

CITY COUNCIL - 15 OCTOBER 2007

REPORT OF THE PORTFOLIO HOLDER FOR CUSTOMER SERVICES, CONSULTATION AND AREA WORKING

STREET TRADING – THE PROMOTION OF A PRIVATE PARLIAMENTARY BILL

1. SUMMARY

1.1 This report seeks authorisation for the promotion of a private bill under section 239 of the Local Government Act 1972 to supplement the powers relating to street trading in the City exercisable by the Council under the Local Government (Miscellaneous Provisions) Act 1982.

1.2 The Private Bill will;

- (i) amend the definition of street trading to include the supplying or offering to supply any service in a street,
- (ii) alter the Pedlars exemption so that it only applies to house to house trading,
- (iii) enable authorised Council officers and Police constables to seize articles being sold, offered or displayed for sale in suspected unauthorised street trading cases, and,
- (iv) enable courts to forfeiture such articles on conviction.

2. RECOMMENDATIONS

2.1 IT IS RECOMMENDED that

- (1) the City Council authorise the promotion of a Private Bill to supplement its enforcement powers relating to unlawful street trading by:-
 - (i) amending the definition of street trading to include the supplying or offering to supply any service in a street
 - (ii) altering the Pedlars exemption so that it only applies to house to house trading,
 - (iii) enabling authorised Council officers and Police constables to seize articles being sold, offered or displayed for sale in suspected unauthorised street trading cases, and
 - (iv) enabling courts to forfeiture such articles on conviction

- (2) the City Council join together with other local authorities to promote their own Bills with the prospect of fee sharing.

3. BACKGROUND

- 3.1 The Local Government (Miscellaneous Provisions) Act 1982 ('the Act') enables Nottingham City Council to designate streets within their area as "Prohibited Streets", where all street trading is prohibited or as "Consent Streets", where street trading is prohibited unless authorised by consent from the Council. The reasons for such control include amenity of the area, safety, prevention of obstruction, fairness of competition and consumer protection.
- 3.2 Although the Act makes provision for local authorities to prosecute unlawful street traders, namely those engaging in street trading in a prohibited street or in a consent street without the authorisation of the Council, there are a number of deficiencies with the enforcement provisions of the Act. These are underlined in paragraphs 3.3 to 3.11.
- 3.3 **The definition of street trading**
- 3.4 The Act defines street trading as the 'selling or exposing or offering for sale of any article' in a street, which excludes services that are offered on the street such as memberships and contracts.
- 3.5 **The level of penalty on conviction.**
- 3.6 The only sanction is a maximum fine of £1,000 in the Magistrates' Court. As this is only a maximum fine it is open for offenders to be given a much lower fine or a conditional discharge on conviction. The Council has successfully prosecuted four unlawful traders in 2007 - the maximum fine given was £180. This level of fine is not a deterrent as for many unlawful street traders whom are repeat offenders, the threat of a fine and a costs award is merely an occupational hazard when compared with the rewards that can be made.
- 3.7 **There is no provision for the seizure and forfeiture of goods being offered for sale from suspected unlawful street traders.**

- 3.8 The threat to unlawful street traders of having their goods seized and forfeited on conviction would be a more effective deterrent than a fine.
- 3.9 **There is an exemption from prosecution if a person is acting as a Pedlar with the authority of a Pedlar's Certificate granted under the Pedlars Act 1871.**
- 3.10 This exemption is being used by some street traders. Pedlars certificates are obtained from any Police Authority and can be used anywhere in the country. For many years, Pedlars and street trading activity has co-existed in Nottingham City Centre with ad hoc pedlars coming into the City occasionally. However since early 2006 the situation has become more problematic and the City has been inundated by traders claiming to act under the authority of Pedlars Certificates. Several locations in the City, namely Clumber Street, St Peter's Square and Lister Gate have become regular spots and this Pedlar activity cannot be regulated under the Act.
- 3.11 The definition of a Pedlar has been debated over the years in the superior courts, however as a number of different and somewhat conflicting decisions have been made, each based on the particular circumstances of each case it has left councils in an unsatisfactory position as they have to make a judgment based on these High Court authorities as to whether or not to prosecute. In practice this means that officers are required to obtain evidence for a prosecution alleging that unlawful street trading is being carried out by persons with a valid Pedlar's Certificate, by carrying out time-consuming covert surveillance or seeking the co-operation of any available CCTV operators. This diverts officers and CCTV operators from carrying out more useful duties in protecting the public.

4. THE CASE FOR NATIONAL LEGISLATION

- 4.1 The somewhat archaic status of the Pedlars Act 1871 has given rise to Parliamentary interest, and several attempts at amending the legislation have been put forward. More recently a Private Members Bill the 'Pedlars (Street Trading Regulation) Bill' was taken through Parliament by Dr Brian Iddon MP but failed to get past its second reading. The Government have stated that Dr.

Iddon had not produced sufficient evidence of the need for powers nationally. They feel that illegal or nuisance street trading is essentially a local issue and that the Government had not objected to private Bills being pursued by individual local authorities.

- 4.2 The National Association of British Market Authorities (NABMA) has been working with the Parliamentary Agents that successfully promoted several of the recent Private Local Authority Acts and have been seeking support for several Local Authorities to join together to promote similar legislation with the prospect of fee sharing. NABMA has organised several meetings and seminars for member authorities and many Authorities are now considering promoting their own Acts. In the local region Derby and the South Yorkshire Authorities of Sheffield, Doncaster, Rotherham and Barnsley have all expressed an interest.

5. CASE STUDIES

- 5.1 The deficiencies with the 1982 Act have been overcome by other authorities including Newcastle, Medway, Leicester, Liverpool and Maidstone, enacting Private Local Acts. These Acts have altered the Pedlars exemption so that it only applies to house to house trading and they enable authorised officers of the council to seize articles being sold, offered or displayed for sale in suspected unauthorised street trading cases and they enable the courts to forfeit such goods on conviction.

5.2 Leicester City Council

- 5.3 As part of their street trading policy Leicester City Council do not have any regular street trading pitches within the City Centre. However, they were experiencing problems with illegal street traders and pedlars and have now enacted a private local act, the Leicester City Act, 2006. Before the Act was enacted the Council wrote to all the pedlars trading in the City and gave copies of the new Act to all new pedlars as their warning. Since the Act came in to force The Council have not experienced any problems and have, therefore not needed to carry out any enforcement.
- 5.4 The enactment of the Leicester City Act in 2006 has contributed to up to 10 new Pedlars in Nottingham. This has had a detrimental affect on the environment of the City Centre, particularly access on

busy pedestrianised streets and increased levels of litter and trade waste. If the other local authorities in the region promote their own bills there is a likelihood of another influx of Pedlars in to Nottingham, with the consequent impact on the street scene.

5.5 **Maidstone Borough Council**

5.6 Prior to the enactment of the Maidstone Borough Council Act the Council needed to raise an injunction against a persistent illegal street trader. The cost of enforcing the case, raising the injunction and taking it through Court was in the region of £10,000. The Council promoted their own Act, which was opposed in the House of Lords, at a cost of around £40,000. However, since the Act was enacted the Council have not had any problems with illegal street trading or pedlars.

6. **PROPOSALS**

6.1 It is proposed that Nottingham City Council promotes a Private Bill to supplement its enforcement powers relating to unlawful street trading, and joins with other NABMA member authorities to promote their own Bills with the prospect of fee sharing.

6.2 The other option available to the Council is to continue to attempt to control the situation under the existing legislation. However, as explained in paragraphs 3.1 to 3.11 this has already proved to be time consuming and have very little impact.

7. **FINANCIAL IMPLICATIONS**

7.1 If the Council were to promote a Private Bill on their own the cost could be as much as £80,000. However, at the recent NABMA meetings at least two other authorities, Derby City Council and the South Yorkshire Metropolitan Councils (who could promote one bill collectively), have indicated their desire to promote their own Bills. If Nottingham promotes a bill at the same time, some of the costs of preparing the Bills can be shared.

7.2 The estimated cost of three councils promoting Private Bills at the same time is £41,550 plus VAT, for each council. If the number of councils promoting Private Bills at the same time increases, the total cost to Nottingham City Council would be reduced. It should be noted that these costs may increase if there is opposition to the

bill.

- 7.3 It is proposed that as no funds are available in the Markets and Fairs Trading Account to fund this activity the cost of promoting the Private Bill is met from the Policy Contingency.
- 7.4 During 2006/2007 the Markets Trading Account received £123,643 in street trading fees. There is a risk that if the Council are unable to control the activities of Pedlars some of the existing street traders may terminate their agreements and obtain Pedlars Certificates and continue to trade, with a consequent loss of income and control. There are three street traders in the High Street and Long Row area of the City who are most affected by the illegal street trading activity on Clumber Street. The combined consent fee from these three pitches is £13,600.

8. LEGAL IMPLICATIONS

- 8.1 Section 239 of The Local Government Act 1972 makes provision for the Council to authorise the promotion of a Private Bill. The Act requires two resolutions to be passed, one before the bill has been deposited in Parliament on or before 27 November and one as soon as may be after the expiry of 14 days after deposit. The following requirements are:
- (i) the resolutions must be passed at a meeting of the full council
 - (ii) more than 50% of all the members of the council must vote in favour of both resolutions
 - (iii) each meeting must be advertised in a local newspaper at least 30 clear days before the meeting. The advertisement must be separate from any other notice or advertisement of the meeting
- 8.2 A private bill seeks rights and powers over and above those sanctioned by public acts or the common law; therefore it is common for interested parties to object. Any person that is "specially and directly" affected by a bill, i.e. affected by the bill in a different way from the public and community at large, may oppose the bill by presenting a "petition" against it. A petition in this context is a document, in a particular format, outlining how the person is affected by the bill and why they think it shouldn't be proceeded with or how you would like it altered. If there is

opposition to the bill it will be heard before the Opposed Bill Committee, the function of the committee is to decide whether and in what form the bill should proceed.

- 8.3 Human rights issues are relevant to the proposals under consideration and will need to be balanced. In promoting the Bill the City Council is taking a position that the balance favours the proposed additional regulation. Parliamentary procedures will consider these issues.

9. OBSERVATIONS OF OTHER OFFICERS

9.1 CITY CENTRE MANAGEMENT

- 9.2 The current level of Pedlar activity in the city centre has attracted negative comment from the public, and on occasions amounts to a nuisance. There have been open conflicts between Pedlars and authorised street traders which gives a very poor image of the management of street activity to the public. In certain parts of the city centre the high levels of footfall that attract the Pedlars are overcrowded with semi-static mobile trolleys and moving pedestrians. The semi-static nature of stands impedes emergency vehicles and many other operations such as street cleaning.
- 9.3 There is a balance to be struck between vibrant streets and a pleasant street environment for shoppers and visitors and unorganised chaotic trading. One option would be to allow Pedlars to move around to sell their wares (i.e. abide by the terms of their certificate) and to manage that more effectively. This would tie up a considerable amount of Officer time, particularly at weekends and is not necessarily going to be effective. The alternative is to ban all peddling within the city centre, and this is deemed to be a more satisfactory proposal.
- 9.4 Whilst this step may appear somewhat draconian it is in effect the only way in which the Local Authority can exercise control over something that is currently a low priority for the Police.
- 9.5 The banning of peddling within the City would remove that very visual anomaly that currently exists between regulated street trading that is well managed and controlled and unmanaged ad-hoc street selling. The public are not able to differentiate between

the two, but do see quite different standards, which often leads to misconceptions that the Council is exercising separate standards in so far as the two types of activity are concerned.

10. List of background papers other than published works or those disclosing confidential or exempt information

10.1 Letter from the DTI to John Heppell MP dated 23 March 2007

11. Published documents referred to in compiling this report

11.1 Leicester City Council Act 2006

11.2 Liverpool City Council Act 2006

11.3 Maidstone Borough Council Act 2006

COUNCILLOR EUNICE CAMPBELL

**PORTFOLIO HOLDER FOR CUSTOMER SERVICES,
CONSULTATION AND AREA WORKING**