton Street (Dorset Road to Pinfold Street)

Paddock

Gillity Avenue(Sutton Road to Gillity Close)	Woodside Road/Woodside Close
Junction of Wood End Road to Sutton Road	The Crescent (Broadway North to King George V1 Avenue)
Liskeard Road	

Palfrey

Bescot Crescent	Hawes Close
Broadway West (Bescot Crescent to Wallows Lane)	Milton Street (Whitmore Street to Earl Street)
Delves Green Road (Delves Crescent to Botany Road)	Walstead Road (Hawthorne Road to West Bromwich Road)

Pelsall

Allens Lane (Commercial Road to Walsall Road)	Highfield Road
Brewers Terrace	High Street
Chapel Street	Mob Lane
Church Road	Spring Lane
Green Lane	Wood Lane (Trevor Road to Wolverhampton Road)

Pheasey

Appledore Road	Old Hall Lane
Collingwood Drive	The Crescent
Hillingford Avenue	Wimperis Way
Moreton Avenue	

Pleck

Bridgeman Street (from Pleck Road to Long Street)

Current List of Licensed Streets Classified by Ward

Rushall/Shelfield

Autumn Lane	Four Crosses Road
Autumn Drive	King George Crescent
Barns Lane	Kings Road
Bickley Road	Mob Lane
Bridge Road	Queens Road (Kings Road to Linley Road)
Chesnut Drive	Rushall Square
Dean Road	Spring Lane
Four Crosses Crescent	Spring Road
Station Road	
Sycamore Road	
Winterley Lane	

Short Heath

Lucknow Road (Spring Lane to Hayes Lane)	Stroud Avenue (Birchtree Hollow to Furzebank Way)
Pool Hayes Lane (Ravencroft Road to Lucknow Road)	Wood Lane (Henley Road to Oaken Drive)

St Matthews

Birchills Street	Old Birchills
Caldmore Road (from Vicarage Place to Mount Street)	Stafford Street (Link Road North to Bloxwich Road)
Forest Lane	

Streetly

Blackwood Road	Ferndale Road
Boundary Road	Hardwick Road
Briar Avenue	Hawthorn Road
Bridle Lane	Hundred Acre Road
Chester Road	Manor Road
Egerton Road	Valentine Close/Goodwood Drive

Willenhall North

Nottingham Drive	Wood Lane (Henley Road to Oaken Drive)
The Square New Invention	

Willenhall South

Albion Road	Gipsy Lane
Albion Street	Hall Street
Bloxwich Road South	John Street
Bow Street	Lower Lichfield Street
Cheapside	Monmore Island
Dimminsdale	St Annes Road
Durham Avenue (Lincoln Avenue to Clarkes Lane)	Upper Lichfield Street
Farmbridge Close	Waterglade Lane
Farmbridge Road	