

Re-designation of some town centre streets, for street trading purposes

Licensing Committee

Date: 27 October 2009

Author: Head of Licensing

Wards Affected: Central and Eastcott

Purpose

- To recommend changing the designation of some town centre streets from consent to prohibited status, for the purpose of street trading.
- To resolve that 'light touch' street trading authorisations should be granted to musicians who are performing under the terms of the inSwindon Street Busking and Entertainment scheme or to approved visual or performance artists, to allow them to sell examples of their own work, ancillary to their performance or their artistic activity on the street.
- To resolve that, to that end, global street trading consents should be made available to inSwindon, at no cost, to regularise sales ancillary to bookings made under the inSwindon Street Busking and Entertainment scheme, for the use of Jubilee Square.

Recommendation

Licensing Committee is asked : -

- To resolve that a policy resolution is put to full Council, as follows ~

"That the streets in the Borough of Swindon listed below, currently designated as Consent streets shall be given a new designation as Prohibited streets, that is streets where street trading is prohibited.

New Prohibited Streets

[Leaving aside the area to be known as Jubilee Square, consisting of the rectangular space at the intersection of Regent Street, The Parade, Bridge Street and Canal Walk and an area extending by three metres into Bridge Street] Canal Walk, The Parade, all of Regent Street, Regent Circus, Edgware Road, that part of Bridge Street further than three metres from the junction with Canal Walk, down as far as the junction with Fleet Street. The changes in designation to come into effect on 31st March 2009, being a date after the expiration of one month, beginning with the day after this resolution was passed"

1. Reasons

- 1.1 This proposal follows a resolution to consult on the motion printed above, agreed by Licensing Committee on 26 February 2009.

2. Detail

Further information on the subject of this report can be obtained from Lionel Starling on 01793 466118 or e-mail lstarling@swindon.gov.uk.

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- 2.1 Licensing Committee decided on 26 February 2009 to consult on two proposals for changing the designation of town centre streets. The first of these was to create new consent streets in a ring around the core town centre shopping area. The second was to convert some existing consent streets to prohibited streets. This report is about the second of these proposals. The new consent streets came into being on 9 June 2009.
- 2.2 The draft resolution set out above has been published in a local newspaper and the statutory consultation period has expired. Established town centre traders were advised in writing of both proposals originally and some put forward written responses. Those letters were considered at a meeting of the Licensing Committee on 15 June 2009. Street traders have been notified in writing that today's meeting is taking place.
- 2.3 No decision was taken at the 15 June meeting and the matter was carried over to this meeting, to enable a further discussion.
- 2.4 We are legally required to publish a public notice before any resolution of this kind is passed. The wording of the original resolution allowed for the possibility of a new date for implementation, so the expense of a further notice has been avoided.
- 2.5 Formal notice must be given before a resolution takes effect, again by publishing in a newspaper. A final decision is for full Council. For these reasons, the 1 November 2009 date of implementation proposed in the June report has been changed to 31 March 2010. This precedes the season for ice cream trading, coincides with the end of the financial year and acknowledges that major works will start in Regent Street in early 2010.
- 2.6 Live music adds to the vitality of the street scene and in Swindon has introduced a new quality scheme to manage busking. The zone set aside for live performance is Jubilee Square and the top end of Bridge Street. With the removal of the clock, the reliance on the upper part of Bridge Street is removed. It is very common for performers to sell CDs of their own work and many rely on being able to do so, to make their visit viable. An exemption from street trading controls applies where sales are wholly applied to a charitable purpose. Provided that they are only selling their own work and are providing a spectator attraction, there is strong case for a national exemption from street trading laws. They should be treated like any other market trader if they are just selling goods.
- 2.7 Swindon Borough Council has established a very good reputation for the promotion of live music. Leaving Jubilee Square as a consent street would avoid any unintended conflict with the Street Busking and Entertainment scheme. Doing so could be allied with a policy that the discretion to provide consents in Jubilee Square should only be applied to performing artists

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selling their own work, irrespective of the type of media involved, provided that any such sales are ancillary to their public performance in that area on that day.

- 2.8 For one week, an artist from Poland produced pictures and sold them, near the former post office in Fleming Way. He works with spray paints onto canvas. The attached photograph shows the street display. The activity was authorised through a standard street-trading permit, at normal commercial rates. The activity brightened that corner and generated a lot of interest from passers by. It seemed also to deter some of the anti-social behaviour which is a feature of that location. The experiment could be extended, developing that corner into a cultural attraction, until it is needed for regeneration.
- 2.9 Outside of London, 'street trading' means trading in goods from a moveable stall. In London, a more consistent and logical law includes the likes of NPower, Sky and the AA in the definition of street trading. In Swindon, these businesses are exempt because they are selling services, not goods.
- 2.10 Street trading controls apply to any area of land in the open air, including those not obviously "on a street" but either off the street or on land which looks like a street. The special meaning of 'street' means somewhere where members of the public are free to wander without being charged entry. It does not matter at all whether the land is privately or publicly owned. Nevertheless, the inside of e.g. a park or a car boot sale counts as a distinct, consciously entered 'place' in its own right and trading there is not 'street trading'.
- 2.11 A kiosk sited permanently on a street is classed as a shop and street trading laws do not apply. Shops sometimes have tables set up outside, as an extension of their inside sales area. They often need various permissions to do that but they do not need any form of street trading consent. Since kiosks are also shops, they can have outside displays without having to obtain a street trading consent.
- 2.12 Street trading offers no real security, so it does not provide a sound basis for investment. This is simply in the nature of street trading and is not something which can be fixed by policy resolution of the Council. An attraction of street trading is that it can provide a stepping-stone to something more permanent but a disadvantage is that it cannot be relied upon in the long term, unless it is based in a formal market setting.
- 2.13 Market stalls in a market hall or kiosks in the streets are not always offered on long term contract but at least they can be. Street trading consents are always for twelve months or less, by law.

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- 2.14 From December 2009, a new law forbids any action whatever by a local authority which gives an advantage or preference to established traders, over new traders. For the present, it is still lawful to treat existing town centre traders as a special case but the options for doing so are effectively already closed. The implementation date originally proposed for the designation changes would have allowed preferential treatment but the new date does not.
- 2.15 As street trading consents expire, in 2010 and beyond, if there are twenty applications for one pitch the applications will have to go into a draw. Even if a trader had been on the same pitch for thirty years, they will get no 'first option' on it. For this reason alone, the relative stability which town centre traders enjoyed for around ten years will not be seen again. By law, all applicants will be offered exactly the same opportunities, whether they are established or new. Decisions will be made only on merit.
- 2.16 An application for street trading cannot be submitted unless there is planning permission for the pitch. If the planning permission will run out less than twelve months ahead, the street trading consent is cut back to the same extent.
- 2.17 All but two of the planning consents for town centre pitches expire on 31 December 2010 or earlier. Of these two, one is on private land which the owner wishes to see vacated and the other is ear-marked for imminent redevelopment. More than half of the permissions created for the now abandoned town centre kiosk project have already expired. The future of street trading in the town centre will be dictated as much by Planning policy as by any policy decisions taken by this committee.
- 2.18 With town centre regeneration a priority, new planning applications for street trading in the town centre are now judged against tougher criteria than applied in 2001. Without the grant of fresh planning consents, street trading will cease. The distinction between a 'consent' street and a 'prohibited' street means nothing in practice, if there is no planning permission for street trading.
- 2.19 Local authorities are forbidden to fix consent fees for conventional street trading at a commercial 'going rate'. The degree of control which can be exercised through the consent approach is quite limited.
- 2.20 By contrast, kiosks are normally let at market rates and lease agreements can be used to give detailed control over presentation, product offer and conduct. That is why the kiosk model is the one preferred by our major retail and development partners.

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- 2.21 The 2006 Cabinet report on kiosks in the town centre advocated a very large number of kiosks, paid for by the Council and largely destined to provide new accommodation for some existing street traders. With hindsight that scheme was far too ambitious and might have put competing small shops out of business.
- 2.22 It is unlikely that there are many places in the town centre where kiosks would be an asset. If there are going to be kiosks, it cannot be assumed that the Council will provide them, although that cannot be ruled out. There are no guarantees that if kiosks are installed anywhere, existing street traders will be offered them. In particular, kiosks are not best suited to businesses which rely on the preparation of fast food, as proper washing facilities and ventilation are not easy to install in such units.
- 2.23 There have been references to the fact that some street traders have been in the town centre for around eleven years. They were not there before that because street trading was banned. The ban was only lifted after a rash of illegal trading in the town centre from ice cream and burger vans. Had parking enforcement been a Council function then, the ban would probably still be in place today.
- 2.24 Large businesses with current and planned investments in the town centre in the order of hundreds of millions of pounds have expressed their dissatisfaction with the current street trader offer, especially the trade in hot food. Large retail multiples have expressed similar concerns but have done so through inSwindon and the New Swindon Company rather than publicly.
- 2.25 The future of large-scale retail in the town centre is not guaranteed and the health of that sector is very dependent on having the right policies in place.
- 2.26 As far as those matters within the control of the Council are concerned, car parking charges are the most important concern of town centre retailers. Street trading is a lesser issue but nevertheless an important one. It is essential for Swindon that Council policies promote business confidence in the town centre. Street traders rely on the fixed retail sector in the town centre, to draw in their customers.
- 2.27 The next area of major regeneration is set to be Union Square, encompassing the Fleming Way post office site, Carfax Street etc.
- 2.28 There are no plans to clear or redevelop either Canal Walk or Regent Street but an upgrade of those streets has been secured. The work in Canal Walk has continued through the summer of 2009 and the work in Regent Street is scheduled to start in March / April 2010. In each case, paved surfaces will be improved and accumulated street clutter will be removed. New art works

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and decorative features will be installed and shop frontages will be transformed.

- 2.29 A brochure outlining the plans, produced by New Swindon Company, is attached as Appendix One.
- 2.30 The refurbishment of Regent Street will severely limit access, during works. When the improved, smarter Regent Street emerges, retail or promotional activity in that street will be judged against a new backdrop.
- 2.31 Planning permission for the flower seller and seasonal ice cream seller in Regent Street expires in a few days time and all remaining street trading in Regent Street itself will cease then. The planning consent for Edgeware Road lasts until 31 December 2010 but the unit there will be disrupted by the street improvements.
- 2.32 The Parade is a special case, as far as town centre pitches are concerned. It looks like an ordinary street but the area bounded by Debenhams, Toni and Guy, Peacocks etc. is private property, as shown in the map attached as Appendix Two. It is an adopted highway but that only gives the Council a limited say in the management of the area.
- 2.33 Ignis, the agent for the freeholder of The Parade, objected very strongly in writing following the recent allocation of a pitch to a doughnut stall and demanded the removal of that unit.
- 2.34 They have now expanded on their views and in particular have requested that the whole area of The Parade be re-designated as a prohibited street, as proposed by this report. They have indicated their strong support for the location of a florist's kiosk near Debenhams, replacing the existing flower stall. They have also made it known that they intend improvements to the street scene and would wish to see a coffee kiosk and street café, in the same area. Their letter is attached as Appendix Three.
- 2.35 Kiosk trading is not affected in any way by street trading policy. Planning permission already exists for the construction of two kiosks under the canopy in the area in front of Debenhams.
- 2.36 Ignis wish the doughnut seller and the ice cream vendor to leave The Parade and they have the right to require that, irrespective of any decisions of this committee. There is no mechanism for moving consents from one site to another and the EU Services Directive forbids any special arrangements to facilitate a move. If there is to be any relocation of the two traders affected, that will in general be a matter for Planning to decide. The only places with short term planning consent and consent status are New

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Bridge Square and Wharf Green. Use of either for those particular purposes would be highly contentious

- 2.37 Responsibility for street trading legislation rests with the Licensing Committee and cannot be given to Cabinet to oversee but Cabinet can make decisions about kiosks.
- 2.38 Licensing Committee can only influence a part of the overall picture. Some of the business options for existing traders would not involve street trading at all.
- 2.39 The 2001 Order which created consent streets and prohibited streets throughout the Council area was worded in such a way that all of the surface car parks in the town centre are currently classified as consent streets rather than prohibited streets. The resolution before this committee would not change their status to prohibited streets. The way in which consent streets were defined was broad brush, whereas the prohibited streets were precisely defined. What this means is that there are more options for street trading in the town centre than were identified in previous reports to this committee.
- 2.40 Use of a surface car park space would require the usual parking payments, unless spaces were removed from the scope of the parking Orders. Doing that would not be simple. The centrally located short term car parks have a punitive charge of £38 for vehicles which are parked long term and with that as a benchmark, street trading there would be uneconomic. In practice, the average yield from a car parking space is much less than the £38 because very few people use them for long stays. Even with routine full occupancy of the car park, a parking fee based scheme could allow a mobile trader to use a single space for about the same as the current street trading consent fee, provided that the street trading fee itself was reduced to zero to compensate.
- 2.41 A new map showing the full range of consent streets which would remain if the resolution at the top of this report is adopted is attached as Appendix Four.

Risk Management

Financial and Procurement Implications

The immediate cost arising is that of placing two public advertisements in a newspaper, if a resolution is carried, to notify the re-designation of town centre streets, for street trading purposes. A figure of £400 should be set aside for that, which will be taken from an existing budget for such purposes. In the course of a full year, the

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consent fees associated with the four annual pitches and the one seasonal pitch which would be removed by this process amount to a total of £21,467. Take up of pitches created in the newly created consent streets, either by displaced traders or by new traders can be expected to balance that to some degree but it is not possible at this stage to say to what extent those opportunities will be taken up.

For 2009/10 it is anticipated that any shortfall in net income which might result from this move will be managed within the framework of the existing Licensing budget.

Legal / Human Rights Implications All of the participants in any given context have human rights. Some of those are absolute, as in the right to life but more generally rights have to be balanced, one against the other. Traders have a right to be consulted about changes which affect them and a right to protection against arbitrary interference with their business. They do not have a right to trade in perpetuity, since that would negate the right of the Council to make appropriate strategic decisions on behalf of the wider community or residents and businesses.

Links to Corporate Plans and Policies (in particular to Swindon 2010 Promises)

This proposal relates to the 2010 Promise 35 that we will take all necessary steps to secure the regeneration of the town centre.

Consultees

- Consultees. Existing town centre street traders have been consulted on the proposal and a public notice was published in a local newspaper.

Background Papers and Appendices

- Appendix One. New Swindon Company brochure.
- Appendix Two. Map of ownership at The Parade.
- Appendix Three. Letter from Ignis, concerning the future of The Parade.
- Appendix Four. Consent streets as they would appear if the resolution is carried.