

REPORT TO:	LICENSING COMMITTEE 10 December 2014
AGENDA ITEM:	7
SUBJECT:	London Local Authorities Act 1990 Resolution to designate parts of the public highway in South End, Croydon for street trading
LEAD OFFICER:	Executive Director, Development & Environment Department
CABINET MEMBER:	Councillor Mark Watson, Cabinet Member for Communities, Safety & Justice
WARDS:	Fairfield
CORPORATE PRIORITY/POLICY CONTEXT: The proposal in this report links with the Town Centre High Street Improvements Project which flowed from the Connected Croydon Programme Board.	
FINANCIAL SUMMARY: There are no direct financial implications arising from this report.	
FORWARD PLAN KEY DECISION REFERENCE NO.: N/A	

For general release

1. RECOMMENDATIONS

- 1.1 The Committee is asked to determine whether to pass a resolution to designate the public highway outside no's 3-77 and 6-62 South End, Croydon, Surrey for the purposes of street trading.
- 1.2 Subject to approval of 1.1 agree that the Trading Standards and Licensing Manager be given delegated authority to consider and determine street trading licence applications in respect of café and restaurant premises in the designated area to display tables and chairs immediately in front of those premises.

1.3 Note that where the Trading Standards and Licensing Manager is minded to refuse an application it will be referred to the Licensing Committee for determination.

2. EXECUTIVE SUMMARY

2.1 The purpose of this report is to seek approval for the designation of parts of the public highway in South End, Croydon 'licence street' for street trading and to enable the determination of applications for street trading licences to display tables and chairs under delegated authority.

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" and a licence to trade granted.

3.3 Public Realm improvements works to the highway have recently been completed in South End, Croydon as part of the Town Centre High Streets Project. This Project flowed from the Connected Croydon Board and was intended to improve the physical environment in South End and make the area a more attractive place for people to visit. South End is known as the Restaurant Quarter and it is hoped that by allowing restaurants and cafes on South End to place tables and chairs on the public highway outside their premises for their customers to use will enhance the area and make it a more attractive location for people to visit and utilize those premises. It is believed that the grant of this designation will complement the area where the improvement works have recently been carried out.

3.4 Designation of the public highway outside no's 3-77 and 6-62 South End, Croydon (the designated area) would enable the cafes/restaurants in the

designated area to apply for a yearly street trading licence to display tables and chairs. At present there are some 23 café & restaurant premises that would fall within the designated area. While applications could be made by any of the premises in the designated area, where the application was not to place tables and chairs in association with café or restaurant premises, it would be referred to this Committee for a decision.

- 3.5 At the present time it is not proposed to specify additional parameters on the scope of the delegation, such as specifying the maximum number of tables and chairs. However, in deciding whether or not to grant, as detailed in para.7 below, the usual considerations such as whether there is enough space in the street to trade without causing undue interference or inconvenience to persons or vehicular traffic would still apply.

4. CONSULTATION

- 4.1 The designation proposal was duly advertised in the Croydon Guardian and brought to the attention of the police, planning, highways, Croydon BID, parking services, food team and TfL.

- 4.2 No comments/objections have been received.

5 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

5.1 The effect of the decision

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

5.2 Risks

There is no direct right of appeal against a decision not to designate a street or part of a street for street trading. Any complaint would have to be by way of judicial review.

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

An appeal against a decision of the Committee or a Judicial Review of the application process may present financial risks to the Council with regards to any award of costs against it.

5.3 Options

The options available are: to designate the street as proposed or to not designate the street as proposed.

5.4 Future savings/efficiencies

There are no savings or efficiencies arising directly from the recommendations in the report.

(Approved by: Dianne Ellender, Head of Finance and Deputy S151 Officer – Chief Executive's Department).

6. COMMENTS OF THE SOLICITOR AND MONITORING OFFICER

LICENCE STREET

6.1 The Council Solicitor comments that 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 Committee and this decision is not subject to any direct appeal.

6.4 Any subsequent licence applications must be considered on their own merits.

6.5 STREET TRADING LICENCE

If a site has been designated as a 'licence street', under the arrangements for South End proposed in this report, an officer would determine applications for a licence to trade at that site – a 'street trading licence'

7. GROUNDS 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 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

(i) the application is for the grant (but not the renewal) of a street trading licence; and

(ii) the only available position is in that part of the street which is contiguous with the frontage of a shop; and

(iii) 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 (Approved by: Gabriel MacGregor, Head of Corporate Law on behalf of the Council Solicitor and Monitoring Officer)

8. HUMAN RESOURCES IMPACT

8.1 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 Adrian Prescod, HR Business Partner, for and on behalf of Director of Human Resources, Chief Executive's Department

9. CUSTOMER IMPACT

9.1 There are no specific customer services issues relating to these applications

10 EQUALITIES IMPACT ASSESSMENT (EIA)

10.1 The arrangements for Licensing Hearings 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.

11. ENVIRONMENTAL AND DESIGN IMPACT

11.1 The grant of the designation will complement the Public Realm improvements programme.

12. CRIME AND DISORDER REDUCTION IMPACT

12.1 The Police Licensing Officer has been consulted on this proposal.

13. HUMAN RIGHTS IMPACT

13.1 The Human Rights 1998 (HRA) requires public bodies to ensure everything they do is compatible with Convention Rights and makes it unlawful for a public authority to act incompatibly with those Rights. **Article 6 (A6)** of the European Convention on Human Rights (ECHR) is the right to a fair trial. The key elements of this include

- The right to a *fair* hearing;
- The right to a *public* hearing;
- The right to a hearing before an *independent and impartial tribunal*;
- The right to a hearing *within a reasonable time*.

13.2 When hearing an application, the proceedings of a non-judicial body such as the Licensing Committee, as opposed to an actual Court, need not meet the full requirements of A6 where there is a right of appeal from the Licensing Committee to a Court that does meet the full A6 standards and can consider all aspects of the case (even if that does not include a full re-hearing of the facts).

13.3 So, while it is good practice to make a hearing before the Licensing Committee as A6 compliant as possible, it will not be a breach of the HRA if it is not. Further, the hearing of all applications, are subject to the principles of Natural Justice and the requirement for decisions to be 'Wednesbury reasonable'.

14. FREEDOM OF INFORMATION/DATA PROTECTION CONSIDERATIONS

14.1 Protocols agreed in relation to Licensing Hearings are within the Council's Constitution and will be accessible as part of the Council's Publication Scheme maintained under the Freedom of Information Act.

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BACKGROUND DOCUMENTS: None