



Derby City Council

COUNCIL CABINET
14 November 2018

ITEM 14

Report of the Strategic Director of Communities
and Place

Market Rights Policy

SUMMARY

- 1.1 Derby's history of holding markets in the city can be traced back to 1154, however in order to bring the Council's right to hold and regulate markets into the modern regulatory framework, Cabinet resolved to adopt the provisions of Part III of the Food Act 1984 at their meeting on 13 September 2013. This Act provides the modern statutory code for the operation of markets and is supported by the Local Government (Miscellaneous Provisions) Act 1982 which enables the regulation of temporary markets. Cabinet is asked to adopt the provisions of these Acts and endorse the Market Bye-Laws previously adopted by Derby City Council.
- 1.2 In order to effectively manage and regulate markets under this regulatory framework, a Market Rights Policy has been developed, which describes how the Council will consider applications for commercial and charitable markets to run in Derby. In drawing up this policy, the Markets Team has consulted with colleagues from Highways, Streetpride, Derby Live and Licensing and an Equality Impact Assessment has been completed. Cabinet is asked to approve this policy and the fee structure associated with processing applications for temporary licences.

RECOMMENDATION

- 2.1 To adopt the Derby Markets Rights Policy detailed in Appendix 2 to this report.
- 2.2 To adopt the provisions of Section 37 of the Local Government (Miscellaneous Provisions) Act 1982.
- 2.3 To endorse the Markets By-Laws adopted by Derby City Council.
- 2.4 To delegate authority to the Director of City Development & Growth in consultation with the Cabinet Member for Governance and Licensing, to advertise in a local publication, in accordance with the provisions of section 37(1) of the Local Government (Miscellaneous Provisions) Act 1982, the resolution of the Council Cabinet set out in paragraph 2.2.

- 2.5 To approve the fee structure associated with processing applications for temporary licences as outlined in Section 11 of the Derby Market Rights Policy.

REASONS FOR RECOMMENDATION

- 3.1 The Market Rights Policy is needed to protect the Council's market authority status through the application of a regulatory regime. This will enable officers to manage applications from market operators wishing to operate a market within the Council's administrative boundary.

SUPPORTING INFORMATION

- 4.1 Derby can trace the history of holding markets in the city back to 1154, when King Henry II bestowed on the then burgesses of the city a Royal Charter, included in which was enshrined the enduring right to stage markets.
- 4.2 For the purposes of this report and attached Policy, the definition of a market is 'a concourse of five or more buyers and sellers'. The Council holds Market Rights under Part III of the Food Act, 1984. The most important common law right held by a market authority is the ability to regulate and licence other markets within the Council market rights protection zone.
- 4.3 Any organisation or individual that wishes to operate a market within the city's administrative boundary may only do so by applying for a temporary market licence. In drawing up this policy the Council has taken into account relevant UK and European legislation regarding potential anti-competition challenges and will exercise proportionality when licensing markets to protect the legitimate commercial interests of its market traders and the economic viability of the City. We need to achieve a balance between boosting footfall and vibrancy in the city centre through encouraging new markets and managing the impact on existing market facilities (i.e Market Hall and Allenton Market).

- 4.4 At its meeting of 13 September 2013, Cabinet approved the recommendation to adopt Part III of the Food Act 1984 to ensure Derby's Market Authority status was regularised within this modernised legislative framework. Council officers recommended that in order to protect the market authority status of Derby, the provisions of Part III of the Food Act 1984, should be adopted. This provides the modern statutory code for the operation of markets and enables:
- the establishment or acquisition of markets (Section 60)
 - the appointment of market days and hours (Section 52)
 - the authority to determine charges (Section 53)
 - the regulation of markets by the adoption of market by-laws (Section 60).
- 4.5 Drawing authority from the adoption of the Food Act 1984, officers will be better able to protect the commercial viability of the Market Hall and Allenton Market, provided by Derby City Council.
- 4.6 In order to regulate temporary markets (as detailed below), it will also be necessary to adopt the provisions of Local Government (Miscellaneous Provisions) Act 1982 in respect of:
- a) Car Boot Sales
 - b) Farmers Markets
 - c) Craft Markets/Fairs
 - d) Food and Drink Markets
 - e) Seasonal Markets
 - f) Specialist Markets i.e. Antiques, CD's, computer fairs, food
- 4.7 These Acts and the ratification of the Market By-Laws that already exist give the regulatory framework for the Market Rights Policy, against which officers can assess applications from operators who wish to hold a market within the city of Derby.
- 4.8 Consultation on the details of this policy was carried out with the Council's Licensing, Highways, Streetpride and Leisure and Culture teams and the application process includes consultation with these departments to assess any implications arising from a temporary market (for example traffic and waste management). The policy also includes reference to our powers for enforcement i.e. if the terms upon which a license for a temporary market are breached, the Council has the right to rescind the licence and take appropriate action to close the market or seek damages as appropriate.

OTHER OPTIONS CONSIDERED

- 5.1 There are not considered to be any reasonable alternative options if the Council is to responsibly regulate existing and proposed markets and protect the vitality and viability of the Council's markets.

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Estates/Property officer Service Director(s) Other(s)	Olu Idowu – Head of Legal Services Amanda Fletcher – Head of Finance N/A N/A Greg Jennings – Director of City Development and Growth Catherine Williams – Head of Service Claire Davenport – Director of Leisure, Culture and Tourism Michael Kay – Head of Environmental Health and Licensing Pete Meakin – Culture Development Manager Ann Webster – Lead on Equality & Diversity
For more information contact: Background papers: List of appendices:	Cassandra Carruthers, Markets Manager Tel: 01332 643488 cassandra.carruthers@derby.gov.uk Appendix 1 – Implications Appendix 2 - Market Rights Policy Appendix 3 – Derby Markets By-Laws

IMPLICATIONS

Financial and Value for Money

- 1.1 The fees detailed in this policy are based on the costs incurred for the Council to process and grant a temporary licence whilst ensuring that all of the necessary information requested from the applicant is in place. This includes but is not limited to, health and safety requirements and proof of planning permission, where applicable. No income is made over and above actual costs incurred by the Council of administering temporary licences.

Legal

- 2.1 The Council's Markets Authority status requires, in the interest of effective regulation of its markets and the rights they confer, that it sets out clearly the principles under which traders and patrons of its markets engage with each other and with the Council within the regulatory framework of Part III of the Food Act 1984. This report sets out effective proposals and choices to give effect to that requirement.
- 2.2 The decision whether or not to adopt within the Council's area, the regulatory framework for regulating temporary markets, set out within section 37 of the Local Government (Miscellaneous Provisions) Act 1982, is a decision for Council Cabinet to make.

Personnel

- 3.1 It is not expected that the administration of the Markets Rights Policy will require additional resources for it to be discharged.

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- 4.1 No implications.

Equalities Impact

- 5.1 An Equality Impact Assessment has been carried out and concluded that the implementation of the policy will have no detrimental effect on any of the defined equality and diversity issues. To reinforce this, an Equality Statement has been incorporated into the Policy to make sure that any organisation providing a market complies with Equality Legislation.

Health and Safety

- 6.1 The implementation of the policy will enable better regulation to ensure that any events that take place do so in a way that protects the health and safety of organisers, sellers and patrons.

Environmental Sustainability

- 7.1 No implications.

Property and Asset Management

- 8.1 The policy will contribute to the aspirations that the Council has for the future of Derby Market Hall as a vital element of the City Centre Master Plan.

Risk Management and Safeguarding

- 9.1 The regulatory regime that the policy introduces on the future provision of markets in Derby will ensure that any risks are addressed.

Corporate objectives and priorities for change

- 10.1 An effective means of regulating market activities will contribute towards the corporate objective of a providing a thriving sustainable economy.