

CHESHIRE EAST COUNCIL

CABINET MEMBER FOR ENVIRONMENT

Date of Meeting:	23 rd July 2012
Report of:	Head of Community Services
Subject/Title:	Regularisation of Market Provision
Portfolio Holder:	Councillor Rod Menlove

1.0 Report Summary

- 1.1 As part of the Council's localism aspirations a decision was taken by Cabinet in September 2011 to transfer a number of assets and services to the relevant Town and Parish Councils. This included the transfer of Markets.
- 1.2 This report provides the legal position in relation to the methods by which market rights may be established together with information in relation to the existing markets at Alsager, Knutsford, Middlewich, Nantwich, Sandbach and Wilmslow. The report requests the consolidation of the existing market rights by the application of the powers within Part III of the Food Act 1984 (as amended).

2.0 Decision Requested

- 2.1 That, without prejudice to the Council's existing market rights however acquired, a resolution be passed establishing the markets set out within the Appendix to this report under Part III of the Food Act 1984 (as amended).
- 2.2 That the resolution above in relation to the markets at Alsager and Sandbach shall come into force only if the Certificate of Lawfulness of Existing Use or Development (CLEUD) is granted by the Local Planning Authority.
- 2.3 That the resolution at 2.1 shall only come into force in respect of those markets listed in the Appendix which do not take place on the highway or for which the consent of the Highway Authority has already been provided in respect of those markets or a Traffic Regulation Order (if applicable) has been made.

3.0 Reasons for Recommendations

- 3.1 The decision at 2.1 above has been requested in order to consolidate and regularise the position in relation to market rights prior to the proposed transfer of markets to the Town and Parish Councils.

4.0 Wards Affected

- 4.1 Alsager, Knutsford, Middlewich, Nantwich North and West, Sandbach Town, and Wilmslow East

5.0 Local Ward Members

- 5.1 Cllr R Fletcher, Cllr D Hough, Cllr S Jones, Cllr S Gardiner, Cllr O Hunter, Cllr P Raynes, Cllr P Edwards, Cllr S McGory, Cllr M Parsons, Cllr P Butterill, Cllr A Moran, Cllr B Moran and Cllr R Menlove

6.0 Policy Implications including - Carbon reduction - Health

- 6.1 The transfers are in line with the council policy of transfer and devolution of assets and services to Town and Parish Councils.
- 6.2 This initiative aligns with the first priority of the Sustainable Community Strategy “nurturing strong communities” and is part of Cheshire East’s stated drive to ensure that working locally is at the heart of what it does.
- 6.3 National Policy is designed to decentralise government and give communities power to make a difference in their area. This initiative clearly aligns with this national policy.

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

- 7.1 The decision to transfer the markets to the Town Councils is in line with the original decision of Cabinet on 5th September 2011 and the financial implications have therefore previously been considered and approved. The establishment of the markets pursuant to the Food Act is required prior to the transfer.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 Market rights can be created in a number of ways, i.e.:
- (i) a franchise can exist by grant from the Crown (or by presumption of a lost grant from the Crown arising from long uninterrupted use);
 - (ii) the right to hold a market may be conferred by statute, e.g. by local Act
 - (iii) a market may be established under section 50 of the Food Act 1984; or
 - (iv) certain local authorities may make provision for the sale of animals etc under the Animal Health Act 1981.
- 8.2 The creation of market rights confers on the holder the right to hold a market and, subject to the provisions of the grant or statute under which the rights are held, both (a) the power to charge tolls in connection with that market; and (b) the common law right to maintain an action for disturbance against anyone setting up a rival market within six and two-third miles of the market area.

- 8.3 'Street trading' for the purposes of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 means, subject to prescribed exemptions, "the selling or exposing or offering for sale of any article (including a living thing) in a street." The Schedule provides an exemption for "anything done in a market or fair the right to hold which was acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of an enactment or order." Markets which are established by virtue of charter or statute are therefore exempt from the street trading regime; as a result trading at such a market in a street which had been designated as a 'consent street' for the purposes of street trading, would not require authorisation by way of a consent.
- 8.4 The markets operated by the Council across the Borough have been established over a period of many years and on different basis, for example, Sandbach Thursday market is operated on the basis of a 1579 Charter, whilst the Ministry of Health Provisional Order Confirmation (Macclesfield) Act 1949 provides the Council with the express power to establish and hold markets in the area of the former Macclesfield Corporation. In addition, the Council operates a number of markets which have been in existence for many years, but for which it has been difficult to definitively evidence the basis of the market rights. As a general principle, in order to establish a prescriptive right on the basis of long user, the user must be able to demonstrate at least twenty years continuous use as of right. Details of the specific markets which are the subject of this report currently operated by or on behalf of the Council within the Borough, and the basis on which those markets are operated (if known) are set out within the Appendix to this report.
- 8.5 Section 50 of the Food Act 1984 (as amended) ('the 1984') provides local authorities with the power to establish markets within their area, subject to the proviso that a market may not be established so as to interfere within any rights, powers or privileges enjoyed in respect of a markets within the area without the consent of the person with the benefit of such rights. Section 52 of the 1984 Act provides that a market authority may appoint the days on which, and the hours during which, markets are to be held. Section 53(1) of the 1984 Act states that a market authority may demand in respect of the market such charges as they may from time to time determine. Section 60 of the 1984 Act makes provision for the making of byelaws dealing with matters including the regulation of the market place and the prevention of nuisances or obstructions in the market place. Once transfer of the markets has taken place it will be the responsibility of the individual Town or Parish Council to establish any future markets within their parished area and to ensure that all of the legal requirements connected with any such establishments are complied with.
- 8.6 Markets have been included within the proposals relating to the transfer of assets from the Borough Council to the relevant Town/Parish Council as part of the 'Transfer of assets' project. In the circumstances it is suggested that a definitive basis for markets rights is established in order to facilitate the proposed transfers. It is suggested that the most practicable solution is to consolidate the existing market rights by applying the provisions of Part III of

the Food Act 1984 (as amended) to the existing markets listed within the Appendix to this report.

- 8.7 By virtue of the General Permitted Development Order temporary markets are included within the category of a class B use and, provided that the market is not held within the curtilage of a building, land may be used for the purpose of a market for no more than 14 days per calendar year as permitted development. In cases where markets are held on a more frequent basis planning consent for a 'change of use' may be required. Taking this into account the Farmers markets at Knutsford, Nantwich and Sandbach and the Artisan market at Wilmslow, which take place on 12 days per calendar year, fall within permitted development. The markets at Knutsford, Middlewich and Nantwich have planning permission in place for market use. The markets at Alsager and Sandbach (outside of the Market Hall) and Wilmslow may not have specific permissions in place, however, the Council has made an application to the Local Planning Authority on the basis that the two/three markets have existed for a sufficient period of time for a Certificate of Lawfulness of Existing Use or Development to be granted. This has not been determined as of yet and therefore any resolution made on the basis of the facts contained within this report shall remain subject to such certificate being granted in respect of the markets at Alsager, Sandbach and Wilmslow.
- 8.8 It may be suggested that the placing of market stalls in a highway is prima facie an obstruction to that highway if it would unreasonably interfere with the rights of members of the public to pass and repass along the highway. The powers within Part VIIA of the Highways Act 1980 provide the Council with the power to provide service and amenities on footways and highways where vehicular traffic is prohibited by traffic order. However, where a Council proposes to (i) place an object or structure in a highway for a purpose which will result in the production of income; and (ii) grant a person permission under section 115E to use the object or structure, they may not do so unless the consent of the frontagers with an interest has been obtained to (a) the placing of the object or structure; (b) the purpose for which it would be placed; and (c) to the proposed grant of permission. This is relevant in relation to the markets at Nantwich, Sandbach and Wilmslow. In Nantwich, the outdoor market (on Tuesdays, Thursdays and Saturdays) is situated on the footpath immediately in front of the market hall and the Farmers Market takes place on Town Square, which is pedestrianised highway. In Sandbach the market on Thursdays and Saturdays takes place on the footpath at Little Common and the footpath to the front and side/rear of the Market Hall and in addition to this the Farmers Market takes place on The Cobbles, which is highway land. In Wilmslow the market at Bank Square on Fridays takes place on highway land and in addition to this the Artisan Market at Grove Street and Bank Square takes place on highway land. The Council as Highway Authority must consider whether the markets cause an obstruction of the highway and if so it must obtain consent to such obstruction as detailed in this report. Any decision made as a result of this report will be subject to such consent being obtained where required.

9.0 Risk Management

- 9.1 There is a risk that the Town/Parish Councils will not accept the transfer until the markets are established under the Food Act.
- 9.2 Sandbach Market takes place on Scotch Common on a Thursday. Scotch Common is a registered Village Green. Any use which existed upon land registered as a Village Green 20 years prior to the application for such registration taking place can lawfully continue without being in contravention of its status as a Village Green. The Council has not been able to definitively prove 20 years prior use for this purpose. The market at Sandbach on a Thursday was established by Market Charter in 1579 but as the purpose of this report is to regularise the position in relation to all of the markets the market at Scotch Common has been included in this report for the sake of completeness.

10.0 Background and Options

- 10.1 On 5th September 2011 a decision was taken by Cabinet to transfer a number of assets and services to the relevant Town and Parish Councils. This included the transfer of Markets listed within the report.
- 10.2 The regularisation of the markets provision is needed in order to provide a consistent and uniform approach to enable the successful transfer to the relevant Town/Parish Councils.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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