

Burnley Market Rights Policy Review

REPORT to Executive



DATE	13th September 2022
PORTFOLIO	Economy & Growth
REPORT AUTHOR	Marie Shaw
TEL NO	
EMAIL	mshaw@burnley.gov.uk

PURPOSE

The purpose of the report is for members to consider and approve the Markets Rights Policy.

RECOMMENDATION

- 1) It is recommended that the Executive
 - i) approve the revised Markets Rights Policy set out in Appendix A
 - ii) approve the fees set out in Schedule one of Appendix A
 - iii) Delegates Authority to the Strategic Head of Economy and Growth in consultation with the Executive Member of Economy and Growth to receive and determine applications for market licences.

REASONS FOR RECOMMENDATION

- 2) The Council’s current Market Rights Policy dates back to 2004 and is very restrictive, permitting only markets operating for charitable purposes and car boot sales
- 3) The revised policy aims to protect the Council’s market rights but provide flexibility to permit some markets where there are clear economic and community benefits.

SUMMARY OF KEY POINTS

Background

- 4) Burnley Council has by way of a Market Charter and subsequent Statutes exclusive rights to hold a Market within a distance of six and two thirds miles of its existing Market. These market rights were first granted by Edward 1 on 6th June 1294, to Henry de Lacy Earl of Lincoln.
- 5) As markets in grew particularly during the industrial revolution, there was a need to ensure that the local authority had control over such activity given that the markets were both important for feeding the working class and giving the authority profit and prestige. As such many local Authorities, including Burnley, pursued Acts of Parliament to empower their market

rights and layout the rules and regulations surrounding such activity. The Burnley Market Act received Royal approval in 1865.

- 6) The Burnley Market Act of 1865 permits the council to operate markets each day of the week, except for Sunday, Christmas Day etc at any location and as such gives Burnley Council the associated powers to preserve the Market Rights that accompany it.
- 7) The Council has the legal right to prevent any other Market from operating within this distance, whether within its own Administrative border or not, and regards such markets as Rival Markets.
- 8) A Market is defined as set out in the Local Government Act (Miscellaneous Provisions) 1984 as “a concourse of buyers and sellers” and effectively anything that involves the public being offered goods for sale and the letting of stalls for financial gain, whether for the operator or the individual seller, falls within the legal definition of a market including car boot sales, craft fairs and table top sales.

Implementing Market Rights

- 9) To avoid conflict in its market rights, it is important that the Council sets out a clear Market Rights Policy, setting out its position on licencing markets, the process for applying and the criteria against which a decision will be made.
- 10) The Council can only exercise its market rights so long as it continues to operate a market either directly or indirectly through a third party. The Council should set out a clear policy on how it will use its Market Rights in order to retain the benefits conferred by the rights.
- 11) First and foremost, the main purpose of market rights is to protect markets owned by the Council from rival markets. This protects both the Tenants /Traders who operate from Burnley Market from Rival Market competition that may affect their business, and the Council's financial interests arising from rental income, should such a Rival Market impact on Tenants/Traders business to the extent that they no longer operate from Burnley Market. By maintaining the market rights the Council's investment and income from its own market is protected from competitor markets. There have been several instances in recent times, where Local Authorities have not exercised their market rights, where rival markets, often set up as “Bazaars”, have set up in empty retail premises, effectively undercutting the local authority markets.
- 12) Secondly, in circumstances where the Council is minded to permit markets, the market rights allow the Council to regulate the quality, type and number of markets in the area and to permit markets where they have wider benefits, for example town centre regeneration, or in conjunction with cultural events or for charitable purposes. Whilst we have other powers, including planning regulations and environmental health powers, there are very limited circumstances where we can apply these to limit markets. A particular benefit is in being able to ensure that markets held in the borough are high quality. It is also beneficial to the holders of licences that they too are protected from competition.

Current Policy

- 13) The Council last reviewed its Market Rights policy in 2004, where the Head of Markets was delegated authority to:

- Approve Car Boot/Table Top Sales where the sole purpose is to fundraise for non-commercial gain
- Determine applications for 'Car boot' operating licences and to set fees relating to such activities, in consultation with the Executive Member

14) The Council did not agree to licence any privately operated commercial markets.

15) Whilst the Council still needs to protect its own market operations, particularly from commercially operated general retail markets, there are a growing number of circumstances where the Council needs to take a more flexible approach. Specialist markets can add colour, vibrancy and attract new visitors to our town centres and cultural venues and often operate as part of larger cultural events such as concerts and festivals.

Revised Policy

16) The revised policy is set out in Appendix A of this report. The Policy seeks to protect the Council's rights to operate a general retail market whilst accepting applications for licences for specialist markets including but not restricted to; Artisan market, farmers markets, antique fairs/markets, bric-a-brac markets, pre-loved and vintage markets, record markets; and for fundraising markets operated by charitable organisations; and car boot sales.

17) The policy also seeks to ensure that the Council can regulate the number and quality markets in the borough ensuring that they operate safely, comply with relevant legislation, are appropriately located and do not cause any nuisance.

18) Markets operating on Council land and premises are also required to comply with the Events Safety Guidance procedures.

19) The Council currently has separate procedures for car boot sales and fundraising events and the new policy seeks to streamline the process with one application for all market types. The policy on fund raising events was over complicated and it has been simplified for genuinely small local fundraising events, whilst ensuring that larger events where fees are charged by charities to commercial businesses for stalls fall under the licencing rules.

20) The policy also includes a licence fee schedule for different types and sizes of markets, this will be subject to annual review in line with other fees and charges made by the Council. No charge will be made for markets operated by charitable organisations for some fundraising purposes. The fee represents the cost of assessing applications, drawing up and agreeing a license and some staff time for compliance checks.

21) In addition to the market licence fee, where markets are operating on Council owned property and land, operators may also be required to pay a rental fee and/or be recharged any costs incurred by the council in terms of staff time, utilities and business rates.

POLICY IMPLICATIONS

22) The proposals support the Council's Strategic Objectives on Economy and Growth, supporting the development of the borough's town centres.

DETAILS OF CONSULTATION

23)None

BACKGROUND PAPERS

24) None

FURTHER INFORMATION PLEASE CONTACT: Marie Shaw ALSO: Kate Ingram
