

HAVANT BOROUGH COUNCIL

LICENSING COMMITTEE

26 June 2023

Adoption of Street Trading Provisions – Local Government (Miscellaneous Provisions) Act 1982

FOR RECOMMENDATION FOR ADOPTION

Portfolio Holder: Councillor Elizabeth Lloyd

Key Decision: No

Report number: HBC/013/2023

1. Purpose

- a. This paper is submitted to the Licensing Committee in relation to the Council's adoption of Part III and Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, regarding street trading provisions designation of consent streets.

2. Recommendation

- a. Members are requested to:
 - i. Recommend that Full Council pass a resolution to adopt Part III and Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982; and
 - ii. Approve the commencement of the statutory consultation process for designating consent streets.

3. Executive Summary

- a. This report sets out details of the proposal to regularise the adoption of the provisions of Part III and Schedule 4 of the Local Government

(Miscellaneous Provisions) Act 1982 ('the Act') for the Havant Borough Council administrative area.

- b. Schedule 4 of the Act contains provisions relating to the determination of prohibited, licence and consent streets, the setting of fees, the administration of licences and consents, and enforcement powers.
- c. It has become evident that, whilst the Council did adopt the provisions under the Act sometime in 1983, there may be insufficient evidence available to fully demonstrate proper adoption. This appears simply as a result of the passage of time and lack of retention of relevant records. It is therefore essential that the provisions are properly adopted to ensure compliance.

4. Additional Budgetary Implications

- a. There are no additional budgetary implications arising as a result of this report.

5. Background and relationship to Corporate Strategy and supporting strategies and policies

- a. Pride in Place: Creating a great place to live, work and enjoy – enabling a vibrant and diverse street trading offering in the Borough, enhancing the retail and food/beverage offering for residents and visitors.
- b. Growth: Building our future – stimulating the local economy by encouraging local businesses to utilise street trading as part of their offering.

6. Options considered

- a. As the Council does not currently have sufficient evidence that the relevant provisions of the Act have been adopted, it is considered prudent to ensure that they are properly adopted to ensure that the

provisions for ongoing delegation are met. The adoption of the legislation at this stage will ensure that appropriate records are kept.

- b. The Council did adopt the relevant provisions of the Act in 1983, although insufficient records exist to evidence this. Should the Council not adopt the provisions at this stage, any legal challenge to the Council's street trading provisions would ultimately succeed.

7. Resource implications

a. Financial implications

- i. Adoption of the relevant provisions of the Act requires the Council to publish notice of its intention to pass a resolution on street trading and the designation of consent streets. It is then required to publish a notice that the same resolution has been passed.
- ii. Publication of these notices will be in a local newspaper, likely the Hampshire Independent, with the cost borne by the Licensing Team's existing budget.

Section 151 Officer comments

The adoption of Street Trading Provisions does not impact or change any existing budget pressure, nor does it add any new pressures. All costs can be met within existing budgets.

The proposed resolution would also mitigate the risks of exposure to high legal cost in any potential judicial review (even if the probability/likelihood risk is low). Therefore, this has my approval.

Steven Pink, Chief Finance Officer (S151)

Havant Borough Council

b. Human resources implications

- i. There are no human resources implications arising as a result of this report.

c. Information governance implications

- i. There are no information governance implications arising as a result of this report.

d. Climate and environment implications

- i. There are no climate or environment implications arising as a result of this report.

e. Other resources implications

- i. There are no other resource implications arising as a result of this report.

8. Legal implications

- a. Only the Full Council has the power to adopt the legislation, and designate consent streets, under the terms of the Constitution. The power to designate streets cannot be delegated as it requires a resolution.
- b. The adoption of street trading provisions is contained in Part III, section 3 of the Local Government (Miscellaneous Provisions) Act 1982. A Council may resolve that Schedule 4 to this Act shall apply to their district and, if a council does this, Schedule 4 shall come into force in their district on such day as may be specified in the resolution.
- c. The statutory process for the designation of streets under this legislation includes the following steps:
 - (i) The intention to designate a street must be advertised for two consecutive weeks in a local newspaper and served on the Police and Highways Authority, giving 28 days for written representations;
 - (ii) The Council is under a duty to consider any representations received. Following consultation, a further report will be submitted to the Licensing Committee with details of any

objections made. The Licensing Committee will consider these objections and make a recommendation to Full Council;

- (iii) If Full Council resolves to designate consent streets, a further public notice must be published at least 28 days before the resolution takes place. The notice of resolution must be published in local newspaper in two successive weeks (the first notice appearing a minimum of 28 days before resolution takes effect);
- (iv) Controls come into effect on the date specified in the resolution.

Monitoring Officer comments

Full Council has the power to adopt the legislation, and designate consent streets, under the terms of the Constitution.

Jo McIntosh

9. Risks and mitigations

- a. Exposure to challenge: As the Council cannot currently sufficiently evidence the adoption of the relevant provisions of the Act, the Council is exposed to legal challenge by means of Judicial Review. Resolving to adopt the provisions at this stage will ensure that accurate records of adoption are kept.

10. Consultation

- a. Street trading legislation lays down a statutory procedure for making a resolution to designate streets. Once a draft resolution is approved a Council must place a statutory notice in a newspaper giving public notice of the Council's intention to adopt the resolution and giving a period of no less than 28 days during which objections be made. The Council must also give notice to the Police and the Highways Authority. The Council must then consider any objections made before resolving to adopt the resolution. Following this the Council must place statutory notices in a newspaper for two consecutive weeks giving public notice of adoption of the resolution.

- b. A separate consultation process will take place in relation to the Council's draft street trading policy.

11. Communications

- a. The Licensing Team will directly arrange the publication of the statutory notices with the relevant newspaper.
- b. The Public Relations Team will arrange publication of the statutory notices on the Council's website.

12. Appendices

- Appendix A – Draft notice of intention to designate consent streets
- Appendix B – List of consent streets

13. Background papers

None.

Agreed and signed off by:

Portfolio Holder: Councillor Elizabeth Lloyd 15/06/2023

Executive Head: Alex Robinson 15/06/2023

Monitoring Officer: Jo McIntosh 15/06/2023

Section 151 Officer: Steven Pink 13/06/2023

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