

Agenda Item No: 6 **Report No:** 104/16

Report Title: Delegation of Street Trading Powers to Seaford Town Council

Report To: Licensing Committee **Date:** 28 July 2016

Cabinet Member: Councillor Paul Franklin

Ward(s) Affected: All Seaford wards

Report By: Ian Fitzpatrick, Acting Director Service Delivery

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Purpose of Report:

That Licensing Committee consider Seaford Town Council's request that street trading powers be delegated to them in relation to specified streets in Seaford.

Officers Recommendation(s):

It is recommended that Licensing Committee—

- 1** Consider the request from Seaford Town Council to delegate street trading powers from Lewes District Council to them in relation to specified streets in Seaford.
- 2** Make a recommendation to full Council –
 - (i) on whether to grant and on what terms, or refuse the request; and
 - (ii) if the recommendation is to grant the request, that full Council authorise the Director of Service Delivery to make all necessary arrangements to give effect to that decision, including the power to enter into a delegation agreement on behalf of Lewes District Council.

Reasons for Recommendations

- 1** Seaford Town Council wish to have direct control over street trading in certain areas of Seaford and have put a formal request to Lewes District Council to that effect. The request merits full and proper consideration.

Licensing Committee is the appropriate body to consider policy matters relating to street trading. However, the decision on whether to delegate Council regulatory powers to a parish council is a matter for the full Council, having regard to any recommendation from this Committee.

Information

- 2.1** Street trading is generally unlawful unless licensed by a local authority. To control the location and type of street trading across the district, Lewes District Council ('LDC') has adopted the relevant provisions of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') enabling it to designate any street within its area as a prohibited, licence or consent street.
- 2.2** Since 2014 the whole of LDC's area has been a designated consent area, making it unlawful for any street trading to take place across the district without the necessary consent, unless a relevant exclusion applies.
- 2.3** This designation is now considered wider than necessary. Street trading tends to be concentrated in town centres and popular tourist areas, and it will be proposed in a future report that LDC's consent area be narrowed to encompass these areas alone.
- 2.4** Mindful of that future proposal, Seaford Town Council ('STC') have asked that the following streets remain consent streets: Station Approach, Clinton Place, Sutton Road, Broad Street, Church Street, Church Lane, High Street, Place Lane, South Street, Saxon Lane, Marine Parade, The Esplanade, and all streets 50 metres inland from Marine parade and the Esplanade.
- 2.5** STC have also asked that the power to manage street trading, in respect of those streets named at 2.4 above, be delegated to them. The formal request is set out in the e-mail of 18 May 2016 from STC's Town Clerk (reproduced at Appendix 1) and explains how STC's close liaison with the Chamber of Trade on a number of projects makes it very aware of the needs of Seaford town centre and seafront businesses. With its local knowledge of the potential impact of new traders on residents and existing businesses in the town, it is considered that STC is best placed to regulate street trading activity in those areas.
- 2.6** It is recommended that street trading powers for those streets listed at 2.4 above be delegated to STC, subject to the provisions set out in paragraph 2.10 below. Pending the outcome of LDC's review of the consent area which currently covers the whole district, those parts of Seaford outside the zone that STC would administer under delegated powers would continue to be administered directly by LDC.
- 2.7** If the recommendation at 2.6 above were approved, there would be no immediate change to the geographical extent of the street trading consent area across the district. However, it would mean that, in relation to those Seaford streets listed at 2.4 above, STC would manage street trading functions.

- 2.8** When LDC review the extent of the designated street trading area across the district, it will have due regard to STC's wishes as to which streets in Seaford should remain within a consent area.
- 2.9** The 1982 Act confers a power on district councils to designate any street in their district as a prohibited, licence or consent street is conferred on district councils. Whilst a district council may, in relation to specific streets, delegate that power to the parish council in whose area those streets are located, ultimate responsibility for discharging the street trading function lies with the district council.
- 2.10** In practice this would mean STC carrying out street trading functions in relation to specified streets in Seaford for and on behalf of LDC. The scope and duration of STC's street trading powers would be set out in a delegation agreement between LDC and STC. It is recommended that Council authorise the Director of Service Delivery to draft such an agreement and to consult with STC over the final version prior to completion.
- 2.11** The delegation agreement with STC should, in particular, provide for:
- Scope and limitations of delegated powers
 - Duration and basis for renewal
 - Monitoring
 - Support from LDC
 - Termination
 - Liability for costs of street trading enforcement
 - Indemnification of LDC against costs etc arising from STC's exercise of delegated powers
 - Effect on the agreement of any changes to LDC's Street Trading Policy made during the currency of the agreement
- 2.12** In the list above, 'support from LDC' would include training of STC staff in how to exercise delegated street trading powers effectively. LDC's Environmental Health officers have the necessary expertise to provide this.

Financial Appraisal

- 3.1** Street trading licence fees should not exceed the costs of the procedures and formalities involved in administering applications. In view of this, the costs of enforcing the street trading regime against unlicensed operators must not be reflected in licence fees charged by a local authority. This requirement is equally applicable to STC, should they be given delegated powers to administer street trading across certain parts of Seaford.
- 3.2** The delegation agreement would require STC to meet in full the costs of enforcing the street trading regime across the area for which they are

responsible. If the delegation of powers is agreed, there will be no significant impact on this Council's budget.

Legal Implications

- 4.1** Under section 101 of the Local Government Act 1972, LDC may arrange for the discharge of any of its functions by another local authority (which, in the context of this report, would include STC). An arrangement such as this may only be authorised by resolution of LDC sitting in full Council, and may be qualified by reference to a delegation agreement entered into with the body carrying out the functions on behalf of the district council.

If authorised, the delegation would permit STC to carry out street trading powers across specified parts of Seaford in the name of LDC. As with any delegation, the delegating body (LDC in this instance) retains the right to exercise its powers in its own name at any time, should it be necessary.

- 4.2** The formula a local authority must apply in setting its street trading licence fees, as detailed in the Financial Appraisal above, was established by the Court of Appeal in *R (on the application of Hemming) v Westminster City Council* [2013].

Risk Management Implications

- 5** I have completed a risk assessment. No new risks will arise if the recommendations are not implemented. The following risks will arise if the recommendations are implemented, and I propose to mitigate these risks in the following ways:

The delegation agreement would limit STC's exercise of delegated powers to a defined period; make renewal subject to satisfactory performance; and put in place controls aimed at ensuring the powers were exercised lawfully and in accordance with LDC's current Street Trading Policy.

Despite the training LDC would provide, there is a risk that STC might exercise delegated street trading powers incorrectly or otherwise unlawfully, giving rise to costs, damages or liabilities. To mitigate this risk, the delegation agreement would indemnify LDC against the financial effect of STC's improper exercise of delegated powers.

Equality Screening

- 6** There are no equality implications arising from this report.

Background Papers

Lewes District Council Street Trading Policy 2014

Appendices

Appendix 1: E-mail of 18 May 2016 from Town Clerk, Seaford Town Council, to Service Manager, Environmental Health