

SLOUGH BOROUGH COUNCIL

REPORT TO: Council **DATE:** 19th April 2011

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WARD(S): All

PART I FOR DECISION

RECOMMENDATIONS OF THE LICENSING COMMITTEE FROM ITS MEETING HELD ON 23RD FEBRUARY 2011

(A)- REVIEW OF STREET TRADING

1. Purpose of Report

To report the recommendation of the Licensing Committee on 23rd February 2011 for the proposed changes to the Councils Street Trading Protocol and Guidance to be approved.

2. Recommendation

The Council is requested to resolve that the proposed changes to the Street Trading Protocol and Guidance as contained in Sections 1 to 4 in **Appendix B** of the report be approved.

3. Community Strategy Priorities–

- **Being Safe, Feeling Safe**
- **Prosperity for All**

4. Other Implications

(a) Financial

In recommending the proposed changes to Street Trading in Slough, the result will be an increase of sites. It is anticipated that this may generate additional income of around £30,000. This will offset any additional expenditure in the administration of the Street trading Consents.

(b) Risk Management

Recommendation	Risk/Threat/Opportunity	Mitigation(s)
From section 2 above	The approval of the proposed amendments would significantly enhance economic prosperity within the Borough of Slough	If approved the new applications would be subject to wide consultation to ensure that any Street Trading

		would not be cause for concern or complaint to local businesses and local residents
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(c) Human Rights Act and Other Legal Implications

Section 1 and Schedule 1 Part 1 and 11 of The Human Rights Act 1998 apply:

Article 1 – Every person is entitled to a peaceful enjoyment of his or her possessions including the possession of a licence and shall not be deprived of the possession except in the public interest.

Article 6 – That in the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal by law.

(d) Equalities Impact Assessment

An Equality Impact Assessment screening has been completed and the conclusions are that there are no adverse or negative impacts of opportunity for any equality target group or for any reason

5. **Supporting Information**

5.1 Street Trading is governed by Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 which was adopted by the Council in 1986.

5.2 A 'Street' as defined by the act includes:

- (a) any road, footway, beach or other area to which the public have access without payment; and
- (b) a service area as defined in section 329 of the Highways Act 1980.

And also includes any part of a street.

5.3 'Street Trading' means, subject to the below, the selling or exposing or offering for sale of any article (including a living thing) in a street.

5.4 The following are not street trading for the purposes of the Schedule-

- (a) trading by a persons acting as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871.
- (b) anything done in a market or fair the right to hold which was acquired by virtue of a grant (including presumed grant) or acquired or established by vittue of an enactment or order.
- (c) trading in trunk road picnic area provided by the Secretary of State under section 12 of the Highways Act 1980.
- (d) trading as news vendor;
- (e) Trading which-
 - (i) is carried on at premises used as a petrol filling station; or
 - (ii) is carried on at premises used as a shop or in a street adjoining premises so used and as part of the business of the shop;

- (f) selling things, or offering or exposing them for sale, as a roundsman:
- (g) the use for trading under Part VIIA of the Highways Act 1980 of an object or structure placed on, in or over a highway;
- (h) the operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980;
- (i) the doing of anything authorised by regulations made under section 5 of the Police, Factories, Etc (Miscellaneous provisions) Act 1916.

5.5 The Council Protocol and Guidance on Street Trading has been reviewed previously in 1999 and 2006 in relation to 'Prohibited Streets', 'Consent Streets' and the application procedure.

5.6 The current Protocol and Guidance details that all streets within the Borough of Slough are 'Consent Streets' however there are only a number of streets designated where trading can take place and trading in all other streets is prohibited. A list of the current 'Consent Streets' designated for trading is contained at **Appendix A**.

5.7 The current Protocol and Guidance also details the requirement of a Street Trading Consent on private land within 10 meters from the highway. It must be stressed that although the 10 meter distance is in place, Schedule 4 clearly defines 'Street' as in **point 5.2** above, which states 'where the public have access without payment' and this may include private land 10 meters from the highway if the public have access without payment at the time.

5.8 Since 2006 a number sites of designated streets have become non – viable as trading sites. In addition there is no longer enough suitable trading sites to accommodate the number of prospective traders wanting to apply for Street Trading Consents, which currently stands at 23.

6. Proposals and Consultation

6.1 In order to encourage employment initiatives and enhance local economic prosperity, which it is felt will ease some of the burden of unemployment within the Borough, a further review of Street Trading has been conducted and subject to consultation. The Consultation has been carried out with all Licensed Premises, all religious buildings such as churches, temples and mosques, residents associations, all elected Member's of the Council and Parish Councils, all current and prospective Consent holders, all consultees as detailed in the new proposals and formal consultation through the SBC website.

6.2 The new proposals (amended) following consultation are contained at **Appendix B** which in brief detail:

- That all streets to remain as Consent Streets in which Street Trading is prohibited without consent of the Council in addition to the current designated trading streets.
- The number of traders in the High Street to be kept as is.
- That all new applications will be subject to a full consultation exercise with the consultees as detailed.
- Determination periods and referrals to Licensing Sub Committee's
- A Full site assessment.
- A full inspection of the vehicle, van, trailer etc to be used for trading purposes.

6.3 There was a very minimal response to the consultation and areas of the attached

proposals have been highlighted in grey to show some minor amendments.

- 6.4 All other areas of the current Street Trading Protocol and Guidance such as the application procedure and standard conditions etc are to remain the same.

7. **Comments of Other Committees**

The Licensing Committee at its meeting on 23rd February 2011 considered the proposed changes to the Councils Street Trading Protocol and Guidance and recommended as set out in paragraph 2 above.

8. **Conclusion**

That Council approves the proposed changes to the Street Trading Protocol and Guidance as contained in Sections 1 to 4 in **Appendix B** of the report.

9. **Appendices Attached**

- 'A' - List of current 'Consent Streets' designated for Street Trading
- 'B' - Proposed amendments to current Street Trading Protocol and Guidance.

10. **Background Papers**

- '1' - Schedule 4 Local Government (Miscellaneous Provisions) Act 1982
- '2' - Equality Impact Assessment Screening
- '3' - Reports and Minutes - Licensing Committee 23rd February 2011

Appendix A

Locations for static street trading

Bath Road (A4) From Wellington Street junction to the borough boundary

Farnham Road From Whitby Road junction to Northborough Road / Cumberland Ave junction

High Street,(including the Town

Square and surrounding footway)

From Windsor Road junction to Yew Tree Road junction

High Street West, Slough All

London Road, Langley Service road/lay-by adjacent to and east of the Toby Carvery

Wellington Street (subway) From the entrance to the Queensmere shopping centre to Brunel bus station northern end, excluding all stairways and ramps

Wellington Street /William Street The central area only, excluding all stairways and underpass ramps

Colnedale Road, Poyle All

Galleymead Road, Poyle All

Newlands Drive, Poyle All

High Street, Chalvey The lay-by opposite The Green

White Hart Road, Chalvey All

Colnbrook by-pass From Sutton Lane, east to the M25 motorway bridge including the service road running adjacent to the by-pass west of Lakeside Road.

High Street, Colnbrook From number 9 Market Place to the junction with Vicarage Way

Poyle Industrial Estate To include - Poyle Road from the junction with Bath Road, south to the junction with Horton Road, Horton Road from the roundabout at Poyle road, east to the Borough Boundary adjacent to Wraysbury River, the whole of Millbrook Way, Mathisen Way, Arkwright Road, Prescott Road, Willow Road, David Road, Blackthorne Crescent, Augustine Close and Calder Way

Waterside Drive, Langley All

Petersfield Avenue, Slough From its junction with Wexham Road, east to the junction with Whittenham Way and the whole of Albion Close

Grassmere Parade, Slough At the junction of Grassmere Avenue and Wexham Road, outside the shopping parade

Appendix B

STREET TRADING REVIEW AND PROPOSALS

1. PROPOSALS REGARDING STREETS

The proposals in the review of Street Trading in Slough are as follows:

1. That all streets to remain as Consent Streets in which Street Trading is prohibited without the consent of the Council.
2. That the current streets that have been designated as streets where Street Trading is permitted to remain plus the proposals as contained in (1) above.
3. That the current number of Street Traders permitted to operate in Slough High Street, to remain.
4. With regards to (1) above, applications for Street Trading Consents will be accepted and will be subject to a full consultation exercise, site visit and inspection of the street trading unit as detailed below.

2. CONSULTATION

Before a **new** application for a Street Trading Consent is determined the Council will carry out a consultation process with various persons and groups. In particular we will consult with:

- Thames Valley Police
- Royal Berkshire Fire and Rescue Service
- Ward Members
- Slough Borough Council – Planning
- Slough Borough Council – Highways
- Slough Borough Council – Transport
- Slough Borough Council – Parking and Development
- Slough Borough Council – Trading Standards
- Slough Borough Council – Food and Safety Team
- Slough Borough Council – Neighbourhood Enforcement Team
- Slough Borough Council – Environmental Services and Quality
- The owner or occupiers of any property within 100 meters of the proposed site. This consultation will be by way of sending a copy of the Notice of Application to the relevant property owners

Please note a consultation process will not be conducted for renewal applications, unless there has been issues raised by any of the above listed consultees during the term of the previous Consent.

- (a) The consultation will normally take 28 days in order that any objections to the application can be made in writing.

- (b) If no objections are received the application will be granted and the Street Trading Consent issued (subject to full payment being received and the criteria set out in the site assessment and inspection of the street trading unit being completed)
- (c) The time scale for determination of a licence application where no objections have been received will normally take about 4 weeks as long as the full application criteria has been met.
- (d) If objections are received the application will be put before a Licensing Sub Committee for determination.
- (e) The time scale for determination of a licence application where objections have been received may take between 6 to 8 weeks dependant upon the date of the sitting of the Licensing Committee.
- (f) The Licensing Committee is made up of local Councillors who will determine each application on its own individual merits. At the committee hearing the applicant(s) and objectors will be given the opportunity to put their case forward. The Committee are empowered to grant, refuse or apply any relevant conditions in addition to the General Conditions to any licence application put before them.

Please note that an initial fee of £250 will be required when an application is made. This fee will be to cover the cost of the consultation and any Committee referral and is non-refundable.

3. SITE ASSESSMENT

Street Trading Consents from static locations will not normally be granted where:

- (a) Any effect on road safety would arise either from the siting of the trading activity itself, or from customers visiting or leaving the site, or
- (b) Where there are concerns over the recorded level of personal injury accidents in the locality where the street trading activity will be sited, or
- (c) There would be a significant loss of amenity caused by traffic, noise, odour or fumes, or
- (d) There is already adequate like provision in the immediate vicinity of the site to be used for street trading purposes, or
- (e) There is a conflict with Traffic Orders such as waiting restrictions, or
- (f) The site or pitch obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use for street trading purposes, or
- (g) The trading unit obstructs the safe passage of users of the footway or carriageway, or

- (h) The pitch interferes with sight lines for any road users such as at road junctions, or pedestrian crossing facilities, or
- (i) The site does not allow the Consent Holder, staff and customers to park in a safe a manner, or
- (j) The street trading activity is carried out after dusk and the site is not adequately lit to allow safe access and egress from the site for both customers and staff.
(This will be subject to consultation with SBC Street Lighting department).

4. INSPECTION OF STREET TRADING UNIT

The vehicle, van, trailer, stall or other device to be used for the proposed street trading activity will be inspected by an Authorised Officer's' of the Council, prior to the issue of any Street Trading Consents, where this is reasonably practicable. The unit to be used for the street trading activity shall comply in all respects to the legal requirements relating to type of street trading activity proposed. In particular the unit to be used shall comply with the following legislation:

- Food premises (Registration) Regulations 1991
- Food Safety Act 1990
- Food Safety (General Food Hygiene) Regulations 1995
- Health and Safety at Work etc Act 1974 and any Regulations made under this Act
- Environmental protection Act 1990

(B)- EQUALITY ACT 2010 – TAXIS AND PRIVATE HIRE WHEELCHAIR ACCESSIBLE VEHICLES

1. Purpose of Report

To report the recommendations of the Licensing Committee with regard to the provisions of the Equality Act 2010 (The Act) in relation to Hackney Carriage and Private Hire Vehicles and the duties placed upon the Licensing Authority to maintain a list of 'Designated Wheelchair Accessible Taxis and Private Hire Vehicles', therefore placing obligations on the drivers of these vehicles to carry out certain duties unless granted an exemption by the Licensing Authority on the grounds of medical or physical condition. Further to put in place systems for assessing drivers and for granting exemption certificates for those drivers who they consider should be exempt.

2. Recommendation

The Council is requested to resolve:

- (a) That the Authority maintains a list of all 'Designated Wheelchair Accessible Taxis and Private Hire Vehicles'.
- (b) That the Licensing Manager be given authority to grant exemptions on medical grounds, with all other applications for exemptions on physical capabilities e.g. weight, strength and height being referred to the Licensing Sub-Committee.
- (c) That ALL drivers of wheelchair accessible vehicles, both Taxis and Private Hire, that have not previously undergone 'Passenger Assistance Training (PATs) must do so by 30th April 2011 or at the earliest opportunity, to be able to comply with the new duties.

3. Community Strategy Priorities

- **Being Safe, Feeling safe**
- **Prosperity for All**

4. Other Implications

- (a) Financial

There are no financial implications.

Risk Management

Recommendation	Risk/Threat/Opportunity	Mitigation(s)
From section 2.	Approving the recommendations will ensure that all licensed wheelchair accessible vehicles are contained on a list held by the Licensing Authority and that drivers of such vehicles are subject to compliance with the new duties.	Any driver of a wheelchair accessible vehicle has the right to apply for an exemption certificate on medical and physical grounds, has the right of appeal if a certificate is refused and has the right of appeal against inclusion of the vehicle on the Councils' list of designated vehicles.

(b) Human Rights Act 1998 and Other Legal Implications

Section 1 and Schedule 1 Parts I & II of The Human Rights Act 1998 apply:

Article 1 – Every person is entitled to the peaceful enjoyment of his or her possessions (including the possession of a licence) and shall not be deprived of the possession except in the public interest

Article 6 – That in the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

(c) Equalities Impact Assessment

An Equalities Impact Assessment has been completed by the Government and the conclusions are that there are no adverse or negative impacts of opportunity for any equality target group or for any reasons.

5. Supporting Information

5.1 The Equality Act 2010 brings together in one Act a number of different pieces of legislation about discrimination, including disability discrimination. The new Act includes many of the Taxi and Private Hire provisions which were contained in the Disability Discrimination Act 1995, but also includes some additional important changes. Sections 160 to 173 of the Act relate specifically to Taxis and Private Hire Vehicles.

6. Duties to Assist Passengers in Wheelchairs

6.1 Sections 165, 166 and 167 of the Act deal with the imposition of duties on drivers of wheelchair accessible taxis and private Hire vehicles to assist passengers who use wheelchairs.

6.2 Whilst The Act does not impose a requirement on drivers or operators to provide wheelchair accessible vehicles the duties which were contained in the Disability Discrimination Act 1995 had never been brought into force, so when the new duties are implemented it will constitute a substantive change in the law.

6.3 **Section 165** of The Act places duties on drivers of designated wheelchair accessible vehicles. Designated vehicles are those listed by the Licensing Authority under Section 167 of The Act. These duties are;

- To carry the passenger while in the wheelchair;
- Not to make any additional charge for doing so;
- If the passenger chooses to sit in a passenger seat to carry the wheelchair
- To take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort; and
- To give the passenger such mobility assistance as is reasonably required

This section will be commenced at a later date, but not before April 2011.

The Slough Borough Council approved Policy and Conditions booklet already contains all the above duties in the Bye-laws and they are therefore currently in place but will now be a national requirement under the Act.

6.4 **Section 166** of The Act allows Licensing Authorities to exempt drivers from the duties to assist passengers in wheelchairs if they are satisfied that it is appropriate to do so on medical grounds or because the drivers' physical conditions makes it unreasonably difficult for him or her to comply with the duties.

6.5 This section commenced on 1st October 2010 and it is therefore necessary for Licensing Authorities to put in place systems for assessing drivers and for granting exemption certificates for those drivers whom they consider should be exempt. The recommendations in this report are that:

- The Committee delegates to the Licensing Manager the authority to grant exemptions on medical grounds, with all other applications for exemptions on physical capabilities e.g. weight, strength and height being referred to the Licensing Committee.

6.6 The Department for Transport advised all Local Authorities in 2010 that guidance and regulations specifying the exact format for the Exemption Notices would be published in early 2011. To date these have not been made available.

6.7 **Section 167** of The Act allows Licensing Authorities to maintain a list of 'Designated Vehicles', that is, a list of wheelchair accessible vehicles in their area. The consequences of being on this list is that the driver must undertake the duties set out in section 165.

6.8 Although the list of 'Designated Vehicles' will have no actual effect in law until the Duties are commenced, the DfT have recommended that Local Authorities start maintaining a list as soon as possible for the purpose of liaising with the trade and issuing Exemption Certificates.

6.9 From October 2010 it has been possible for drivers of 'Designated Vehicles' to appeal to the Magistrates Court against a decision by the Licensing Authority not to grant an exemption of duties to be carried out in accordance with section 165. As

with many other Local Authorities, Slough has been waiting for further guidance and regulations to be published as detailed in Point 6.6 above.

- 6.10 On 20th January 2011 all Hackney Carriage drivers and proprietors were written to advising them of the implications of the requirements under the Equality Act 2010. They were also provided with separate guidance for drivers published by the DfT.

7. Main Implications.

- 7.1 If a list of 'Designated Vehicles' is maintained the Licensing Authority will be required to:

- (a) Liaise with the trade and put the necessary procedures in place to deal with requests for exemptions
- (b) Maintain records of all licensed drivers who drive vehicles that are on the list
- (c) Maintain records that the proprietors of such vehicles to ensure that ALL drivers are trained in safe loading and securing of persons in wheelchairs.

- 7.2 If the Licensing Authority does not put a 'Designated Vehicle' list in place they could be open to criticism and possible challenge from Disability Groups. The Licensing Authority has a duty of care to show due diligence in ensuring that licensed drivers meet the requirements of the provisions set out in the Equality Act when dealing with disabled passengers in wheelchairs.

- 7.3 When section 167 comes into force it will be possible for the owner of a vehicle aggrieved by the decision of the Licensing Authority to include that vehicle on a list maintained under section 167 to appeal to the Magistrates Court before the period of 28 days beginning with the date of the inclusion.

- 7.4 Slough Borough Council currently licenses 107 Hackney Carriage Vehicles, which consists of 49 saloon vehicles and 58 wheelchair accessible vehicles.

Other areas included in the Equality Act 2010 (Information only)

8. Guide Dogs and Assistance Dogs

- 8.1 Section 168 to 171 of the equality Act 2010 deal with the carriage of guide dogs and other assistance dogs in England and Wales.

- 8.2 These sections have simply been lifted from the Disability Discrimination Act 1995 which imposed a duty on Taxi and Private Hire Vehicle Drivers (and Private Hire Operators) to accept guide dogs.

- 8.3 When these sections came into force on 1st October 2010, the existing sections in the Disability Discrimination Act 1995 were repealed, so the change is largely a technical one rather than one with any practical implications. The existing obligations to carry guide dogs and assistance dogs will continue but simply under different legislation.

9. The Control of Taxi Numbers

- 9.1 Since the implementation of the Transport Act 1985 it has been possible for Licensing Authorities in England and Wales (Outside London) to refuse a licence application if they are satisfied that there is no significant unmet demand for taxis in the licensing area.
- 9.2 Section 161 of the equality Act 2010 qualifies the law in this area, to ensure Licensing Authorities that have relatively few wheelchair accessible Taxis operating in their area, do not refuse licenses to such vehicles for the purposes of controlling numbers.
- 9.3 For section 161 to have effect, the Secretary of State must make regulations specifying:
- The proportion of wheelchair accessible Taxis that must operate in an area before the respective Licensing Authority is lawfully able to refuse to licence such a vehicle on the grounds of controlling Taxi numbers: and
 - The dimension of a wheelchair that a wheelchair accessible vehicle must be capable of carrying in order for it to fall within the provision
- 9.4 The DfT plans to consult on the content of the regulations before section 161 comes into force; the actual date will be announced in due course, but will not be before April 2011.

10. Comments of Other Committees

The Licensing Committee at its meeting on 23rd February 2011 considered the report and recommended as set out in paragraph 2 above.

11. Conclusion

Members are requested to endorse the recommendations set out in the report in order to comply with the duties placed upon the Council as set out in the Equality Act 2010.

12. Background Papers

Disability Discrimination Act 1995
Equality Act 2010
Slough Borough Council 'Hackney Carriage Driver and Vehicle – Policy and Conditions' Booklet
Explanatory Notes – Equality Act 2010
DfT Guidance to Local Authorities
Letter sent to all Hackney Carriage Drivers and Proprietors & DfT Guidance
Agenda and Minutes – Licensing Committee 23 February 2011