

# Agenda Item

**Licensing and Enforcement Committee**

**9 June 2009**

**IC/JT**



## **Request to remove the designation of the Esplanade from Fisherman's Gap to Beach Road, Seaton as a consent street for street trading under Schedule 4, paragraph 2(1) (c) of the Local Government (Miscellaneous Provisions) Act 1982**

### **Summary**

This report sets out the request from Seaton Town Council's Amenities Committee to remove the designation of the Esplanade, Seaton as a consent streets for street trading under Schedule 4, paragraph 2(1) (c) of the Local Government (Miscellaneous Provisions) Act 1982.

### **Recommendation**

1. That the Committee considers the requests from Seaton Town Council's Amenities Committee supported by some charities in the town to remove the designation of the Esplanade, Seaton as a consent streets for street trading under Schedule 4, paragraph 2(1) (c) of the Local Government (Miscellaneous Provisions) Act 1982 and defer the decision to allow further consultation and investigation of the options, and
2. Agree the interim measure proposed by the Licensing Service (paragraph 4.4) to facilitate local charities to run street markets on Seaton Esplanade during bank holiday weekends.

#### **a) Reasons for Recommendation**

To allow further consultation and investigation of the options whilst still facilitating local charities to run street markets on Seaton Esplanade during bank holiday weekends.

#### **b) Alternative Options**

1. That the Committee in principal agree to the removal of the designation of the Esplanade from Fisherman's Gap to Beach Road Seaton as a consent street for street trading. Should this option be taken it would start the formal process of removing the designation and would include the publication of a public notice to this effect in a newspaper local to Seaton. Owing to legal requirements relating to public notices the whole process would need at least two months to take effect.
2. That the Committee decides not to propose the removal of the designation of the Esplanade Seaton meaning that the Esplanade would remain a Consent Street where no street trading would be permitted without a consent having been issued by the Local Authority.

c) **Risk Considerations**

None

d) **Policy and Budgetary Considerations**

None

e) **Date for Review of Decision**

None

---

**1 Background**

- 1.1 During the latter part of 2008 the Seaton Town Council's former clerk to the council wrote to the Licensing Manager on behalf of Seaton Town Council and asked that the District Council look at some of the existing restriction on street trading in Seaton. Since 1998 the District Council had designated much of the town centre streets in Seaton as 'Prohibited' streets for street trading. Following this request discussions were held involving the former town clerk, his replacement David Mears and other parties.
- 1.2 On 1 December 2008 as a result of the Town Council's approach this Committee considered a request to re-designate certain streets within Seaton as consent streets for street trading under the Local Government (Miscellaneous Provisions) Act 1982. The Committee resolved to grant the request in principle and as required by the legislation a public notice was placed in a local newspaper.
- 1.3 The Notice was published in the View from Seaton on 20 January 2009 requesting responses by 18 February 2009. Alongside the public notice a formal consultation was undertaken with comments requested from Ward Members, Seaton Town Council, Devon & Cornwall Constabulary, Devon County Council as Highway Authority, Seaton Chamber of Commerce and East Devon District Council's Environmental Health, Planning and Street Scene services. A copy of the public notice is attached at **Appendix A**.
- 1.4 Responses were received from Councillor Mrs S Jones, Devon County Council and East Devon District Council's Street Scene Service. These were reported to this Committee at its meeting on 2 March 2009. It was resolved that with effect from Monday 6 April 2009 the Square and the Esplanade, Seaton from Fisherman's Gap to Beach Road be re-designated as Consent Streets for the purpose of Street Trading. The policy, standard conditions and fees together with the scope of powers to be delegated to the Head of Legal Licensing and Democratic Services were approved.
- 1.5 Two further public notices were published in the View from Seaton on 3 and 10 March 2009. A copy of the public notice is attached at **Appendix B**.
- 1.6 As a result of this Committee's decision dated 1 December 2008 on Monday 6 April 2009 the Square and the Esplanade from Fisherman's Gap to Beach Road, Seaton were re-designated as Consent Streets for the purpose of Street Trading under Schedule 4, paragraph 2(1) (c) of the Local Government (Miscellaneous Provisions) Act 1982 and deleted from the Schedule of Prohibited streets which came into force on the 29 June 1998.
- 1.7 The Senior Licensing Officer arranged and attended a meeting on the 7 April 2009 with the Mayor and Town Clerk of Seaton Town Council to discuss the policy and procedures relating to the issue of Street Trading consents. The impact upon the charities who arrange and have stalls at the street markets was discussed.
- 1.8 Subsequently on the 22 April 2009 a letter was received from the Town Council. Coincidentally at around the same time a number of negative letters were published in the local press and the Licensing

Service started to be contacted by some of the charities who are involved in the Street Markets and by interested members of the public. In response to the comments and negative publicity a meeting was requested with the Town Council and representatives of the charities affected.

### **Meeting with Town Council & Charities**

- 1.9 Councillor G Godbeer Chairman of this Committee and the Senior Licensing Officer attended a meeting at Seaton Town Hall on Monday 18 May 2009 to discuss the issues of the Street Trading legislation. The meeting was chaired by the Mayor and attended by Town Councillors, representatives of 10 charities and interested members of the public. The aim of the meeting was to listen to the problems both experienced and perceived by the charities in order to find a solution.
- 1.10 Following the discussions the meeting requested that this Committee be asked to consider removing the designation of the Esplanade from Fisherman's Gap to Beach Road, Seaton as a consent street for street trading under Schedule 4, paragraph 2(1) (c) of the Local Government (Miscellaneous Provisions) Act 1982. In effect the meeting was of the opinion that the road between Fisherman's Gap and Beach road should be totally uncontrolled so far as street trading was concerned. In view of the Town Council's request to this Committee in 2008 to change the Esplanade's designation to a 'consent' street and the public consultation that followed this request was unexpected.
- 1.11 Following this meeting the Seaton Town Council's Amenities Committee discussed the issue at its meeting on Wednesday 27 May 2009 and resolved to request that the District Council completely remove all restrictions relating to street trading on the Seaton Esplanade between Fisherman's Gap to Beach Road Seaton. A letter dated the 27 May 2009 has since been received from Mr Mears, the town clerk, confirming this request. A copy of the letter appears at **Appendix C**

## **2 Procedure**

- 2.1 The Esplanade's designation as a 'Consent' street was only recently made by this Committee following lengthy consultation. If the Committee should decide to change this designation including deregulating the area the same procedure used earlier this year and described in paragraphs 1.2 to 1.6 will be required. Because of restrictions imposed by the legislation the whole process will take at least two months and requires the publication of three public notices at an estimated cost of £400.
- 2.2 Consultation would also be undertaken with the Council's Environmental Health, Planning and Street Scene services, the Police, Seaton Chamber of Commerce and Devon County Council as the highways authority.

## **3 Evaluation of the proposal**

- 3.1 The removal of the designation of the Esplanade from Fisherman's Gap to Beach Road as a consent street would remove it from the scope of control of the Local Government (Miscellaneous Provisions) Act 1982. This would result in anyone, both commercial and charitable, being able to trade on the Esplanade 24 hours a day 7 days a week. They would not need any form of permission from the Council to trade although depending on where the stall was located they might need a road closure order.
- 3.2 A road closure order is required if the stalls are to be set up in the road along the Esplanade however an order is not necessary if the stalls are located on the side of the road or on the pavement. Whilst the stalls may cause an obstruction of the highway that is a police issue and unless the obstruction is serious it may not be a high police priority.

- 3.3 Currently the Street Markets are operated so that the charity holding the market lets out pitches to traders for a fee, which is retained by the organising charity. It is considered by the charities that if the traders obtain their consent from East Devon District Council they will be reluctant to then have to pay an additional fee to the Charities. Whilst in the past local charities have run these street markets and charged traders to trade there is no legal bases for charities to make a charge.
- 3.4 The main points of the Charities argument is that they have operated these street markets for years without any problems and the previous infringement of the legislation was a regrettable oversight. They feel that the Street Trading regime introduced by East Devon District Council places too great a financial burden on both them and the commercial traders thereby effectively destroying their ability to run the street markets in the future.
- 3.5 The removal of the designation of the Esplanade will effectively remove East Devon District Council from the process. This means that there will be no formal legally underpinned opportunity for screening potential traders and their goods to ensure safety of those attending the events, suitability of the type and nature goods being sold and vehicles being used.
- 3.6 It is understood that the street markets run by local Seaton charities traditionally happen only on bank holiday weekends. The Licensing Service understands that no other street trading currently occurs on the Seaton Esplanade at other times. In effect this means that at present street trading occurs on only four weekends a year as the bank holidays occurring during the winter months would be unsuitable for street trading on the Esplanade.
- 3.7 During recent months the Licensing Service has experienced an increased number of enquiries from people wishing to set up stalls in the street to trade. It is anticipated that much of these enquiries have been stimulated by the economic crisis however it is an indication of the importance of the District Council retaining control of street trading.

#### **4 Conclusion**

- 4.1 The request by Seaton Town Council and the local charities for the Esplanade to be deregulate so far as street trading is concerned seems to have been generated by the concern felt locally that the bank holiday street markets run by local charities are being adversely effected by the requirement for each stall holder to obtain a 'consent' to street trade from the District Council.
- 4.2 As the charities only run the markets on four bank holiday weekends each year the Licensing Manager believes that before Members consider the complete removal of the street trading controls on the Esplanade other options should be explored.
- 4.3 As the meeting with Seaton Town Council and the charities only occurred on the 18 May and the formal request from the Town Council was not received until Friday 29 May there has been insufficient time to properly investigate the issue.
- 4.4 It is recommended that the issue of deregulating the Esplanade be deferred until the Committee's September meeting to enable further investigation of the options. There is only one remaining bank holiday weekend this summer and in order to facilitate any street market planned and organised by a Seaton charity over the August Bank Holiday weekend it is proposed that the following interim measure be adopted:
- The organising charity be advised to apply and pay the set fee of £15 for one street trading consent in the normal manner. The applicant would then be issued with a consent authorising the use of that part of the Esplanade that the charity intends to use for the street market.

- This would then permit the charity to allocate pitches to other charities or traders within the length of Esplanade identified in the consent. The Licensing Service would leave the organisation of the market to the charity and maintain a light touch overview.
- The charity will be required to comply with the standard conditions attached to all East Devon District Council street-trading consents. They would also need to ensure compliance by the other charities and traders allocated pitches by them. The standard conditions are not considered onerous as they are merely intended to encourage good practice and safety. However if a need to amend the standard conditions is identified the Head of Legal, Licensing and Democratic Services has delegated authority to do so in consultation with the Chairman.

### **Legal Implications**

The legal implications are as set out in the report.

### **Financial Implications**

The current arrangement produces a fee from the organising charity for each event. The proposed interim option would generate a charge of £15 for street trading consent.

The alternative option of removing the designation would incur expenditure of £400 on statutory advertising and extensive officer time on consultation.

Future discussions would need to consider any opportunities to generate income for EDDC.

### **Appendices**

Appendix A – Public Notice

Appendix B – 2<sup>nd</sup> Public Notice

Appendix C – Copy of Seaton Town Council's Letter dated 27 May 2009

### **Background Papers**

Agendas & Minutes Licensing & Enforcement Committee meetings 1 December 2008 and 2 March 2009

---

John Tippin    Ext 2787  
Licensing Manager

Licensing & Enforcement Committee  
9 June 2009

Ian Carter        ext 2080  
Senior Licensing Officer

Licensing & Enforcement Committee  
9 June 2009