

**Brighton & Hove City Council**

**AGENDA ITEM:**

**COMMITTEE:** Consumer Services and Highways Management Sub.

**Date:** 2nd April 1998

**Report of:** Director of Environmental Services

**Subject:** Street Trading Harmonisation

**Ward(s) affected:** All

**1. Purpose of the report**

1.1 To inform members of the present arrangements in respect of street trading, to detail harmonisation options and to make recommendations.

**2. RECOMMENDATIONS**

It is recommended that members:-

2.1 Adopt a street trading policy based upon the option detailed in paragraph 3.10(C) [the Brighton model] of this report.

2.2 Delegate power to the Director of Environmental Services to advertise and serve the necessary notices to designate or redesignate streets as necessary to:

- (1) conform with the policy adopted in paragraph 2.1 above,
- (2) designate the streets listed in Appendix B to this report as prohibited streets, **after consulting Ward Members.**
- (3) redesignate the Kingsway to its western junction with Roman Road and part of the Kings Esplanade from prohibited street to

consent street, (DARTS to provide assurance that Kingsway used appropriately).

- (4) redesignate Fonthill Road, Newtown Road, Goldstone Lane and part of Goldstone Crescent from prohibited street to consent street and require the Director of Environmental Services to report back with the result of consultations.
- 2.3 Require that the Director of Environmental Services periodically review the static trading areas and to report upon underused areas.
- 2.4 Require that new applications for street trading consents be accompanied by a fee of £100 such sum being credited to the consent fee should the application be granted and being returned if the application is refused.
- 2.5 Delegate power to the Director of Environmental Services to determine new, renewal and variation applications for street trading consents and to revoke consents subject to any persons aggrieved by the delegated power being entitled to an appeal to the Committee save where revocation has occurred as the result of non-payment of fees.
- 2.6 Apply the standard conditions adopted by the former Brighton Borough Council to street trading consents to the new authority excepting that condition A be substituted by the condition detailed in paragraph 3.11(h) of this report.

### 3. INFORMATION

#### Historical

- 3.1 Both Brighton and Hove Councils adopted the provisions of the Local Government (Miscellaneous Provisions) Act 1982 which enabled them to control street trading within their area by designating streets and other areas as a prohibited or a consent street.
- 3.2 Within Brighton the Council sought to control trading by creating a central zone within which all streets were prohibited streets with the exception of a small number of streets which were designated consent streets to permit trading from a static pitch only or for specific purposes such as street artists, chestnut sellers and the Dieppe Market. The seafront area including Grand Junction Road and Kings Road is designated a consent street but is outside the trading policy established by the Council and control of that area is the responsibility of the Director of Arts, Recreation and Tourism Services.

- 3.3 The remainder of the Borough forms an outer zone within which streets and other places to which the public have access are designated consent streets for mobile trading only. Major traffic/bus routes and the Undercliff area have been designated prohibited streets in this outer zone. Parks and other open spaces are undesignated to permit their flexible use. Appendix A is a map outlining the zones referred to.
- 3.4 In 1994/5 Brighton Council considered and approved a consolidating report reviewing its street trading policy, enforcement of trading and conditions attached to consents. The fees for consents are reviewed annually. Since that report various streets have been redesignated as prohibited streets in the central zone as some static sites had remained vacant for sometime.
- 3.5 Within hove a different approach was adopted. Major traffic routes including the Kingsway and the majority of the streets running south and north off of Western Road / Church Road / New Church Road together with a small area around the Goldstone Ground and a small group of streets between the Kingsway and Kings Esplanade are designated prohibited streets.
- Blatchington Road and Station Road / Boundary Road are designated consent streets as are various areas to the south of the Kingsway. As with Brighton this latter area is the responsibility of the Director of Arts, Recreation and Tourism Services. The remainder of the streets in the Borough are not designated. No policy concerning trading conditions has been formulated and no fees are charged for consents.

### **Present Trading Position**

- 3.6 With Brighton central zone there remain 11 static trading sites of which 5 are let. It is apparent that there is a small core of long term traders who wish to retain their sites have been taken up by traders but usually their business does not prove to be viable and the contents are surrendered.

Occasional activities such as street artists, chestnut sellers and the Dieppe Market generally continue to be in demand.

- 3.7 The Upper Gardner Street market also falls within the ambit of street trading. The market has 92 pitches but only 15 are let. Annual consents are issued for pitches at this market payable quarterly. Consideration has been given to proposing a weekly consent but his would require additional enforcement and administrative costs which would have to be borne by the consent holders. Such a proposal would not be supported by the Market Traders Association or local community groups and it is not recommended that the present format be changed.

- 3.8 Within the outer zone since the formation of the new Authority only 2 consents have been issued this year. A major mobile vendor has not renewed his consents for the outer zone presumably choosing to trade in Hove area where no fee is payable.
- 3.9 Within Hove there are currently 3 traders in operation on the consent streets. No information is available on the number of mobile traders as they do not require the permission of the council.

### **Harmonisation and Future Policy**

- 3.10 In considering a harmonisation of street trading policy for the new Authority a number of major options present themselves:-
- (A) The most contentious option would be to remove all designations and allow unrestricted street trading. Whilst for the majority of streets such a move would not have an effect it is probable that the major shopping streets would be subjected to greater street trading. Being unfettered this could lead to disputes and complaints both from the public and retailers in the affected. It is not recommended that this option be adopted.
  - (B) The antithesis of the above option would be to designate all streets and other areas as prohibited streets and effectively any traders found on the streets would be guilty of an offence. As indicated earlier there is a relatively small core of established static traders in Brighton & Hove. Adoption of such an option would obviously have a major impact on these traders and would meet with opposition. Enforcement of such a policy could prove to be time consuming and have a financial implication. Again it is not recommended that this option be adopted.
  - (C) Another option would be strictly control all street trading by extending the "Brighton model" to Hove and designate all streets as consent or prohibited streets, issue consents as appropriate subject to standard street trading conditions and impose fees.

This would eliminate the present anomaly whereby a trader needs a consent to trade in outer zone of Brighton

but when in Hove no consent is necessary, there is no regulation and no fee is payable. Adoption of this option would enable the Council to maintain control of street trading throughout its area and it is recommended that this option be adopted.

- (D) A further option would be to apply the “Hove model” to Brighton and retain the present controls on the central zone, impose conditions and fees on consent holders in both Brighton and Hove as appropriate but to remove the designation of consent streets to all such streets in the outer zone of Brighton. This would allow trading whether static or mobile in the majority of the streets in the new Authority. The police have expressed reservations with such a policy which may lead to dispute between traders although there is no record of significant problems in Hove as a result of such unfettered trading. This option is less bureaucratic and there is no significant financial implications in adopting this model as street trading fees are determined on a self-financing basis to take account of administration and enforcement.

3.11 If an option entailing continued controlled trading (paragraph 3.10 C or D) is considered appropriate several further matters need to be address:-

- (a) At present the seafront area in Brighton (Grand Junction Road, Kings Road, Lower Esplanade including Fishmarket Hard, Madeira Drive and the Beach and foreshore above low water mark) is designated as a consent street. This area and its day to day administration is the responsibility of the Director of Arts, Recreation and Tourism Services and is excluded from the general street trading policy.

Within Hove some of the seafront area (Kingsway/Wellington Road, Kings Esplanade (part), St Aubyns South, Sussex Road and Medina Villas) is designated prohibited street whilst other areas south of the Kingsway such as the Beach, promenades and esplanades are designated consent street and are the responsibility of the Director or Arts, Recreation and Tourism Services.

For compatibility it would seem appropriate to redesignate the Kingsway to its western junction with Roman Road and part and part of the Kings Esplanade to consent street. This would allow a more flexible use of the entire seafront. As previously it is

recommended that this area would be outside the general street trading policy and the Director or Arts Recreation and Tourism Services would be responsible for its administration.

- (b) As indicated earlier not all streets in Hove between the Kingsway, New Church Road / Church Road / Western Road and Portland Road have been designated as prohibited streets. For clarity and to simplify administration it is recommended that all streets within this area be designated as prohibited streets. Appendix B lists the streets which would need to be designated to achieve this.
- (c) With the demise of Goldstone Ground there is no longer a case to support the designation of Fonthill Road, Newtown Road, Goldstone Land and part of Goldstone Crescent as prohibited streets or dedesignated completely dependant on the option adopted.
- (d) It has been a matter of debate on occasion as to whether trading on the forecourts of properties and the like constitutes street trading. At present, in Brighton, designation for the purpose of street trading includes land to which the public commonly has access. Such a definition could include therefore, the Marina or forecourts of premises such as outside Tescos in Station Road. It can be argued that whilst the public may have access they do not have in law the right to that access and such trading should not fall within the ambit of street trading. This view has some merit and it is recommended that where such trading takes place the Council should not seek to impose street trading legislation. A measure of control can still be exercised over this type of trading by the requirements of the Planning and Highways legislation as appropriate.
- (e) When the Brighton Borough Council originally approved the static trading sites within the central area the location of each site was identified on a map and the area was marked on the pavement or roads as appropriate. The practice of marking generally has not been undertaken for sometime as the sites are known and various road alterations have dictated that their positions have in some cases needed to be modified slightly. Upper Gardner Street market is the exception to this as the majority of this road is available for trading and it is essential that the individual pitches are identified. The lack of marking on the other sites does not inhibit enforcement of trading conditions.

Within Hove specific static trading sites have not generally been identified and approved within consent streets. There is little merit in attempting to identify the position of sites at this stage as there is little demand for consents in Hove.

It is recommended that all individual static sites within Brighton be subject to periodic review and where specific sites have been unused or elicit little interest from potential traders reports be submitted with a view to changing their designations to prohibited streets. Within the consent streets in Hove it is recommended that where an application for consent is received, the application and proposed trading position be considered by Committee following consultation with Council officers, retailing organisations and specific retailers likely to be affected by the proposal. The consent streets in Hove should also be subject to periodic review and where little interest has been shown for trading reports should be submitted with a view to changing their designation to prohibited streets.

- (f) At present no fee is required to accompany an application for a new trading consent, the appropriate fee only being levied where the application is successful. In the event that the application is refused, withdrawn or not taken up the cost of processing and determining the application is borne, therefore, by the Council. The fee for consent can be paid on a quarterly basis and for consent in the outer zone in Brighton currently amounts to £225 per quarter. It is recommended that a fee of £100 should be required to accompany applications for new consents. Should the application be successful this sum will be credited as part payment of the first quarterly fee. In the event that the application is refused the fee will be returned to the applicant.
  
- (g) The Director of Environmental Services is authorised to grant uncontentious new and renewal applications for street trading consents and to revoke them for non-payment of fees. Such actions are reported to Committee. Applications to vary consents, generally on types of goods sold and trading times, are considered by Committee. Increased delegated authority to the Director of Environmental Services would enable applications and enforcement to be dealt with more expeditiously. It is recommended, therefore, that authority be delegated to Director of Environmental Services to determine new, renewal and variation applications for street trading consents and to revoke consents if appropriate. Any applicant or consent holder aggrieved by the decision of the Director of Environmental Services would have the right for an appeal to be

considered by Committee at their next available meeting except where revocation has occurred as the result of non-payment of fees. In determining applications or revocation of consents regard will be had generally to suitability, danger, persistent obstruction, nuisance, breach of conditions, non-payment of fees, proposals outside of policy guidelines and objections from the Police, Fire Authority or as the result of consultation.

- (h) All consents in Brighton are issued subject to standard conditions (Appendix C). The first condition (A) seeks to ensure that no sub-letting of the consent holder occurs, that young persons are not employed and that the consent holder is present should there be any employees. The second condition (B) requires attendance by the consent holder with the exception of subsistence breaks and agreed absence for holidays. A consent can be issued in a maximum of two names. Generally consent holders are physically operating their stalls some with the assistance of employees. In practice to prove any contravention of these two conditions is impossible as it would require continual observation for long periods and any apparent absences may be subsequently justifiable such as through illness or attendance to other unavoidable matters. Whilst the aims of the conditions are laudable enforcement is impractical. It is important, however, to make the consent holders aware that they are expected to be present at their stalls and it is proposed to retain condition (B) despite the difficulties of enforcement. In order to retain control over the consent and to ensure a reasonable prospect of enforcement it is recommended that condition (A) be replaced by the following:-

The consent may not be transferred and the Trader shall not permit any person to exercise the consent in his/her absence unless that person is employed by the consent holder and is at least seventeen years of age. The consent holder shall not employ more than two persons at any one time to exercise the consent in the absence of the holder and any contravention of the standard conditions forming part of the consent by these persons shall be deemed to have been committed by the consent holder.

#### **4. FINANCIAL IMPLICATIONS**

- 4.1 Assuming all existing consents are maintained during the current financial year, the four occupied static trading pitches will generate an income of £10040, two mobile consents will generate £1766 and the fifteen consents in Upper Gardner Street market will generate £5760. Total income will remain the same at £17243.



- 4.2 The proposals are broadly financially neutral for the 1998/9 budget. No significant changes in income are expected. Any diminution in street trading will obviously adversely affect the budget.

**5. LEGAL IMPLICATIONS**

There are no legal implications.

**6. ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications.

**7. EQUALITIES IMPLICATIONS**

There are no equalities implications.

**8. BACKGROUND PAPERS**

Report to Environment and Planning Services Committee meeting 25th January 1994 – consolidating report on street trading excluding Seafront and documentation Report to Environmental & Planning Services Committee meetings 25th January 1994, 21st June 1994, 21st March 1995, 25th September 1996 and 5th February 1997 – redesignation of certain streets.

## **APPENDIX B**

Streets requiring designation of prohibited street within the area formed by the Kingsway, New Church Road / Church Road / Western Road and Portland Road:-

Chelston Avenue, Rothbury Road, Jesmond Road, Mansfield Road, Woodhouse Road, St Helier Avenue, Reynolds Road, Titian Road, Raphael Road, Modena Road, Lawrence Road, Westbourne Street (south of Portland Road), Pembroke Crescent, Wilbury Grove, Brunswick Square, Alice Street, Alice Close, Holland Mews, Hove Place, Medina Place, Namrick Mews, Vallance Gardens, Princes Crescent, Princes Avenue, Westbourne Place, Glendor Road, Tennis Road, Norman Road, Tandridge Road, Marine Avenue, Glastonbury Road, Middleton Avenue, Kenton Road, Erroll Road, St Leonards Avenue, Seaford Road.