



SHEFFIELD CITY COUNCIL Cabinet Report

Report of: Simon Green, Executive Director, Place

Date: 16th October 2013

Subject: Legal Basis of Operation –Establishment of New Moor Indoor Market

Author of Report: Andy Ward – 0114 2735280

Summary: Establishment of the new Moor Market as a market under the powers available to Local Authorities pursuant to Part III of the 1984 Food Act

Reasons for Recommendations:

The Council owns a Royal Charter that provides it with rights to amongst other things establish and protect the operation of Castle Market. It is uncertain that these rights could be used when it establishes the new Moor Market.

Therefore in order to provide certainty in respect of the establishment of and the benefits provided by market rights it is recommended that a resolution is passed to establish and operate the new Moor Market under powers provided to Local Authorities pursuant to Part III of the 1984 Food Act.

Recommendations:

That Cabinet agrees to the establishment and operation of the new Moor Market pursuant to Part III of the 1984 Food Act.

Background Papers: Cabinet Report dated 8th March 2006 - City Centre Indoor Market Provision

Category of Report: OPEN

Statutory and Council Policy Checklist

Financial Implications
YES - Cleared by: Paul Schofield
Legal Implications
YES - Cleared by: David Sellars
Equality of Opportunity Implications
YES - Cleared by: Ian Oldershaw
Tackling Health Inequalities Implications
NONE
Human rights Implications
NONE
Environmental and Sustainability implications
NONE
Economic impact
NONE
Community safety implications
NONE
Human resources implications
NONE
Property implications
YES – Nalin Seneviratne
Area(s) affected
ALL
Relevant Cabinet Portfolio Leader
Cllr Leigh Bramall
Relevant Scrutiny and Policy Development Committee if decision called in
Economic and Environmental Wellbeing
Is the item a matter which is reserved for approval by the City Council?
No
Press release
NO

LEGAL BASIS FOR THE ESTABLISHMENT AND OPERATION OF THE NEW MOOR INDOOR MARKET

1. SUMMARY

- 1.1 The current Castle indoor market was established and operates way of a Royal Charter granted by King Edward I to the Lord of the Manor of Sheffield, Thomas de Furnival in 1296 which was purchased by Sheffield Corporation from the Duke of Norfolk in 1899.
- 1.2 This Royal Charter not only gives the Council the legal right to establish and operate a market on the Castle Market site but further affords the Council exclusive market rights within a 6 and 2/3 mile radius as the crow flies of Castle Market. As a consequence unless expressly permitted by the Council a third party may not operate a rival market on the same day as the Council within this area. The law provides that if a third party does so there is a legal presumption of damage to the Council's market and it can halt the rival market by way of a court injunction.
- 1.3 The Council's right to establish and operate a market under the Charter is an overriding interest and is protected without the need for substantive registration. However, pursuant to the Land Registration Act 2002 this protection will come to an end on 26 October 2013 if the Charter is not registered. The Council is in the process of applying for registration which and this will be completed by the deadline.

Notwithstanding this in order to provide certainty for the basis of the establishment and operation of the new Moor Market it is considered prudent that the Council resolves to establish and operate the new Indoor Market under the powers granted to local authorities pursuant to Part III of the 1984 Food Act which will give it statutory protection.

2. WHAT DOES THIS MEAN FOR SHEFFIELD PEOPLE

- 2.1 That the new indoor Moor Market has a certain legal basis for its establishment and operation.
- 2.2 That market rights enjoyed by the City Council under its Royal Charter and the 1984 Food Act continue and thus allow it to control the establishment of unlicensed rival markets throughout the city.

3. OUTCOME AND SUSTAINABILITY

- 3.1 The outcome will be that the new Moor Market will have a certain legal

basis for its establishment and operation and the Council will be able to maintain and protect its market rights.

4. MAIN BODY OF THE REPORT

4.1 Markets in Sheffield are operated by the City Council under powers acquired by the purchase of a Royal Charter by the Sheffield Corporation in 1899 from the Duke of Norfolk and powers given the Local Authorities pursuant to Part III of the 1984 Food Act. The Royal Charter had been granted to the Lord of the Manor of Sheffield by King Edward I in the thirteenth century. This charter not only allows the Council to establish and operate markets in Sheffield but also gives the Council market rights allowing it to control all rival markets within a 6 and 2/3 mile radius of any market it operates itself. The establishment of markets under the 1984 Food Act affords the Council the same powers.

4.2 However, the Land Registration Act 2002 requires that a Charter such as that held by the Council must be registered by 26 October 2013 if it is to continue to afford the Council its exclusive market rights. The Council is in the process of making an application to the Land Registry and the Charter will be registered by that date.

4.3 Notwithstanding this in order to ensure the new Moor Market has legal certainty for its establishment and operation and the maintenance of its market rights it is considered prudent to formally establish and operate the new Moor Market pursuant to Part III of 1984 Food Act which allows a local authority to establish and maintain a market and make by laws to regulate its use.

Financial Implications

4.4 The Council has made a very significant investment in the new Moor Market and needs to ensure that investment is legally established. Licensing of other markets under the Council's market rights raises for the Council approximately £25k per annum.

Legal Implications

4.5 Registration of the Charter under the Land Registration Act 2002 by 26 October 2013 will in addition to the powers under the Food Act 1984

4.6 ensure maintenance of the Council's policy regarding the licensing and operation of other markets if it chooses to rely on the Charter as the basis for that policy.

4.7

Both the Council's Charter and Part III of the 1984 Food Act allow the Council to establish and maintain markets and make by laws to regulate their use. A properly established market can be protected from rival markets by court injunction if the rival market is within six and two third miles of the properly established market, is operated without permission and causes damage to the properly established market. There will be a presumption of damage if the rival market is operated on the same day as the properly established market.

Equality of Opportunity Implications

4.8

This proposal is equality neutral affecting all local people equally regardless of age, sex, race, faith, disability, sexuality, etc.

Tackling Health Inequality Implications

4.9

There are no health inequality implications to this proposal.

Human Rights Implications

4.10

There are no human rights implications to this proposal.

Environmental and Sustainability Implications

4.11

There are no environmental and sustainability implications to this proposal.

Economic Impact

4.12

The economic impact of the new Moor Market will be considerable for the newly rehoused Castle Market traders, the 20 or so brand new traders, for The Moor area of Sheffield and the city itself.

Community Safety Implications

4.13

There are no community safety implications to this proposal.

Human Resources Implications

4.14

There are no human resources implications to this proposal.

Property Implications

4.15

It is essential to formally establish the new Moor Market as in the absence of the same its standing as a market could be challenged by a would be rival operator. This proposal to establish and operate the Moor Market under the 1984 Food Act addresses this formality.

5. ALTERNATIVE OPTIONS CONSIDERED

- 5.1 The Council could rely on its Royal Charter to establish and operate the new Indoor Market which will be registered under the Land Registration Act 2002 by 26 October 2002. . However, given the proximity of the registration date to the opening of the new Moor Market in November 2013 it is considered prudent to use the powers available under the 1984 Food Act.

6. REASONS FOR RECOMMENDATIONS

- 6.1 In order to protect its establishment and operation and to maintain robust challenges to rival markets it is essential that the new Moor Market has a certain legal basis for the same.
- 6.2 Establishing and operating the new Indoor Market under the 1984 Food Act provides that legal basis.

7. REASONS FOR EXEMPTION (if a Closed report)

- 7.1 This is an OPEN report

8. RECOMMENDATIONS

- 8.1 That Cabinet agrees that the new Moor Market should be established and operated pursuant to Part III of the 1984 Food Act.