

ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1.	Meeting:-	Cabinet
2.	Date:-	21st May, 2014
3.	Title:-	Market Franchise Rights Policy
4.	Directorate:-	Environment & Development Services

5. Summary

To report on the review of Rotherham Borough Council's Market Franchise Rights Policy in respect of market type events operated by defined organisations for sporting, social, charitable and political fund raising purposes and for those that are privately operated for commercial gain. The changes in policy outlined in this report will align the RMBC policy with European Anti-Competition legislation and will allow for the establishment of commercial market operations subject to eligibility criteria being met.

6. Recommendations

(1) That a revised Market Rights policy and pricing structure as outlined in the body of this report be adopted by Rotherham Borough Council.

7. Proposals and Details

For the purposes of this report a market is as defined by the Local Government (Miscellaneous Provisions) Act 1982 as being a concourse of buyers and sellers numbering 5 or more stalls stands or pitches. Any event that has less than this number is not legally deemed to be a market and as such falls outside of the scope of the proposed policy. The term 'market' applies to car boot sales, table top sales and craft fairs.

Rotherham Council, as a Markets Authority holds the powers in the form of Market Franchise Rights to operate markets within the Borough free from disturbance from rival markets. These rights allow the Council to create and operate its own markets, license or if necessary prevent through injunctive relief all rival markets within a 6 and 2/3 mile radius of any market it currently operates or licences.

Market Rights

The Council, by virtue of its statutory powers, enjoys market rights throughout Rotherham. All markets held in Rotherham are licenced and operated in accordance with the provisions of Part III of the Food Act 1984. The statutory powers afforded to the Council under the provisions of Part III of the Food Act 1984 enable the Council to:

- a) implement a markets policy within its area;
- b) operate markets within Rotherham;
- c) consider applications for other markets; and
- d) determine whether such markets can be held by way of consent.

Existing RMBC policy allows defined organisations, who wish to hold a temporary market for fund raising purposes which would otherwise infringe the Council's market franchise rights; to operate up to 3 car boot / table top sales / community markets per annum for a one off licence fee of £20. This policy aims to allow genuine fund raising organisations to all have a fair 'bite of the cherry' and stops any one organisation dominating to the detriment of others.

Current practice has also been to licence for a nominal fee, events not run by the Council if they are either of strategic value to the Council or of a specialist nature such as collectors or computer fairs etc. and they do not pose any financial risk to the Council's own operations. Historically, Council policy has always been to exclude the licensing of commercial retail markets that would have a detrimental effect on the Council's own retail markets.

Licensing Private Markets under the Council's Markets Policy

The Council's consent to a market, by the grant of a market licence, must be given prior to the event taking place. Any market that takes place without such a licence is in breach of the Markets Policy and may be subject to the enforcement action described in the Policy. Markets are only licensed once an application for a market licence has been approved (and signed by both the Council and the Market Operator) and the appropriate fee received by the Council.

Recent legislative changes, in particular the European Services Directive have cast doubt upon whether market franchise rights can continue to be used to control rival

operations suggesting that such actions could be considered to be anti-competitive and in breach of competition laws. This view is not shared by the National Association of British Market Authorities (NABMA) who has taken Counsel's opinion on this matter and is advising its members that market rights are still valid and fall outside of the scope of the European Services Directive.

However, it is important to ensure that any market rights policy is fair and consistent, enabling prospective market operators, whether charitable or commercial to submit an application which will be considered against reasoned criteria. These criteria include

- Public safety,
- The creation of new business opportunities and employment,
- Supporting a balanced market offer and
- Maintaining market standards.

It is proposed that the existing RMBC policy is updated and replaced with a new policy and pricing structure as detailed in "Appendix 2", which allows for the licensing of private markets.

8. Finance

The current policy generates income of £650 per annum with two thirds of this coming from markets held for charitable or fund raising purposes. This income is unlikely to be affected by the policy change.

Although there have been enquiries regarding commercial car boot sales and retail markets it is not possible at this time to estimate what the take up will be when a charging structure is in place.

There will be some staffing cost implications as licensed markets will have to be periodically monitored for compliance with operating criteria, these costs are likely to be minimal and covered by any additional income generated.

9. Risks and Uncertainties

Although advice is that Franchise Rights remain valid and enforceable continuation of the current policy presents a risk that the Council may be subject to legal challenge under EU competition laws which, although unlikely to be successful; may be costly to defend. Neighbouring local authorities in Barnsley and Sheffield have both recently introduced similar franchise rights policies to that proposed in this report.

Increasing the number of markets which operate in the Borough may have a detrimental impact upon our own operations and those of genuine charitable or fund raising organisations. A market policy with strict eligibility criteria will minimise this risk by avoiding a market "free for all" and allowing appropriate markets to be licenced.

10. Policy and Performance Agenda Implications

Vibrant and successful markets contribute significantly to the success of a town centre and are a key element in town centre regeneration; they also support business growth priorities by providing a sustainable environment for business start-up.

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The proposed policy will ensure that a fair charitable and private market provision is available whilst at the same time maintaining RMBC's ability to protect its own operations from potentially damaging rivals.

11. Background Papers and Consultation

Consultation has taken place with RMBC Legal Services and the National Association of British Market Authorities (NABMA).

NABMA have received Counsel's advice on the legal aspects of the European Services Directive relevant to Market Franchise Rights.

Market policies from a number of Local Authorities have been referenced to ensure that the proposed policy matches current best practice.

Contact Name : Robin Lambert, Markets General Manager, 6956, robin.lambert@rotherham.gov.uk.