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To: All Members of the Licensing
Committee

Please ask Shaun Banks (Telephone:
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Dear Councillor,

Licensing Committee – Thursday, 27 September 2018

I refer to the agenda for the above meeting and enclose report in relation to the following Agenda Item:

- 7. Request for Deviation from The Council's Street Trading Policy** (Pages 3
- 18)

Yours faithfully,

Shaun Banks (Telephone: 01793 463606)
for Director of Law and Democratic Services



Stephen P. Taylor M.A (Oxon), Solicitor
Director of Law and Democratic Services

Request for a street trading consent within the Town Centre

Licensing Committee

Date: 27 September 2018

Author Kathryn Ashton - Licensing Manager

Wards: All

Parishes Affected: All

1. Purpose and Reasons

- 1.1 The Licensing Committee is asked to consider a request made by Mr Steven Hill to trade within the town centre over a five week period over the Christmas contrary to the current Street Trading Policy for Swindon Borough Council.
 - 1.2 The current Street Trading Policy is currently under review as agreed by Committee and the consultation ends on 19th October 2018. The results of this will be brought back to the Committee with the new recommended Policy for adoption.
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2. Recommendations

That the Committee:

- 2.1 Considers the application made by Mr Hill and determines whether it should deviate from its current Street Trading Policy which prevents individuals operating within the town centre unless they form part of a market. The current policy is attached as Appendix A. Should the Committee agree to Mr Hill's request the location of his trading would be identified by 'In Swindon'.

3.0 Detail

- 3.1 A request has been received by the Licensing Authority from Mr Steven Hill to trade Bratwurst and fairground rides within the town centre for 5 week period starting end of November 2018. Mr Hill has regularly traded over this period linked to the Christmas Market. However, this request is made as currently there is no certainty that a Christmas Market will go ahead.
- 3.2 There are ongoing discussions between an identified market provider and In Swindon with the aim of securing this provision and if successful Mr Hill will form part of this.

4.0 Background

- 4.1 Swindon Borough Council has resolved that Schedule 4 of The Local Government (Miscellaneous Provisions) Act 1982 applies to its area. Under this

Request for a street trading consent within the Town Centre

Licensing Committee

Date: 27 September 2018

Schedule the Council can manage street trading by designating streets as consent streets, licence streets or prohibited streets.

- 4.2 Street Trading is defined as the selling or exposing or offering for sale any article in a street subject to a number of exemptions, which include the following:
- Trading as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871
 - Any trade in a market or fair the right to hold which having been obtained by a grant, enactment or order
 - Trading as a news vendor
 - Trading at or adjoining a shop premises as part of the business of the shop
 - Offering or selling things as a roundsman.
- 4.3 Schedule 4 of the Local Government (Miscellaneous) Act 1982 defines a street as any road, footway, beach or other area to which the public have access without any payment, and a service area as defined in section 329 of the Highway Act 1980. There are 3 classifications of 'street' for the purpose of street trading as follows:
- A consent street is a street in which street trading can only take place if the consent of the local authority has been obtained
 - A prohibited street is a street in which street trading is prohibited from taking place at all
 - A licence street is a street in which street trading is prohibited without a formal licence given by the local authority.
- 4.4 The current Street Trading Policy for Swindon Borough Council was introduced in 2013, became effective in 2014 and has not been reviewed since that time. The Policy designates the whole of Swindon Borough Council as 'consent' streets save for those identified as 'prohibited' streets in the town centre shown in the map within the current policy. There is also an area which is shown as 'under consideration'. The current Street Trading Policy is attached as **Appendix A**.
- 4.5 There are a number of individual street trading consents issued throughout the Borough with the exception of the town centre. These consents are issued for a 12 month period and then must be renewed. There is an application fee of £2400 generally paid quarterly. With regards to a temporary permission there is a daily fee of £37 for 'one off' traders but this 5 week period would be £100. Any trader must have obtained the relevant planning consent prior to utilising any street trading consent. The current policy requires: -
- a. Street trading consents only be granted when their presence will enhance the qualities of vitality, success and reputation of the area as a place to do business

Request for a street trading consent within the Town Centre

Licensing Committee

Date: 27 September 2018

- b. Street trading consents shall not normally be granted for hot food trailers and vans where it appears they will be used principally to save costs relative to competing cafes and takeaways
- c. A presumption against siting fast food traders in residential areas, in the locality of fixed fast food premises, close to schools or where they may impact adversely on the amenity of the area or conflict with the policy.
- d. Street trading consents may be granted for street markets specified as weekly farmers markets, themed markets and a Christmas market.

5. Alternative Options

- 5.1 The Licensing Committee could choose either to grant the request contrary to current policy or to refuse the request made.

6. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 6.1 There are no direct financial or procurement implications arising from this report, though consents for street trading do attract a fee, which is considered to be reasonable in ensuring that there is no financial burden on the Council in dealing with, and enforcing consents.

Legal and Human Rights Implications

- 6.2 Legal and Human Rights considerations have been taken fully into account in compiling this report. The recommendations of this report are compatible with Convention Rights as they are fully in accord with the requirements of relevant legislation. The Council is required to comply with the statutory provisions referred to in the report, which the adoption of this policy will ensure it does. All other legal and human rights implications have been considered in the preparation of this report.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 6.3 There are no staffing, sustainability or rural implications arising from this report.

6.5 Consultees

The Director of Law and Democratic Services (Monitoring Officer) is consulted in respect of all reports.

6.6 Background Papers

Request for a street trading consent within the Town Centre

Licensing Committee

Date: 27 September 2018

The Local Government (Miscellaneous Provisions) Act 1982

Current Street Trading Policy for Swindon

6.7 Appendices

Appendix A - Swindon Borough Council' Street Trading Policy 2013

General Statement of Principles for the Regulation Of Street Trading in Swindon

INTRODUCTION

- 1.1 The regulation of street trading is concerned solely with the social, economic and environmental impact that street trading has, especially on (but not restricted to) the immediate locality. Such activities are regulated under Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 ('the Act').
- 1.2 Swindon Borough Council has resolved pursuant to section 3 of the Act that Schedule 4 shall apply to its district. The Council therefore has the power to designate any street within its district as a 'Prohibited Street', a 'Licence Street' or a 'Consent Street' for street trading purposes.
- 1.3 These are defined in the Act as:
 - "Prohibited Street" - a street in which street trading is prohibited.
 - "Licence Street" - a street in which street trading is prohibited without a licence granted by the district council;
 - "Consent Street" - a street in which street trading is prohibited without the consent of the district council;
- 1.4 The Council has resolved that all streets within the Borough of Swindon shall be consent streets for street trading purposes, save for those identified as prohibited streets on the plan of the town centre (Appendix A).
- 1.5 The Council has control over areas which have been adopted as Public Highway under law. Some of the streets in the town centre are not owned by the Council and therefore the landowners consent will be required for street trading activities in these streets.

PART A - STREET TRADING CONSENTS (GENERAL)

- 2.1 The core criteria of avoiding 'obstruction of the street or danger to persons using it' and 'nuisance or annoyance (whether to persons using the street or otherwise)' shall be used to determine applications. Additionally, applications shall be judged against presentation, sustainability and the achievement of a sensible retail mix, together with any other reasonable consideration.
- 2.2 The pedestrianised public highways in shopping centres are intended to provide uncluttered, open vistas between shops. Traders who seek to use portable structures to gain access to prime retail sites on a daily basis at a fraction of the outlay expected of shop-keepers shall be looked at on an individual basis.

- 2.3 In the principal retail areas of Old Town and the Town centre, street trading shall be assessed on its likely impact on the vitality, success and reputation of the area as a place to do business. Street trading consents shall only be granted to traders who demonstrate that their presence will enhance those qualities. Traders do not have a 'right' to access core areas and those with a neutral or negative impact shall be excluded.
- 2.4 Street trading legislation does not distinguish between trailers and market stalls but there is generally a substantial difference between the two types of trading. Both trading formats are subject to this policy but they will be affected in different ways (see 'Part B - Markets' below).
- 2.5 For the streets identified on the plan of the town centre as 'consent solely for markets' (Appendix A), the Council will only grant a consent to carry on street trading where the applicant is part of an organised market. No Street Markets will be allowed outside of these specified streets within Swindon's Business Improvement District area.
- 2.6 Hot food trailers and vans etc. tend to function as portable shop units, operating in isolation. Where it appears that they will be used principally to save on costs relative to competing cafes & take-aways, a street trading consent shall not normally be granted. Where the infrastructure or trading opportunities are such that a fixed retail unit could not be justified, a fast food trailer shall be considered for consent.
- 2.7 Aside from their exclusion from the Town centre, there is a presumption against the siting of fast food traders in residential areas, in the locality of fixed fast food premises, close to schools or where they may impact adversely on the amenity of the area or conflict with this policy.
- 2.8 Parish and town councils may make recommendations on whether an application to engage in street trading within their area should be granted, within 15 working days of being notified. Swindon Borough Council will administer the applications and will monitor street trading consents. The minimum legal requirements must still be met.
- 2.9 Street trading consents can be withdrawn at any time and therefore have no intrinsic value. It is entirely legitimate for a trader to sell any trailer, equipment or stock to a third party. It is unlawful however for a trader to purport to sell a 'pitch' or a consent. Where such transactions are discovered to have taken place, use of the pitch in question by any person shall be suspended immediately and the ban shall remain in effect for a period of six months. The police will be informed.
- 2.10 In the case of individual pitches, new proposals shall normally proceed by way of planning consent, sought by the business which wishes to trade there. In these cases, the proposer will have the first option on applying for a street trading consent. Planning consent is required for routine trading pitches but the existence of a planning consent provides no guarantee that a street trading consent will be issued.

- 2.11 Where established individual pitches are vacated, the street trading consent must be handed back to the Council. An outgoing trader shall not be permitted to propose an incoming trader for the pitch that they have vacated.
- 2.12 An e-mail list of potential traders is maintained by the Council. Anyone asking for their name to be added to that list will be notified if an individual trading pitch becomes vacant. Letters will not be sent out. Any pitch vacancy will be posted on the Council's web site and expressions of interest must be submitted within 30 days of the date of posting. Any street trading consent subsequently issued will be allocated on merit, according to the published criteria.
- 2.13 It is entirely a matter for individual street traders, whether or not their business is profitable and whether or not there is sufficient customer demand for their product or service. No account will be taken of either of these factors, when street trading decisions are made.
- 2.14 The overall employment consequences or the likely external economic impacts of a street trading proposal may be taken into account.
- 2.15 The regulation of street trading will not be used directly to secure compliance with the many other legislative duties which impact on street traders. Consent conditions will not say, for example that traders "must fulfil their obligations under the Health & Safety at Work Act". Failure to comply with any legal requirement will nevertheless be a material factor, should it be necessary to review a consent.
- 2.16 When carefully sited, permanent island trading units of high quality may be useful in providing accents in the street scene. They may for example link different areas of the town centre. Structures of that kind fall outside the scope of street trading and therefore of this policy. It will be expected that any proposal for a fixed structure will mirror any design criteria already laid down for shop-fronts.

PART B - MARKETS

- 3.1 Street markets have been part of the town centres in the UK for many years. In the past they tended to be very local affairs but now include Continental, German and Farmer's Markets that offer a more specialised experience. Street markets can bring benefits to a Town centre by offering an alternative shopping experience, a place for social interaction, an attraction for tourists and by contributing to the local economy. On the other hand, they may take business away from established retailers, they pay no rent and can take up prime dates when the streets could be used for alternative purposes. There is therefore a need to take a balanced approach to the issue but the Council will support street markets where they contribute to the overall social and economic wellbeing of the Town.

3.2 Objectives

In supporting street markets within Swindon Town Centre, the Council has a number of objectives:

- To support the local economy;
- To enhance the shopping experience;
- To provide an additional attraction to encourage more shoppers to the Town Centre;
- To encourage local producers and businesses; and
- To add vibrancy to the town centre.

3.3 General Principles

The following factors will be into account when considering proposals for Town Centre street markets:

- The benefit to the economy of the Town;
- The potential to connect with local businesses;
- The provision of opportunities for the sale of local produce;
- The offering of a diverse range of products;
- The impact on the environment and the of use sustainable methods in their operations; and
- Where possible, the employment of local residents.

3.4 In submitting a proposal to the Council, the Market Operator and Stall Holders shall be expected to show how their event complies with the above objectives and general principles. The Council will not normally support an application for a street market in the Town centre where the above objectives and general principles have not been appropriately addressed.

3.5 The appearance of a market must ideally enhance, but at least not be detrimental to the street scene. Precise measurements of the height, width and depth of proposed stalls shall be submitted with any application.

3.6 Markets Options

Preference will be given to Town centre markets in the following order:

- A weekly general market
- Markets offering local produce or craft items;
- Markets that show a link to existing shops and/ or local producers; and
- Markets with no local connections, such as Continental style markets.

The preferred usage for markets in the town centre is set out in the table below, although a market will be considered in any consent street.

Type	Frequency	Location	Duration	Goods	Conditions
Christmas Market	Annual	Canal Walk/Wharf Green	Maximum 21 days, to fit in with the lights switch on.	Festive related goods, this includes hot food.	Stall holders must use the chalets provided by InSwindon.
					In Swindon are responsible for the site layout of the market
					The layout of the market must be designed to ensure access between shop fronts and chalets for emergency services.
Weekly Market	Weekly	Canal Walk, Wharf Green, Havelock Square	One day per week as agreed between the Market organiser and Licensing Committee	Ideally goods that compliment that which is currently being sold in the town centre	The Stalls used must meet the design code as between the market organiser and licensing committee
				Hot food can be sold but must be subsidiary to the main business of stall.	The layout of the market must be designed to ensure access between shop fronts and chalets for emergency services.
Specialist market	Monthly	Canal Walk, Wharf Green, Havelock Square, The Parade, The Cenotaph, Theatre Square.	One day per Month as agreed between the Market organiser and Licensing Committee.	Must be in keeping and related to the theme of the specialist market	The layout of the market must be designed to ensure access between shop fronts and chalets for emergency services.

- 3.7 In submitting a Business Case proposal, the Market Operator and Stall Holders should take the following matters into account.

3.7.1 Public Safety

The market should not present a significant risk to the public in terms of road safety, obstruction or fire hazard and should not present a risk to public order. If a market stall(s) causes an obstruction to the free flow of pedestrians or access for emergency vehicles, the Council reserves the right to remove such stalls.

3.7.2 Potential Nuisance

The market should not present a substantial risk of public nuisance from noise, rubbish, fumes, vermin, vibration, smoke or dust. The Market Operator and Stall Holders shall not do or suffer anything to be done in or on the street which in the opinion of the Council may be or become a danger, nuisance or annoyance to or cause damage or inconvenience to the Council or to the owners or occupiers of any adjacent or neighbouring premises or to members of the public. Failure to do so may mean removal of the said stall(s).

3.7.3 Amplified music and other amplified sound

The Market Operator and Stall Holder shall not use or suffer or permit any music playing, music re-producing or sound amplification apparatus or any musical instruments radio or television sets unless prior consent has been granted by Swindon Borough Council when granting the street trading consent. Such consent to play music or use other amplified sound may be subject to additional conditions.

3.7.4 Advertising

The Market Operator and Stall Holder shall not place on the street or affix to any equipment placed on the street (excluding the trading units) any advertising material of any description whatsoever. The holder shall not make any excavations or indentations of any description whatsoever in the surface of the street, grass or planted area or place or fix any equipment of any description in the said surfaces.

The Market Operator and Stall Holder shall not attach anything to any street furniture.

3.7.5 Equipment

The Market Operator and Stall Holder shall not place on the street any furniture or equipment other than as permitted by the Council and the Market Operator and Stall Holder shall maintain the same in a clean and tidy condition and not place them so as to obstruct the entrance to or exit from any premises.

The Market Operator and Stall Holder shall not remove any existing street furniture without the express permission of the Council.

3.7.6 Waste

The Market Operator and Stall Holder shall provide at his own cost and expense litterbins or similar receptacles for the deposit of cartons, wrappings, containers and similar discarded items and remove them and their contents at the end of each daily period of use. Thereafter, the waste shall be deposited at an appropriate waste site.

The Market Operator and Stall Holder shall retain with any van, cart, barrow or other vehicle or stall included within his consent any water used or waste produced until the end of each daily period. Thereafter it shall be removed and disposed of at a suitable waste disposal point. In particular the Market Operator and Stall Holder shall not deposit any such waste near or into any street drain or channel or any public litter bin

3.7.7 Health and Safety

All participants/contractors must comply with the relevant Health and Safety legislation throughout the duration of the market.

The Market Operator and Stall Holders are responsible for all public health and safety aspects of the event prior to, during and subsequent to the event.

All stalls/equipment must be contained within the locations specified and laid out by the Council and must be positioned to allow free flow of pedestrians or access by emergency service vehicles. Ideally there must be a gap of 2 metres around the market to ensure swift and safe evacuation, having regard to the volume of people likely to be in the building.

The positioning of the stall must ensure that emergency vehicles can gain access to building frontages. This applies to items that cannot be quickly and easily removed. Where food is sold, the Market Operator and Stall Holder will be required to ensure that all participants comply with the relevant food safety legislation:

The Market Operator and Stall Holder shall keep their trading position and the immediately adjacent area in a clean and tidy condition during the permitted hours and also leave the same in a clean and tidy condition and unobstructed at the end of each daily period of use. Failure to do so may mean removal of the said stall(s).

The Market Operator and Stall Holder shall remove all equipment from the street outside trading hours unless appropriate on-site security measures for their retention have been agreed in advance with the Council. (This will not apply in the case of Christmas Markets as InSwindon will provide chalets).

3.7.8 Use of electricity

The Council may make the provision for the use of electricity for the stall holders and will charge an appropriate fee for this.

3.7.9 Insurance

The Market Operator and Stall Holders shall have at least £5million public liability insurance to cover any activity arising from the trading.

3.7.10 Fire prevention

No refuse or combustible material shall accumulate in or around any pitch or be placed near to electrical fittings.

No hazardous substances or chemicals or inflammable substance shall be stored on the pitch. No gas bottles or other high-pressure container shall be left on the pitch unattended or overnight.

Any stall holder that has any form of heat, gas or electrical equipment on or around their stall shall have a fully functioning fire extinguisher.

3.7.11 Evacuation

In the event of fire, bomb threat or such potentially serious incident which requires the immediate evacuation of the area, instructions will be given by the InSwindon staff.

All traders are advised to make themselves aware of the evacuation procedure in place at the market. On being requested to evacuate by a member of the InSwindon team emergency services or police, traders shall leave the market without delay and where possible and, without danger to themselves or others, assist in directing customers away from the market area.

3.7.12 Conduct of stall holders

All traders shall fully comply with all the rules & regulations and with all terms and conditions of any permit agreement when attending the market and shall comply with all reasonable directions of the Market Operator and InSwindon. The Council's decision is final in all matters and it can remove any trader at its discretion.

All market traders, their servants, agents, employees or contractors shall conduct themselves in an orderly manner so as not to cause annoyance or inconvenience to other users of the market and to act in a responsible manner and not cause any act of neglect, wilful damage or disturbance to the peaceable enjoyment of the market.

The stallholder shall not use or permit to be used abusive, profane, offensive or insulting language. In a dispute between a trader and consumer the trader shall at all times endeavour to remain courteous and polite. Where the matter cannot be resolved amicably the Market Operator will attempt to arbitrate, if requested to do so. If in his/her opinion the consumer is found to have a justifiable complaint, the trader shall be requested, without any liability on the part of the Market Operator, to rectify the matter as recommended.

If the Market Operator is unable to offer a clear opinion or the trader is unwilling to resolve the matter then the consumer shall be advised to take the matter to the local Trading Standards Service. The trader shall be expected to comply with the written opinion of the Trading Standards Service.

- 3.7.13 The stall/pitch holder shall move to another pitch when told by the InSwindon staff at short notice. This is to ensure that complaints or other issues can be dealt with quickly.

3.8 General Conditions

- 3.8.1 Street markets within one area shall be limited to one per calendar month. (This is in addition to any planned Farmers Markets and any Christmas Market).
- 3.8.2 Street markets shall not be held in the same week as Farmer's markets.
- 3.8.3 Traders shall provide their own stalls, save for those involved in Christmas Markets, where InSwindon shall provide Chalets.
- 3.8.4 A street market shall normally consist of 10 to 50 individual stalls (this would not apply to charity markets).
- 3.8.5 A street market shall normally be permitted to last not more than 3 days, except Christmas Market which will last no more than 21 days.
- 3.8.6 Markets shall have a theme in relation to the goods being sold e.g. a continental or Christmas market.
- 3.8.7 The use of generators shall be prohibited unless absolutely necessary, in the event of generators being required they will be of a design to minimise noise and pollution.
- 3.8.8 Music shall not normally be permitted. Permission to play music may be given in exceptional circumstances where a request to do so has been included in the application and specific consent has been given by the Council when granting the street trading consent.

3.8.9 Other than Christmas markets and continental markets, hot food shall only be sold as ancillary to the stall holder's main activity.

3.8.10 The Council reserves the right to restrict or prevent any trader from participating in a market if they breach this policy.

3.9 Other Statutory Consents

The Market Operator shall ensure that the correct planning and highways consents are in place before submitting a 'street-trading' consent application on behalf of each of the stall holders. Licences are dealt with under the statutory procedures outlined in the Act.

3.10 Management Procedures

Where statutory consents are granted, the Council will expect the Market Operator and Stall Holders to comply with any conditions attached to the grant of any consents and the relevant criteria. Lack of compliance by Operators and/or stall holders may be taken into account when future proposals are considered by the Council.

PART C - GENERAL

4.1 Revocation and Renewal

In accordance with the Local Government (Miscellaneous) Provisions Act 1982, the Council may revoke any consent at any time if, in the Council's opinion, the holder of the consent is operating in an inappropriate manner contrary to the general principles and objectives set out in this policy. The Council shall not in any circumstances whatsoever be liable to pay any compensation to the holder of the street trading consent, or Market Operator where appropriate, in respect of such revocation. Where consent is revoked the holder is entitled to have the fee paid remitted in whole or in part. Consents are only valid for 12 months and then must be renewed.

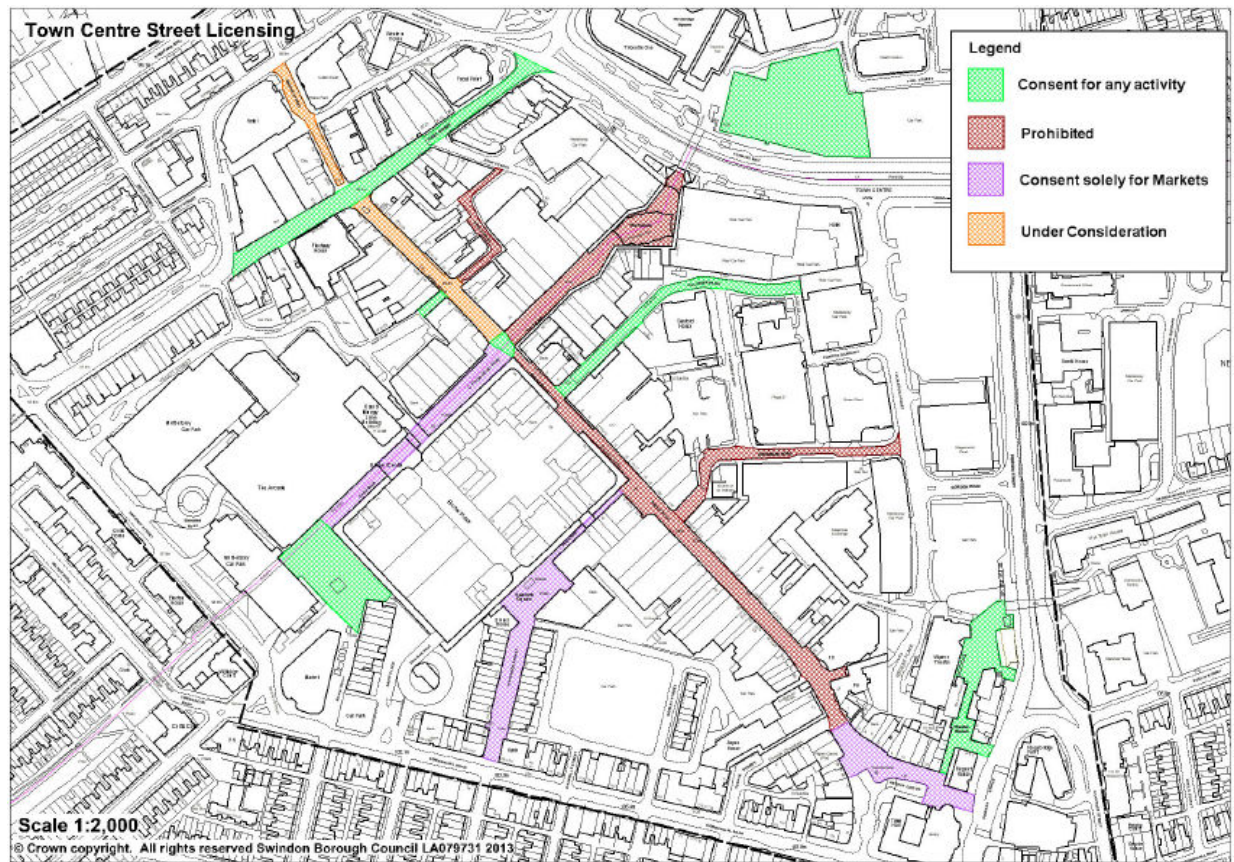
4.2 Commencement & Review

This policy shall come in to effect on 01 August 2014.

The policy may be reviewed at any time, as required, but shall be reviewed no later than 5 years from the date of commencement.

APPENDIX A

Plan of Town Centre showing designation of streets



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