

REPORT TO:	LICENSING COMMITTEE 9 December 2020
AGENDA ITEM:	9
SUBJECT:	London Local Authorities Act 1990 Request for Delegation of Decision Making Authority to the Director of Public Realm in respect of – Uncontested Street Trading Designation and Variation Applications Uncontested Street Trading Licence related Applications, including variations
LEAD OFFICER:	Executive Director, Place Department
CABINET MEMBER:	Councillor David Wood Cabinet Member for Communities, Safety & Resilience
WARDS:	All
CORPORATE PRIORITY/POLICY CONTEXT:	
<p>This report is specific to the subject matter and has no implications on the Council's Corporate Policies, however, if the recommendations in this report are adopted, it will streamline decision making and allow the committee to focus on matters of a more contentious and high profile nature and it will also provide faster decision making response times to applicants and reduce burdens on small business and both these link to the aim in the Corporate Plan 2018-22 that seeks to ensure business moves here and invests and our existing businesses grow.</p>	
FINANCIAL SUMMARY:	
<p>There are no direct financial implications arising from this report. However, in addition to streamlining the decision making process, it will reduce costs associated with arranging and holding hearings, both remotely and in the Town Hall and will reduce time and financial costs on small business who currently have to attend hearings.</p>	
FORWARD PLAN KEY DECISION REFERENCE NO.: N/A	

For general release

1. RECOMMENDATIONS

The Committee is recommended to:

1.1 Delegate authority to the Director of Public Realm, in consultation with the Chair of the Licensing Committee, to consider and determine the following matters pursuant to the provisions of the London Local Authorities Act 1990 ("the Act"), as amended:

- (a) Applications for a Street Designation Order (designation of a License Street or part of street) under Section 24 of the Act which are not located within the Council's Saturation Zone for these purposes and in respect of which no objections have been received (or if received but have been subsequently withdrawn). If the Director of Public Realm is satisfied that street trading should be licensed in the authority area (or specified part thereof), the Director of Public Realm may, subject to consultation requirements, pass one or more of the following resolutions:
- A designating resolution designating any street (or part thereof) within the borough as a "licence street";
 - A resolution specifying in relation to any such street (or part thereof) any class/es of articles, things or services which will or will not be prescribed in any street trading licence granted in respect of that street (or part thereof)
- (b) Applications to vary or consideration of rescinding a Street Designation Order in respect of which no objections have been received (or if received but have been subsequently withdrawn) and the associated resolutions required.
- (c) Applications for the grant/renewal/variation/revocation of Street Trading Licenses under Sections 25, 28 and 29 of the Act in respect of streets or part(s) of street(s) which are designated for the purposes of street trading as "license streets" where no objections have been received (or if received but have been subsequently withdrawn) to the application under consideration and to impose Standard Conditions, Appendix 1 hereto, and such site specific conditions as are reasonable in relation to the license.

Such delegations shall not preclude the Director of Public Realm referring a matter to the Committee for consideration and determination where it is considered appropriate to do so.

1.2 Update the Council's Street Trading Licensing Policy, Appendix 2 to this report, to reflect the above delegations where necessary, to update outdated references to previous officers' titles contained therein and to include the Standard Conditions as an Appendix to the Policy.

2. EXECUTIVE SUMMARY

- 2.1 The purpose of this report is to seek the Committee's decision on the proposal to delegate decision making authority under the provisions of the London Local Authorities Act 1990 (as amended) to the Director of Public Realm, in consultation with the Chair of the Licensing Committee, in respect of uncontested applications for the designation, variation or rescinding of streets or part(s) of street(s) for the purposes of street trading, in respect of uncontested applications for grant, renewal, variation or revocation of street trading licenses and in respect of amending standard & site specific conditions attached to street trading licenses.
- 2.2 It is recommended that all such applications where there are objections or representations against the designation/de-designation or against grant/renewal/variation/revocation will still be considered by the Committee so that contentious matters, including those which fall within the saturation zone as set out in the Street Trading Licensing Policy, still remain with Committee to determine but that uncontentious and routine matters are dealt with by officers.

3. DETAIL

- 3.1 The London Local Authorities Act 1990 (as amended) (The Act) provides a legislative framework to control street trading in the Borough. Trading in respect of services as well as goods comes within the scope of the Act.
- 3.2 Licensed street trading may only take place in streets or parts of streets which have been formally designated as "licence streets".
- 3.3 Section 24 (1) of the London Local Authorities Act 1990 (as amended) states:

'If a borough council consider that street trading should be licensed in their area they may from time to time pass any of the following resolutions:

(a) a resolution (in this Part of this Act referred to as a "designating resolution") designating any street within the borough as a "licence street";

(b) a resolution specifying in relation to any such street or any part of a street any class or classes of articles, things or services which they will, or other than which they will not, prescribe in any street trading licence granted by them in respect of that Street;

and may from time to time by subsequent resolution rescind or vary any such resolution:

provided that before passing a designating resolution, a borough council shall consult with the Commissioner of Police of the Metropolis on their proposal.'

- 3.4 Section 25 of the Act sets out the application process for a new or renewal of street trading license, including the required information which must form part

of the application, publication and notification requirements and the mandatory grounds upon which such an application shall be refused and discretionary grounds on which the application may be refused.

- 3.5 Section 27 provides for the period of validity of the license if granted and not subsequently revoked or suspended and makes provision in respect of standard Conditions for such licenses.
- 3.6 Section 28 and 29 respectively make additional provision for the revocation or variation of licenses and notice requirements in relation to refusal to grant under the discretionary grounds for refusal (section 25(6)), revocation or variation under section 28 and variation under section 27(1).
- 3.7 Currently, all proposals to designate a street or part(s) of street(s) in the borough for the purposes of street trading are referred to the Councils substantive licensing committee to consider even if there are no objections. Similarly, all applications for new street trading licenses or applications to vary the terms of an existing street trading licence are referred to the committee even if there are no objections. In addition, each street trading licence issued has standard conditions attached to it and some licenses have site specific conditions attached. Standard conditions vary slightly dependent on whether the premises in question is on a section of highway maintained by Croydon Council or Transport for London. A copy of the current standard conditions is attached at Appendix 1.
- 3.8 This report proposes that the determination of all street trading designations and licence applications be delegated, by the Committee to the Director of Public Realm to determine, in consultation with the Chair of the Licensing Committee. However, where an application draws objections or where the designation site is in the Saturation Zone, the matter will be referred to the Committee to consider.
- 3.9 The Council Licensing Committee convenes for four scheduled evening meetings in the financial year, basically meeting every three months. In addition, where statutory time deadlines or operational demands make it necessary, the committee can also meet on an ad hoc basis to deal with specific issues.
- 3.10 The committee is asked to consider and determine matters relating to licensing policy, fees and standard conditions for particular types of licence. Subject to para. 3.9 below, it will also meet to consider licence applications that have drawn objections, in order that applicants and objectors are afforded a fair and open hearing and may also be asked to consider licence applications where there are no objections but where officers believe the matter to be high profile and of particular public interest. For this reason, the delegation seeks to reserve the right of the Director of Public Realm to refer matters back to the Committee for consideration and determination should it be considered appropriate to do so.
- 3.11 In addition to the above, at each scheduled licensing committee, members

are also currently asked to determine whether to grant applications to designate a street or part of a street for the purposes of street trading even where there are no objections and whether to grant a new or variation application for an existing street trading licence, even if there are no objections. They would also be asked to consider whether to amend any standard or site specific condition attached to a street trading licence.

3.12 Summoning Members solely to consider such uncontested matters could be considered as unnecessarily costly to Members and the Council (in both time & monetary terms) as well as the cost implications of having officers attend and the facilities management costs of heating, lighting and security staff for in person meetings and the webcasting and IT support costs for remote meetings. In addition, applicants are called to the meetings to explain and substantiate their application, even though no one has raised any objections, which has time & cost implications for them and their business operations.

3.13 With regard to standard conditions attached to street trading licenses, as can be seen at Appendix 1, these are identical aside from the width of available footway for Council & TfL maintained sections of highway.

4. CONSULTATION

4.1 There are no consultation requirements associated with this report.

5 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

5.1 The effect of the decision

There are no direct adverse financial implications as a result of this report.

5.2 Risks

If an applicant is refused a licence on any of the grounds mentioned in paragraph 7.2 (a) - (g) below he/she will have the right of appeal to the Magistrates' Court against the decision. The decision of the Committee or the Director of Public Realm, if the delegation is approved may also be subject to Judicial Review.

An appeal against a decision of the Committee or the Director of Public Realm, if the delegation is approved or a Judicial Review of the application process may present financial risks to the Council with regard to any award of costs against it.

5.3 Options

The Committee may agree to designate an area for street trading or they may decline to do so. With regard to licenses, the options available are: to grant an application, to vary an application, with or without further conditions, or to refuse an application.

5.4 Future savings/efficiencies

If the recommendations in this report are approved, the Council will see monetary savings in not requiring members or officers to attend evening hearings solely for uncontested applications and there will also be monetary savings with regard to facilities management, for example heating, lighting and security costs or webcasting and IT support costs (where applicable) .

5.5 Approved by: Felicia Wright, Head of Finance, Place Department.

6. LEGAL CONSIDERATIONS

LICENCE STREET

- 6.1 If the borough council considers that street trading should be licensed in an area, they may pass a resolution designating any street within the borough as a "licence street" in accordance with Section 24 of the Act.
- 6.2 The first decision which has to be made is whether to designate the particular location as a "licence street", which in turn would permit the consideration of a licence application.
- 6.3 Under Section 24 of the Act, the designation of a location as a "licence street" is at the discretion of the decision maker and this decision is not subject to any direct appeal. The Council's Street Trading Licensing Policy does provide that in determining whether a street or particular site should be designated for the purpose of street trading the following matters may be considered:
- The presence of existing street furniture;
 - The proximity and nature of any road junctions and pedestrian crossing points;
 - The number of sites already designated in the same street;
 - Whether the proposed site for designation would ensure continued free access to members of the public using the road or pavement or cause obstruction to e.g. pedestrians, prams and wheelchairs;
 - Whether it leaves the recommended minimum clear passage of 2.0 metres (or 2.8m on TfL roads), between the front edge of any display and the edge of the kerb or any item of street furniture (railings, lamp posts etc.) – whichever is the nearer to the display;
 - Put the safety of pedestrians at risk;
 - Have a negative effect on the character and appearance of the area;
 - Any relevant Council policies relating to the town or district centre in question whose implementation might be impeded or compromised by the designation.
- 6.4 In relation to the streets listed below the Council, having consulted with the officers responsible for food safety, planning, parking, street scene and district centre managers, the Highway Authority, Transport for London, Police and licence holders in those streets or trade bodies representing them, are of the view that there are enough existing designated sites. This is on the basis that any addition to the number of existing designated sites would have an overall

detrimental impact on the safe and convenient passage of pedestrians in that part of the street. The Committee will therefore generally be minded to refuse any further requests for designation but will consider each request on its merits.

Entire length of London Rd

Entire length of High St, Thornton Heath

Where the Licensing Committee considers that, in any other streets in the borough, there are enough existing designated sites it may, subject to a similar process of consultation, decide to include these additional streets with those listed above. Similarly the Licensing Committee may from time to time determine that due to a change in circumstances parts of streets may be removed from that list.

6.5 Each application must be considered on its own merits.

6.6 **STREET TRADING LICENCE**

If a site has been designated as a 'licence street', the committee or the Director of Public Realm, if the delegation is approved must then decide whether to grant a licence to trade at that site – a 'street trading licence'.

7. **GROUND FOR REFUSAL**

7.1 Under Section 25(4) of the Act, a street trading licence:

- (a) shall not be granted:
 - (i) to a person under the age of 17 years; or
 - (ii) except where the application is made by a company incorporated under the Companies Acts, or by a partnership, for a licence to carry on ice-cream trading to a person, on a corresponding day, days or time, who holds a street trading licence in any other licence street granted under this Part of the Act but nothing in this paragraph shall prevent the renewal of such a licence; or
 - (iii) except where the application is made by a company incorporated under the Companies Acts, or by a partnership, for a licence to carry on ice-cream trading to a body corporate or to an unincorporated association;
 - (iv) in respect of an application for a licence which is not a temporary licence to trade in a street which is not a licence street; or
 - (v) where the street to which the application relates is a street in respect of which the borough council have by resolution passed under Sub-Section

1) (b) of Section 24 of this Act, specified a class of articles or things, or services which they will not prescribe in any street trading licence and the grant of the licence would be contrary to any of the terms of that resolution;

- (b) shall not be granted unless the borough council are satisfied that there is enough space in the street for the applicant to engage in the trading in which he desires to trade without causing undue interference or inconvenience to persons or vehicular traffic using the street.

7.2 Under Section 25(6) of the Act, the Council may refuse an application on any of the following grounds:

- (a) that there are enough traders trading in the street or in any street adjoining the street in respect of which the application is made in the goods in which the applicant desires to trade;
- (b) that the applicant is on account of misconduct or for any other sufficient reason unsuitable to hold the licence;
- (c) that the applicant is an individual who has without reasonable excuse failed personally to avail himself of a previous street trading licence;
- (d) that the applicant has at any time been granted a street trading licence by the borough council which was revoked or could have been revoked on the grounds that he had refused or neglected to pay fees or other charges due to them in respect of the licence;
- (e) that the applicant has failed to provide or to identify suitable or adequate premises for the storage of any receptacles or perishable goods in which he proposed to trade when street trading is not taking place;
- (f) that the application is for the grant (but not the renewal) of a street trading licence; and
 - (i) the only available position is in that part of the street which is contiguous with the frontage of a shop; and
 - (ii) the articles, things or services mentioned in the application are sold or provided at the shop;
- (g) that
 - (i) the application is for the grant (but not the renewal) of a street trading licence; and
 - (ii) the only available position in the street is within the curtilage of a shop; and
 - (iii) the applicant is not the owner or occupier of the premises comprising the shop.

- 7.3 The Head of Litigation and Corporate Law comments on behalf of the Director of Law and Governance that there are no additional legal implications arising from the recommendations in the report other than those already set out within the body of the report.

(Approved by Sandra Herbert, Head of Litigation and Corporate law on behalf of the Director of Law and Governance and Deputy Monitoring Officer).

8. HUMAN RESOURCES IMPACT

- 8.1 There are no specific Human Resource implications associated with this report. The Human Resources impact of supporting the Licensing Hearings will be contained within the budgeted establishments of the Democratic and Legal Services and Licensing Teams.

- 8.2 (Approved by: Jennifer Sankar, Head of Human Resources, Place Department, for and on behalf of Sue Moorman, Director of Human Resources)

9 EQUALITIES IMPACT

- 9.1 The arrangements for the consideration of Licensing Applications under street trading legislation seek to ensure that all applicants and other interested parties receive a fair hearing and that the process is accessible to all groups within the community.

10. ENVIRONMENTAL IMPACT

- 10.1 There are no perceived environmental and design impacts relating to this report.

11. CRIME AND DISORDER REDUCTION IMPACT

- 11.1 As this report relates to internal Council decision making, the Police Licensing Officer has not been consulted on this matter.

12. DATA PROTECTION IMPLICATIONS

- 12.1 **WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?**

NO

The Director of Public Realm comments that agreeing the recommendations in this report will not result in the processing of personal data.

Approved by: Steve Iles, Director of Public Realm

CONTACT OFFICER:

Michael Goddard, Head of Public Protection and
Licensing, Place Department, ext. 61838.

APPENDICIES

Appendix 1: Standard Street Trading Licence Conditions

Appendix 2: Street Trading Licensing Policy

BACKGROUND DOCUMENTS: None