



Report of the DIRECTOR OF CITY DEVELOPMENT

Executive Board

Date: 22 AUGUST 2007

Subject: Street Trading – Leeds Local Act of Parliament

Electoral Wards Affected:

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In

(Details contained in the report)

EXECUTIVE SUMMARY

- 1.1 This report describes how current arrangements for Street trading in Leeds city and the district as a whole operate and goes on to explain:
- how inefficient and ineffective control is;
 - that safeguarding the consumer is currently unachievable;
 - how the city street scene is blighted by unauthorised traders;
- 1.2 The report proposes a solution to the current position which involves the adoption of a local Act of Parliament which will be of significant benefit to all visitors and users of the city and district streets. The report also describes how if Leeds does not adopt a local Act - as a core and attractive city – it could become increasingly 'at risk' from unregulated street sellers as an increasing number of high profile or core cities adopt similar solutions.
- 1.3 The recommendations request Executive Board to:
- Note the contents of this report, the possible benefits to the city and metropolitan district of a local Act and the estimated costs and;
 - Recommend to full Council that they should approve the promotion of a local Act of Parliament to deal with pedlars and street trading and delegate to the Assistant Chief Executive (Corporate Governance) the authority to agree minor amendments to the Bill at any stage during it's promotion.

2.0 Purpose Of This Report

- 2.1 To inform the Executive Board how the current arrangements for Street trading in Leeds city and the district as a whole operate and explain:
- how inefficient and ineffective control is;
 - that safeguarding the consumer is impossible;
 - how the city street scene is blighted by unauthorised traders;
- 2.2 Propose a solution to the current position to the benefit of all visitors to the city and district.

3.0 Background Information

- 3.1 Street trading in the city centre and surrounds of Elland Road football club is managed by way of a limited number of - *consents to trade*- issued by the Council's Market Service under the authority of the Local Government (Miscellaneous Provisions) Act 1982.
- 3.2 Potential traders are required to apply for a consent site by way of an open tender process and successful applicants are issue with a consent for a maximum of 12 months at which time the process is repeated.
- 3.3 Within the city centre, sites are identified jointly by City Centre management and the Markets Service. Strict parameters for both the commodity offered and the style of the unit from which trade is to take place are evaluated with the objectives of enhancing the street scene and protecting consumers.
- 3.4 Elsewhere within the Leeds District, trading from the Highway is managed within Environment and Neighbourhoods. Currently, measures are being introduced to regularise these arrangements so that traders operate by way of similar consents to trade as those in the city centre and at Elland Road.
- 3.5 Unfortunately and particularly in the city centre, unauthorised traders operate to the detriment of the visual amenity whilst often exploiting consumers, especially the vulnerable, by offering goods of dubious quality and origin and with no recognised after sales service.
- 3.6 There are two 'types' of unapproved street trading in the city and whilst always present, numbers of these unapproved traders increases dramatically at seasonal times:
- illegal street traders – trading without consent or pedlar's licence – that is they just turn up and trade when and where they like - and ;
 - pedlars - trading by a *certificate* issued by the police and costing less than £20 per year – and these are almost always abused
- 3.7 Pedlar's certificates are issued by the police under an 1871 Act of Parliament. Any person can apply for the certificate and, as long as the issuing police officer believes the applicant to be of good character, the certificate is issued valid for a year in any location within England.

- 3.7.1 The original rationale of the pedlar's certificate was to allow a person to trade informally whilst moving from street to street, village to village or town to town. Historically such traders might return to a district once or twice a year offering their wares. For example, knife sharpeners or pot sellers would walk or ride (horse & cart) along shouting their presence and customers would approach the traveling salesperson to conduct business.
- 3.7.2 It is this 'trading on the move' which is the cause of contemporary abuse because today's pedlars simply set up a stall in the busiest thoroughfares and then remain in place throughout the day simply showing their certificate to enforcing officers and maybe moving a few feet up and then down the street to satisfy the 'on the move' aspect of the 19th century Act.
- 3.8 Current remedies to stop abuse of a pedlar's certificate or illegal street trading are ineffective and resource hungry and involve action in the Magistrates court.
- 3.8.1 Enforcing officers cannot seize goods under current legislation and therefore need to gather significant evidence to establish the offence against those in possession of a pedlar's certificate. This can often take many days of observation, taking statements and obtaining CCTV evidence before progressing to Magistrates court 4 to 6 months later and where proven a first time offender may be fined £50.
- 3.8.2 The fines and time taken to present the case do not deter those traders who are generating significant turnover – particularly at seasonal times.
- 3.8.3 Similarly, although those trading without a pedlar's certificate do not 'enjoy' its protection the first time sanction imposed by Magistrates is often around £50 and again not related to sales turnover. In the case of illegal traders, they are usually people selling on behalf of a third party who simply replaces the salesperson once they have been to court. This means that subsequent legal action is against a first time offender with low penalties.
- 3.9 For some considerable time Market Authorities and others have lobbied parliament to repeal the 1871 Pedlar's Act but to date there is no momentum to do so.
- 3.10 In 2000 Newcastle upon Tyne City Council sought and obtained an Act of Parliament which covered issues including Street Trading, second-hand goods dealers and distribution of free literature. However, the total cost was high at c£250,000.
- 3.11 Since that time the process of obtaining a local act has become understood and costs have reduced significantly and to such an extent that other Authorities have taken or are taking steps to obtain their own local legislation to eradicate the problems associated with non-regulated street traders – the current cost of the process is considered to be no more than £60,000.
- 3.11.1 Those Local Authorities who have taken action already are: Westminster, London Borough Councils, Medway, Maidstone, Leicester, Liverpool. In addition Birmingham and Manchester (both core cities) have already submitted their applications for this year and Nottingham is in the process of doing so.
- 3.11.2 Therefore an increasing number of core cities have or are about to seek their own local Act to curtail unlawful and damaging street trading.

3.12 A key benefit of the local Act is the ability for enforcement officers to seize items for sale and the equipment used by unapproved traders. Such action immediately removes the commercial advantage of a trader operating without consent. This facility is, perhaps, the single most deterrent and the evidence from Newcastle confirms the effectiveness of the Act in removing unauthorised traders from the streets.

4.0 Main Issues and timing

Main Issues

4.1 The key objectives of successful street trading can be summarised as:

- Protection of the unwary or vulnerable consumer from poor quality, illegal or counterfeit goods;
- Ensuring – through regulation – that street traders comply with environmental and other legislative requirements;
- Improving the visual appearance of streets both in the centre of Leeds and elsewhere in the district by developing the trading ‘platform/kiosk’ with applicants seeking consent to trade;
- Providing consistent and fair conditions for bona fide traders to access opportunity to trade and operate safely and with regard to all other retailers and consumers;

4.1.1 These objectives are supported by Leeds City Centre management who strive to improve the street scene within the centre – for example, following the £4.5m Briggate refurbishment it has been disappointing that so many illegal or unauthorised street traders have operated from these prestigious surroundings.

4.1.2 The Markets Service work closely with West Yorkshire Trading Standards (WYTS) and in discussions with WYTS managers they are fully supportive of the initiative to remove unregulated traders from the streets. Their main concern being the plentiful supply of poor quality, often dangerous products which are traded from the streets. This is particularly the case around Christmas or other seasonal times when potentially hazardous children’s toys and other goods are sold.

4.1.3 In addition there is some evidence that some unapproved street traders offer illegal products which, either directly or indirectly, support more organised crime.

4.2 As described in paragraph 3.11.1 a number of high profile cities already have the protection of the local Act and a further two core cities (Birmingham and Manchester) are seeking the facility this year. It is inevitable that as the larger cities become inaccessible to unauthorised traders these will seek alternative sites. As a result, larger cities without the protection of the local Act are likely to be the first target destination of traders displaced from those cities that do.

4.2.1 As an attractive core city in the top flight of retailing destinations Leeds would be particularly vulnerable from displaced traders if the protection of the local Act was not available.

Timing

- 4.3 A Bill for the Leeds local Act must be deposited before 27 November 2007 to enable enactment by July 2008.
- 4.4 Section 239 of the Local Government Act 1972 requires two resolutions to be passed by full council both of which need to be supported by more than fifty percent of Council Members:
- First resolution before deposit – i.e. prior to 27 November 2007;
 - Second resolution as soon as may be after the expiry of 14 days after deposit.

5.0 Risk Analysis

- 5.1 There are a number of issues to consider:
- 5.1.1 Maintaining the status quo and not taking action to obtain the protection of the local Act will leave Leeds Metropolitan District and the city centre in particular extremely vulnerable to unauthorised traders displaced from an increasing number of Local Authorities who have secured their own local Act.
- 5.1.2 The existing unauthorised traders and those displaced from elsewhere will continue to increase the burden on resources used in the inefficient and ineffective enforcement arrangements currently available and discussed earlier in this report.
- 5.2 The Parliamentary process does allow for a challenge to the request for a local Act for Leeds (as elsewhere) and if a challenge was upheld the action seeking the local Act would fail. However the appropriate legal advice will continue to be utilised throughout the process.
- 5.2.1 Current legal advice - based on evidence from earlier local Acts - is indicative that even in the event, a challenge it is unlikely to be successful.
- 5.3 The cost of the process is thought to be in the region of £60,000 although this is spread over the two financial years 2007/8 and 2008/9. Costs throughout the process will be monitored with any additional costs funded from the Markets revenue budgets.
- 5.3.1 Apart from the regulatory benefit in obtaining the local Act it is anticipated that those trading sites identified as consents by the Council will have an enhanced value with the costs of this action recovered over time.

6.0 Implications For Council Policy And Governance

- 6.1 Promoting this local Act of Parliament will contribute to achieving the objectives set out in the Council Plan in making Leeds a safer place to live and visit.
- 6.2 Promotion of a local Act is a function reserved to full Council and not the Executive therefore this report is only for Executive Board to note and, if appropriate, for

Members to recommend to full Council that the local Act be promoted given the benefits to the city as set out in this report.

7.0 Legal And Resource Implications

- 7.1 The promotion of a local Act of Parliament is a complex process but in brief, a petition must be presented to Parliament before 27 November 2007 and the Bill must then be widely advertised so that those affected may petition Parliament in relation to the Bill.
- 7.2 It is essential for this work to be carried out by a parliamentary agent and it will be necessary to procure the services of such an agent and possibly Counsel - from an approved list of Parliamentary agents.
- 7.3 The agents will negotiate with any potential objectors but ultimately it may be necessary to instruct Counsel to represent the Council - as promoter of the Bill - to appear before a Parliamentary Committee.
- 7.4 The Council's Legal and Democratic Service officers will be involved in the detailed legal work required to facilitate the Bill through its local and parliamentary stages.
- 7.5 The process is estimated to cost in the region of £60,000 and it is anticipated that this cost can be funded from within Asset Management budgets.
- 7.6 It is considered that as a consequence of obtaining the local Act existing and approved street trading consents will have an increased value. Therefore additional income will:
- offset the front-end costs associated with obtaining the Act and;
 - provide sufficient revenue to ensure fair and consistent enforcement of the provisions within the Act.

8.0 Conclusions

- 8.1 Acquisition of the protection afforded by the Bill and discussed in this paper has been desirable for a considerable time. With the increasing number of cities already in possession or in the process of gaining that protection it is now considered essential for Leeds to seek this facility without delay - for both the city centre and wider metropolitan district.
- 8.1.1 The protection afforded by the local Act should provide an efficient and effective means for Leeds City Council to manage street trading throughout the district and at all times of the day and night throughout the year.
- 8.2 It is further considered essential, in contributing to Leeds as an excellent retail centre and core city, to remove the potential dangers associated with illegal and unregulated street trading.

9.0 Recommendation

9.1 Executive Board are requested to:

- Note the contents of this report, the possible benefits to the city and metropolitan district of a local Act and the estimated costs and;
- Recommend to full Council that they should approve the promotion of a local Act of Parliament to deal with pedlars and street trading and delegate to the Assistant Chief Executive (Corporate Governance) the authority to agree minor amendments to the Bill at any stage during it's promotion.