

Leicester
City Council

WARDS AFFECTED

Castle, Freeman and Beaumont Leys

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:

**OSMB
Cabinet**

**21st January 2010
25th January 2010**

Rival Market Licence Application at Leicester City Football Club

Report of the Strategic Director, Development Culture and Regeneration

1. PURPOSE OF REPORT

This report considers an application received from LSD Promotions for a market at Leicester City Football Club to be held weekly on Sundays and also on Bank Holidays.

2. SUMMARY

2.1 Leicester City Council has market rights that enable it to control markets that are proposed to be held within a 6 2/3rd mile radius of its own operated markets. The Council has agreed a rival market policy that provides the basis for the consideration of applications from potential operators to hold markets within the market boundary.

2.2 An application has been received from a private operator, LSD Promotions that wishes to operate a market weekly on Sundays and also on Bank Holidays at the Leicester City Football Club's Walkers Stadium.

2.3 A report was made to the Markets Forum on 10th November by the Head of Markets which considered the potential benefits and issues relating to the application and proposed a potential way forward by issuing a licence with special conditions to control any significant adverse effects. The report included comments that had been received from LSD Promotions, Leicester City Football Club and the Market Traders. The views of the Market Forum on the application and draft licence raised at the meeting are considered in this report.

3. RECOMMENDATION

3.1 Cabinet is recommended to approve a licence with special conditions as set out in Appendix A (Page 14 -16) of the report amended to include provision that Sunday and Bank Holiday Markets should not to be held on same day as first team football matches.

4. REPORT

Background

4.1 Leicester City Council currently operates the largest covered outdoor market in this country which is a vital part of the city centre retail mix. The central market is open from Monday to Saturday. The Council also operates a local market at Beaumont Leys

shopping centre with a general market held Wednesday to Saturday and market and car boot sale on Sunday.

- 4.2 Leicester Market, common to all markets, has faced challenges in recent years as shoppers increasingly have greater choice from supermarkets, out of town shopping centres and on line sales. The recent diversification and strengthening of the city retail offer however has brought potential benefits to the market and the opening of the Highcross Centre has brought additional shoppers into the city centre.

Market Rights/Rival Markets Policy

- 4.3 Leicester City Council holds market rights that allow the council to control all markets operated within a 6 2/3rd mile boundary of its own operated markets.
- 4.4 The Council's rival markets rules and regulations were approved in November 2004 with further revisions approved by Cabinet in 2007. Appendix 1 details the current Rival Markets Policy. Within the scope of this policy the Council has options to refuse an application or issue a licence, including any conditions it wishes to apply.

Market Application from LSD Promotions

- 4.5 The Council originally received a submission in September 2008 from LSD Promotions to hold a market weekly on Sundays and also on Bank Holidays at Leicester City Football Club's Walkers Stadium. The market proposal was for 100-150 stalls with no restriction on stall type.
- 4.6 The submission was considered by Officers in conjunction with the Cabinet Lead for markets, and was referred to the Market Forum on November 18th 2008 for their views. The Market Forum agreed that the application be rejected. Subsequently, a decision was taken in principle to reject the submission on the grounds that it was important to support the City Centre. The applicants were informed that the submission had been rejected on the basis that the proposed Sunday and Bank Holiday market may impact negatively upon the City Centre.
- 4.7 The Council were then approached by Leicester City Football Club and LSD Promotions in May 2009 and asked to reconsider this decision. It was then considered by the Director of Planning and Economic Development in consultation with the Cabinet lead for Markets that the Council should explore an option of granting a license including any conditions that could be applied that would provide the necessary safeguards to control any potential significant adverse effects on the existing markets.
- 4.8 Traders were briefed on the Council's approach by the Cabinet lead on 28th August 2009. Following the briefing the Council received a threat of Judicial Review from solicitors acting for the traders. The Council agreed not to grant a markets licence until considering any comments the traders wished to make.

Report to the Market Forum

- 4.9 A Market Forum meeting was held on 10th November 2009 to consider the views of the traders. The report to the Forum is attached as Appendix A to this report. Paragraphs 4.9 to 4.17 of that report summarise:
- The potential income from the licence if approved
 - The potential benefits and adverse effects of the proposal

- Stakeholder views submitted before the meeting from the traders alongside supporting comments made by Leicester City Football Club and LSD Promotions.

4.10 The report proposed a way forward by issuing a licence with special conditions which is included in Appendix A. It was considered that this would allow the Council to monitor impacts and, should significant adverse effects related to the new market be clearly established, revoke the licence.

Issued raised at the Market Forum

4.11 The Market Traders compiled a petition with some 20,356 signatures. The petition opposed the issuing of a licence for the proposed Sunday and bank holiday market at the Walkers Stadium. This was on the basis that it would have a large impact on the Leicester Market through the traders having a greater loss of income than they are already experiencing and the long term loss of trade and decline of the market. This report provides the basis to consider and respond to the concerns raised in the petition.

4.12 A number of issues were raised at the Market Forum both in relation to the licence application and also the licence with special conditions proposed in the report. The minutes of the Forum meeting are attached as Appendix B to this report. The issues raised at the Forum meeting are considered below and a response is given.

ISSUE RAISED	RESPONSE
1. Council should be spending energy on the city centre market	The Council is finalising an extensive task group report with a number of potential short and longer term improvements to the city centre market. It is anticipated these will be reported through Cabinet in February. The Council must consider applications made under its approved rival markets policy.
2. In terms of the proposed special conditions how will the Council define and measure significant detrimental effect to allow it to revoke the licence. It would need strong objective measures of impact based on loss of trader income which was raised as a likely impact.	The proposed licence and special conditions includes clear measures in relation to income to the Council and stall occupancy levels on any given day (See Appendix A). These are measurable, clear and in the public domain unlike trader income which would be very difficult to monitor given the fluctuation in traders and the complexity of retrieving this information from private individuals. The quantitative measures proposed in the licence would be supported by surveys of shoppers and traders to monitor retail trends. The proposed market potentially provides an opportunity to increase trader income for those currently operating at the City Centre that want to expand.
3. Impact might not show immediately	The proposed licence has formal impact review points built in at 6, 12 and 24 months during the 3 year licence period. This is in addition to quarterly meetings with the

	operator to consider any emerging issues.
4. How much is the Council locked into the licence if issued.	The proposed special conditions include provision to revoke the licence if significant detrimental impact is established.
5. Can the proposed licence be shorter than 3 years taking into account the possibility of a city centre Sunday market coming forward.	The proposed licence has formal review points built in at 6, 12 and 24 months during the 3 year licence period with provision for the Council to revoke the licence if significant detrimental impact is demonstrated on the city centre market.
6. Questioned whether the Council would revoke the licence if the proposed market was successful.	The licence includes provision for it to be revoked if significant detrimental impact is demonstrated.
7. Concern that once the licence is granted the market would be able to grow bigger and be held on other days including at the time of first team games	The proposed licence and planning permission would limit the market to Sundays and Bank Holidays only. A new application would be required to amend this. An additional condition can be added to the licence such that Sunday and Bank Holiday Markets should not to be held on same day as first team games
8. Fee for the licence is too low (one of the lowest in the country)	The fee that would be applied is that set out in the current rival markets policy. There is provision for this to be reviewed and the fee amended. Any review would consider benchmarking with other comparable cities.
9. The proposed market would be in direct competition with the city centre market (e.g. offering fruit and vegetables and meat) and people with a fixed budget purchasing from the new market on a Sunday would not spend at the centre market on a Monday.	The proposed market would not be in direct competition with the city centre market on a Sunday. There is no evidence that individuals would choose to divert their trade from the city centre market to the proposed market at the Walkers Stadium rather than from other retail providers e.g. supermarkets/shops. The city centre market comprises only a very small part of the overall city retail offer and as such plays a relatively small part in the extensive shopping choices open to individuals. Conversely the proposed market might extend the retail offer to many people without impacting on the City Centre Market. The previous Sunday market held at the Walkers Stadium did not have an observable impact on the central market. Special conditions are proposed to allow any significant detrimental effects to be monitored through quantitative measures and shopper/trader surveys and the licence revoked if necessary.
10. Clarity was requested on the market	Market stalls to be largely non-food

offer to understand impacts better.	comprising general stalls and range of handcrafted goods. Food elements to include specialist organic and locally produced foods. Small leisure element to include children's rides, soft play and land train. Also stalls available for environmental groups
11. Traders from the city centre market would consider opening on a Sunday. Could the LCFC market be held at the City centre market.	There is currently no agreed proposal for the City Council to open the city centre market on a Sunday. This would need to be considered in terms of its merits and commercial viability. The licence application has been made by LSD Promotions which has reached a separate agreement with LCFC to hold the market at the Walkers Stadium should they be successful. The current licence application has to be determined as presented in the context of current circumstances.
12. Evidence from elsewhere indicates where LSD have Sunday markets this affected Monday markets.	There is no clear evidence of impact as suggested. Furthermore comparison with other markets is not straightforward as they will have different market offers set in different town/city retail contexts.
13. Would LSD provide stalls	It is understood that some traders would bring their own stalls and LSD would be likely to provide stalls for others.
14. The Council's approach to the planning issues was considered wrong. The Council had to consider need for the Sunday market and if this is established, the site location and implications for the city centre. The Council needed to know what was to be sold and whether they should restrict anything. Planning Policy Statement 6 should apply. Could the planning application be taken back to Planning Committee to consider these issues.	As the planning permission has not yet been issued by the Council owing to the Section 106 legal agreement not having yet been completed, relevant planning issues are to be considered by the Planning and Development Control Committee meeting on 27 th January.
15. The LSD Promotions licence application submission suggests that LCC has identified a need for a Sunday market and chose the Walkers stadium as an ideal venue.	The LSD Promotions submission was not correct. The City Council had not specifically identified a need for a Sunday market at the Walkers Stadium.
16. The draft planning permission includes a condition (16) relating to retailing.	This condition was imposed in relation to the club shop and not the market.
17. Car boot sale would be fine.	This is not part of the licence application.
18. Would the new market include butchers and does this mean the indoor	The proposed market could include butchers. Butchers are considered an essential element

market would not now have any.

of the city centre market.

- 4.13 Following the Market Forum meeting further comments have been made by the Market Traders through their solicitors Marrons, Leicester City Football Club and LSD Promotions. These stakeholders have requested that their comments be brought to the attention of Cabinet and are included as Appendix C to this report. The comments provide further contextual information to the issues raised in the Market Forum report and meeting and further covered in paragraph 4.12 above.
- 4.14 Following careful consideration of the stakeholder comments included in the report to the Markets Forum and the issues raised as summarised paragraph 4.12 above I recommend that Cabinet approves the issuing of a licence with special conditions as proposed in the report to the Market Forum (see Appendix A) but with an amendment that Sunday and Bank Holiday Markets should not to be held on same day as first team games.
- 4.15 Further to the above it should be noted that the market element of the planning application will be resubmitted back to Planning Committee on 27th January for consideration of the retail planning policy aspects. It should be noted that before the licence can be issued planning permission must be in place.

5. FINANCIAL, LEGAL AND OTHER IMPLICATIONS

5.1. Financial Implications

- 5.1 Leicester Markets service outturn for 2008/09 delivered a net trading surplus of £536.7k.
- 5.2 Last year the total income generated by the markets service was £1,870,600.
- 5.3 There is the potential for a regular Sunday Market to impact upon the business levels of the existing markets, and therefore the income of both Traders and the City Council. The Market's service is already facing pressures in terms of meeting its budgeted income together with rising energy and other costs. The proposed License includes conditions that are intended to minimise the impact of new market. The License income will also be useful additional income.
- 5.4 If a claim for Judicial Review is made with regard to the decision to be taken and the claim was successful, the Council would have to pay the legal costs of the successful party as well as its own costs. The amount would depend on whether the claim got past the permission stage.

Martin Judson, Financial services, ext 297390

Legal Implications

- 5.5 Solicitors acting on behalf of the market traders threatened the Council with a Judicial Review following a meeting they had with the Cabinet Lead for the Environment on 28th August. Subsequently, the traders had the opportunity to put their concerns to the Council's Markets Forum meeting on 10th November. This report summarises the comments made at the Forum meeting.

The traders' comments also focussed on the separate planning application from Leicester City Football Club considered by the Council's Planning and Development Control Committee in March 2008, which included amongst other things an application for a Sunday / Bank Holiday market. The issues relating to the retail impact of the proposed market are to be the subject of a separate report by the Director to the Planning and Development Control Committee. This is because the planning permission has not yet been granted as the Council has not had back from the Football Club the required Section 106 Agreement for sealing by the Council.

- 5.6 Judicial Review is the process whereby decisions taken by local authorities are challenged and considered by the courts. The courts can quash decisions taken on the basis that, amongst other things, they are perverse/unreasonable if, for example, there have been failures in a particular process such as failures to consult and/or consider material factors.
- 5.7 Before a Judicial Review can be commenced, there is a requirement to set out grounds of challenge, and where a JR is instituted it is a two-stage process. If the court considers that a claim is arguable, permission is granted and the matter then goes forward to a full hearing where the court considers evidence submitted by way of witness statements. Where a JR claim is successful, the decision being challenged is quashed and the decision-making process in question has to be started afresh. It is possible in the course of JR proceedings for injunctions to be obtained to preserve the status quo.
- 5.8 The traders' solicitors have submitted a FOIA request to the Council which has been responded to.

Anthony Cross, Head of Litigation, x296362

6. OTHER IMPLICATIONS

OTHER IMPLICATIONS	YES/NO	Paragraph References Within the Report
Equal Opportunities	Yes	The Council's existing markets serve all communities in Leicester.
Policy	Yes	The application is considered in the context of the Rival Market Policy
Sustainable and Environmental	Yes	Travel plan considerations would be included in any licence issued.
Crime and Disorder	No	
Human Rights Act	No	
Elderly/People on Low Income	Yes	The Council's existing markets provide a service to the elderly and people on a low income.

7. RISK ASSESSMENT MATRIX

Risk	Likelihood L/M/H	Severity Impact L/M/H	Control Actions (if necessary/appropriate)
1. The market at the walkers stadium has a detrimental adverse effect on the city centre market	L	L	Proposed licence with special conditions to consider any significant adverse impacts with provision to revoke the licence.
2. The market has a detrimental effect on the Council's own operated markets.	L	L	Any licence issued would need to include special conditions to manage any significant adverse effects on existing markets.
3. Legal action by way of Judicial Review	M/H	M	Careful consideration of all relevant information submitted should minimise the institution of Judicial Review proceedings but if issued should minimise the Council having to start a fresh decision-making process.

L – Low L – Low
M – Medium M – Medium
H - High H - High

8. BACKGROUND PAPERS – LOCAL GOVERNMENT ACT 1972

Legal Services file reference 78042 containing in part exempt information.

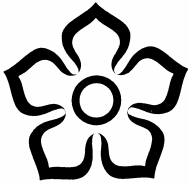
9. CONSULTATIONS

Market Forum
Market Traders
Leicester City Football Club
LSD Promotions

10. REPORT AUTHOR

Andrew Smith
Director of Planning and Economic Development

Key Decision	No
Reason	N/A
Appeared in Forward Plan	N/A
Executive or Council Decision	Executive (Cabinet)



Leicester
City Council

WARDS AFFECTED

Castle, Freeman and Beaumont Leys

APPENDIX A

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS: Market Forum

November 10th 2009

Rival Market Application at Leicester City Football Club

Report of the Head of Markets and Enterprise

1. PURPOSE OF REPORT

This report considers an application received from LSD Promotions for a market at Leicester City Football Club to be held weekly on Sundays and also on Bank Holidays and seeks the Forum's views.

2. SUMMARY

- 2.1 Leicester City Council has market rights that enable it to control markets that are proposed to be held within a 6 2/3rd mile radius of its own operated markets. The Council has agreed a rival market policy that provides the basis for the consideration of applications from potential operators to hold markets within the market boundary.
- 2.2 An application has been received from a private operator, LSD Promotions, that wishes to operate a market weekly on Sundays and also on Bank Holidays at the Leicester City Football Club's Walkers Stadium. Stakeholder comments from LSD Promotions, Leicester City Football Club and Market Traders are included in this report.
- 2.3 Under its Rival Markets Policy the Council can reject a licence application or approve it, with or without conditions. A potential way forward is proposed by issuing a licence with special conditions to control any significant adverse effects.
- 2.4 The views of the Market Forum are sought on the application and draft licence to help inform the decision to be taken by the Council in respect of this application.

3. RECOMMENDATIONS (OR OPTIONS)

- 3.1 The Market forum is asked to:
 1. Consider the application from LSD Promotions to hold a weekly Sunday and Bank Holiday market event at Leicester City Football Club.
 2. Comment on the application and the proposed option of issuing a license with

special conditions to safeguard existing markets.

4. REPORT

Background

- 4.1 Leicester City Council currently operates the largest covered outdoor market in this country which is a vital part of the city centre retail mix. The central market is open from Monday to Saturday. It is estimated that 2 ½ million people visit the Council's markets per year. Shoppers remain very loyal to the market and surveys demonstrate over 85% are satisfied with the service and over 90% of all visitors purchase food while shopping at the market. The popularity of the market is supported by the good local, regional and national media coverage it receives. The Council also operates a local market at Beaumont Leys shopping centre with a general market held Wednesday to Saturday and market and car boot sale on Sunday.
- 4.2 Leicester Market, common to all markets, has faced challenges in recent years as shoppers increasingly have greater choice from supermarkets, out of town shopping centres and on line sales. The recent diversification and strengthening of the city retail offer however has brought potential benefits to the market and the opening of the Highcross Centre has brought additional shoppers into the city centre.

Market Rights/Rival Markets Policy

- 4.3 Leicester City Council holds market rights. These rights allow the council to control all markets operated within a 6 2/3rd mile boundary of its own operated markets.
- 4.4 In 1985 the Council approved licensing regulations that permitted potential operators to hold markets within this area providing certain criteria are met. The rival markets rules and regulations were revised in November 2004 and further revisions were approved by Cabinet in 2007. Appendix 1 details the current Rival Markets Policy. Within the scope of this policy the Council can refuse an application or issue a licence, including any conditions it wishes to apply.

Market Application from LSD Promotions

- 4.5 The Council originally received a submission in September 2008 from LSD Promotions to hold a market weekly on Sundays and also on Bank Holidays at Leicester City Football Club's Walkers Stadium. The market proposal was for 100-150 stalls with no restriction on stall type.
- 4.6 The submission was considered by Officers in conjunction with the Cabinet Lead for markets, and was referred to the Market Forum on November 18th 2008 for their views. The Market Forum agreed that the application be rejected. Subsequently, a decision was taken in principle to reject the submission on the grounds that it was important to support the City Centre. The applicants were informed that the submission had been rejected on the basis that the proposed Sunday and Bank Holiday market may impact negatively upon the City Centre.
- 4.7 The Council were then approached by Leicester City Football Club and LSD Promotions in May 2009 and asked to reconsider their decision. It was then considered by the Director of Planning and Economic Development in consultation with the Cabinet lead for Markets that the Council should explore an option of granting a license

including any conditions that could be applied that would provide the necessary safeguards to control any potential significant adverse effects on the existing markets.

- 4.8 Traders were briefed on the Council's approach by the Cabinet lead on 28th August 2009. Following the briefing the Council received a threat of Judicial Review from solicitors acting for the traders. The Council agreed not to grant a markets licence until considering any comments the traders wished to make.
- 4.9 A license under the current market policy would mean that the City Council would receive income of up to £28k per annum as a license fee (£500 per trading day).
- 4.10 In considering this application, the potential benefits of the proposal and also any potential adverse effects on the existing markets need to be taken into account. Uppermost to this consideration is the Council's consistent position that it should maintain the strength and viability of its markets with related city centre benefits.
- 4.11 Firstly in terms of potential benefits, a successful Sunday and Bank Holiday market at the Football Club could be a good addition to the retail offer for Leicester as a whole. It would provide an outdoor market offer on days that the city centre market does not currently operate, providing a new shopping offer for local people and also potentially attracting people into the City, adding to the city's profile and economic prosperity. The proposed market could also provide business opportunities for new traders as well as existing market traders currently operating at the council's markets, potentially boosting their income and supporting the viability of their businesses.
- 4.12 The potential benefits outlined above must however, in the context of the rival markets policy, be carefully weighed against any potential significant adverse effects on the existing markets within the City. In particular could the Sunday and Bank Holiday market divert trade from existing markets and undermine their viability. Importantly the proposed market would not impact directly on trade/income at the existing city centre market on Sundays and Bank Holidays during which it is closed. As such any linked negative impacts on the wider city centre retail offer on these days is not relevant to consideration of this application. The converse may be true in that some visitors attracted to the Walker's Stadium Market may also choose to visit and shop in the nearby city centre.
- 4.13 The main issue associated with this application is considered to be the potential impact the Sunday market might have in diverting trade and potential traders from Leicester Market on other trading days. In essence there is only likely to be an adverse effect on the central market trade if significant numbers of regular Leicester Market shoppers choose to switch their trade from other days of the week to the new Sunday Market at the Walkers Stadium. Whilst the impact in this regard is not clear, the previous Sunday market held jointly by the City Council and Leicester City Football Club at the Walkers Stadium did not have any observable significant adverse effect. Also any adverse effect on trade is likely to be minimised as many regular city centre market shoppers are likely to combine their trips with other city centre retail and leisure visits.

Stakeholder Views

- 4.14 The views of Market Traders, Shoppers, Leicester City Football Club, and of LSD Promotions have been invited before the Market Forum meeting and are included below.

Leicester Market Traders

- 4.15 The Market Traders views have been submitted by their solicitor prior to the Market Forum meeting and are included in Appendix 2. This considers a number of issues to which a response is given in italics:

- the duty of the Council to act in the public interest - *acknowledged and agreed*
- legal protection of the market – *acknowledged and included in the Rival Markets Policy.*
- the role of the Market Forum and right to be consulted on licence applications – *the Forum is now being consulted.*
- Power to redetermine the application – *As the proposed market licence was not issued, the Council was prepared to consider any new related issues the traders wish to make noting that the Council was already aware of these issues. There is nothing to prevent any application being remade under the terms of the Rival Markets Policy.*
- Merits - the vital contribution the market makes to the commercial viability of the City Centre – *Importance of the market to the centre retail offer is well documented by the Council.*
- Retail planning considerations - *A planning permission covering various uses/events including the market at the Walkers Stadium has not yet been issued and is pending the completion of a legal agreement. Two separate regimes exist in relation to the proposed market at the Walkers Stadium, the planning regime and the market licence regime through the Rival Markets Policy. The impact of the proposed market on the city centre market and related retail function did not feature in the planning report to Committee because this was not considered relevant to the planning application based on available policy guidance. The Rival Markets Policy provides a basis for considering new market proposals and their potential impact on the Council's markets.*
- LSD Promotions – Other Market Operations – *Note the comments made on testimonials*

Leicester City Football Club

- 4.16 Leicester City Football Club have submitted the following representations:

- We feel there is no merit in the assertion that a Sunday Market at The Walkers Stadium would have a detrimental effect on the Leicester Market. Moreover, there has been no quantitative analysis presented to qualify such an assertion.
- The Sunday Market represents an entirely different type of market than the current market at Leicester Market (see submissions of LSD Promotions).
- The Sunday Market trades only on days when the Leicester Market does not. Therefore, should they so desire, traders who currently trade at the Leicester Market could in fact trade at the Sunday Market at the Walkers Stadium enabling the traders to gain additional custom.

- The competition for the proposed Sunday Market is in fact the market held Donnington, not the City market. Therefore, a Sunday Market at Leicester would bring more revenue into the city from the greater Leicestershire area as well as the surrounding counties with no adverse effect on the current City Market.
- There is already historical precedent for holding a Sunday Market at the Walkers Stadium. This was in fact done approximately three years ago and I am unaware of any adverse impact on the City Market being reported at that time or subsequently.

LSD Promotions

4.17 LSD Promotions have made the following representations:

- The City market is not open on Sundays. Beaumont Leys is a small town style market with a car boot sale. The plan for Walkers Stadium is a large leisure style market not available currently in Leicestershire. The shopping offer is different.
- Leicester traders are currently traveling to other Counties to trade on Sundays.
- Leicester shoppers are currently travelling to other Counties to shop on Sunday markets, e.g. Nottinghamshire, Derbyshire, Lincolnshire, West Midlands, and Warwickshire etc.
- A legitimate application was made by LSD under the rival markets policy. The plan for the Sunday market was broadly similar to the Council's own which was originally launched in 2006, and which attracted no press comment from the City traders, negative or otherwise.

The Market Licence

4.18 In reaching a decision on this licence application the Council will follow its Rival Markets Policy which provides options to reject or approve (with or without special conditions) applications. In reaching its final decision the Council will take into account consideration and comment made through the Market Forum. In light of consideration of the potential benefits and impacts outlined above and the stakeholder comments received, the option of granting the market licence application with special conditions is considered a potential way forward to mitigate any risks. This would allow the Council to monitor impacts and, should significant adverse effects related to the new market be clearly established, revoke the licence.

4.19 In order to provide a reasonable basis for reviewing and considering the impact of the proposed new market on the city's markets, the following issues would be required to be included in a conditioned licence :

- Limiting the period of an initial licence.
- Providing regular review points.
- Quantitative income and stall occupancy related trigger points indicating potential significant adverse effects requiring further investigation.

- Qualitative regular trader and user surveys to establish if a stall or occupancy based trigger is related to the new market or other unrelated factors.
- Ability to revoke the licence should a significant adverse detrimental effect be demonstrably related to the new market.
- Potential opportunities to promote and support the Council's markets should also be built in.

Based on these parameters a licence is proposed with special conditions as set out below.

PROPOSED SPECIAL CONDITIONS IN RELATION TO THE HOLDING OF LSD PROMOTIONS RIVAL MARKET AT LEICESTER CITY FOOTBALL CLUB ON SUNDAYS/BANK HOLIDAYS

In accordance with Leicester City Council's Rival Market Policy with reference to clause 13.5 the following conditions are to be agreed prior to any licence being granted.

Due to the nature of the Special Conditions the conditions specified in the policy regarding regular markets criteria that the Applicant must meet are amended as follows:

9.1 Removed

9.3 Removed

10.1 In respect of regular markets the sum of £500 per trading day is required

1. Definitions

"The Licence" means the agreement document between Leicester City Council ("the Council") and LSD Promotions ("the Applicant") - for the holding of a Sunday/Bank Holiday Monday Market at Leicester City Football Club.

"Review Point" means at 6, 12 and 24 months from the commencement date of the first market at Leicester City Football Club by the Applicant.

"Significant detrimental impact" means the level of impact on the Council's markets where it will consider revoking the market licence for the holding of the market at Leicester City Football Club. The criteria used to determine the impact is attached at Appendix A.

2. Special Conditions

2.1 The licence is granted initially for a three year period for Sundays and Bank Holidays only and is subject to review points to establish any significant detrimental impact at 6, 12 and 24 months from commencement of the first market.

2.2 At the review points the Council will gather and analyse information to determine if there is any significant detrimental impact from the Markets held at Leicester City Football Club on the Council's markets (see below for details). Reasonable costs covering the gathering and analysing of qualitative survey information are to be paid to the City Council before the date of each review point by the licence holder (the cost of this will be agreed between the Council and the Applicant prior to each review point)

- 2.3 The results of the information gathered and analysed as per 2.2 above will be considered by the Council and if in the Council's view it shows that the market is having a significant detrimental impact on the Council's markets, then the Council will be entitled to revoke the Licence after due consideration and discussion with the licence holder. This could include consideration of whether additional financial compensation can be made to the Council to offset any attributable financial losses that exceed the annual fee received from the Applicant. The notice period being given to the Applicant being 28 days.
- 2.4 The Parties to this licence will hold quarterly meetings to discuss the running and impact of the market. Dates of which to be agreed between the Council's Market Manager and a representative from the Applicant's Company.
- 2.5 The licence fee will be paid in three annual payments, the first payment being received by the Council prior to the first market commencing and thereafter at 4 monthly intervals, subject to successful completion of reviews under 2.1 above.
- 2.6 Planning permission to hold a market at Leicester City Football Club must be secured prior to this agreement being signed.
- 2.7 The Applicant will provide a market stall at Leicester City Football Club for use by the Council at no cost.
- 2.8 Failure by the Applicant to pay either the licence fee or the qualitative survey information costs when requested by the Council will entitle the Council to revoke the licence.
- 2.9 The Council must be satisfied that the applicant complied with Clause 9.5 of the Rival Markets Policy prior to the License being granted.
- 2.10 Any review of the Council's policy will take effect on this licence from 12 and 24 months from commencement of the first market. i.e. the second and third review points.

Criteria used to determine whether the Sunday/bank holiday market is having a significant detrimental impact on the City Council's markets.

The judgement of significant detrimental impact will be based on a combination of quantitative and qualitative measures/assessments as set out below.

The two quantitative measures shown below would assess impact firstly in terms of the loss of income generally and secondly the reduction in stalls on any given market day. Qualitative assessments will be used to indicate whether any significant detrimental impacts identified through the quantitative measures are likely to be the result of migration of stallholders/shoppers from existing markets to the Sunday/Bank Holiday market at Leicester City Football Club, rather than any other factors.

1. Quantitative

- A pro rata reduction in income to the City Council from stallholders on the city's existing markets that is more than the income received from the Leicester City Football Club market license (i.e. a net financial loss to the City Council). This assessment would be applied pro rata for any 6 month period between review points.
- A reduction in total stalls occupied at the outdoor central market of greater than 5% on any day of the week, over any continuous three month period within the review periods. This would be benchmarked against the daily occupancy level of stalls at the beginning of the review periods.

2. Qualitative

- Evidence taken at the review points, from a stallholder survey and sample customer survey at both the city council markets and Leicester City Football Club market, indicating that stallholder and customer habits are changing such that there is a significant migration of stallholders and customers from the city's markets to the Football Club Sunday/Bank holiday market as a result of the latter.
- Evidence from the survey that this migration is likely to continue or increase in future.

Next Steps

- 4.20 A copy of this report will be made available to LCFC and LSD Promotions. A report will be prepared taking into account comments made and submitted through the Market Forum together with comments received from LCFC and LSD. The Council's Executive will take a decision on the basis of this report.

5. FINANCIAL, LEGAL AND OTHER IMPLICATIONS

5.1. Financial Implications

- 5.1 Leicester Markets service outturn for 2008/09 delivered a net trading surplus of £536.7k.

- 5.2 Last year the total income generated by the markets service was £1,870,600.

- 5.3 There is potential for a regular Sunday Market to impact upon the business levels of the existing markets, and therefore the income of both Traders and the City Council. The proposed License includes conditions that are intended to minimise that impact.
- 5.4 If a claim for Judicial Review is made with regard to the decision to be taken and the claim was successful, the Council would have to pay the legal costs of the successful party as well as its own costs. The amount would depend on whether the claim got past the permission stage.

Legal Implications

- 5.5 Following the briefing meeting the Cabinet lead for the Environment had with market traders on 28th August, solicitors acting for the traders wrote to the Council on 24th September under the terms of the Judicial Review Pre-action Protocol. It was alleged amongst other things that the Council had not consulted with the Markets Forum prior to making a decision to grant a licence under the Council's markets rights to enable the proposed Sunday / Bank Holiday Market at LCFC to proceed. Legal Services responded by letter of 2nd October denying the allegations made and indicating that given the markets licence had not yet been issued to LSD Promotions, the Council would consider any fresh market licence considerations the market traders wished to raise. This report includes the traders' response, together with officer comments.
- 5.6 Judicial Review is the process whereby decisions taken by local authorities may be challenged and considered by the courts. The courts can quash decisions taken on the basis that, amongst other things, they are perverse/unreasonable if, for example, there have been procedural defects in a particular process such as failures to consult and/or consider material factors.
- 5.7 Before a Judicial Review can start, there is a requirement to set out grounds of challenge, and where a JR is instituted it is a two-stage process. If the court considers that a claim is arguable, permission is granted and the matter then goes forward to a full hearing where the court considers evidence submitted by way of witness statements. Where a JR claim is successful, the decision being challenged is quashed and the decision-making process in question has to be started afresh. It is possible in the course of JR proceedings for injunctions to be obtained to preserve the status quo.
- 5.8 The traders' solicitors have submitted a FOIA request to the Council which has been responded to.
- 5.9 This report deals with the issues raised by the traders.
- 5.10 The Markets Forum does not have any decision-making status. The final decision will be taken by the Council's Executive.

Legal implications - Anthony Cross, Head of Litigation, x296362"

6. OTHER IMPLICATIONS

OTHER IMPLICATIONS	YES/NO	Paragraph Within the Report	References
Equal Opportunities	No	The Council's existing markets serve all communities in Leicester.	
Policy	Yes	The application is considered in the context of the Rival Market Policy	
Sustainable and Environmental	Yes	Travel plan considerations would be included in any licence issued.	
Crime and Disorder	No		
Human Rights Act	No		
Elderly/People on Low Income	No	The Council's existing markets provide a service to the elderly and people on a low income.	

7. RISK ASSESSMENT MATRIX

Risk	Likelihood L/M/H	Severity Impact L/M/H	Control Actions (if necessary/appropriate)
1. The market at the walkers stadium has a detrimental adverse effect on the city centre	L	L	Proposed Market unlikely to divert trade from the City centre due to different retail offer.
2. The market has a detrimental effect on the Council's own operated markets.	L	L	Any licence issued would need to include special conditions to manage any significant adverse effects on existing market.
3. Legal action by way of Judicial Review	M/H	M	Careful consideration of all relevant information submitted should minimise the institution of Judicial Review proceedings but if issued should minimise the Council having to start a fresh decision-making process.

L – Low L – Low
M – Medium M – Medium
H - High H - High

8. BACKGROUND PAPERS – LOCAL GOVERNMENT ACT 1972

Legal Services file reference 78042 containing in part exempt information.

9. CONSULTATIONS

Director of Planning and Economic Development
Market Forum

Market Traders
Leicester City Football Club
LSD Promotions

10. REPORT AUTHOR

Nick Rhodes
Head of Markets
X 392370

LEICESTER CITY COUNCIL RIVAL MARKETS POLICY

1. INTRODUCTION

- 1.1 Leicester City Council operates retail markets in the Market place, and also at Beaumont Leys Shopping Centre. Any market that is operated, other than by the City Council, within a radius of 6 2/3rd miles of any retail market shall be deemed to be a Rival Market.
- 1.2 A market shall be deemed a Rival Market, irrespective of the type of goods or general nature of the market. The legal definition of a market, being "a concourse of buyers and sellers" shall apply in the determining whether an event constitutes a rival market or not. In this respect such events as car boot sales, antiques fairs etc shall be deemed rival markets.

2. LICENSING POLICY

- 2.1 The City Council has approved a policy outlining conditions under which licenses will be issued to organisers/ operators allowing rival markets to be held. This revised policy is effective from 1st January 2008.
- 2.2 The licensing policy enables Leicester City Council to regulate markets within its radius to ensure that proposed markets do not become a nuisance to residents, neighbouring businesses and are operated in the appropriate manner.
- 2.3 Any person who wishes to operate a rival market may only do so if such a market has been licensed by the City Council. A license normally will be issued provided the application complies with relevant criteria.
- 2.4 Rival Markets will be categorised into four different types:
(a) Car Boot Sales
(b) Speciality Markets
(c) Farmers Markets
(d) Regular Markets

3. CAR BOOT SALES

- 3.1 Car boot sales will be limited to a maximum of 50 trading positions (i.e. stalls / vehicles / pitches) each trading position shall be of a standard size with a maximum size of 8x6 feet (2.5 x 1.5 metres).
- 3.2 Car boot sales shall be restricted, as far as is possible, to householders selling surplus household articles. No new goods are permitted for sale at any car boot sale. The car boot sale description will also cover events such as computer, records, toy and book fairs providing all other car boot sale criteria are met.
- 3.3 Permission shall only be granted to any organisation or individual during the course of any twelve month period, to hold a maximum of six licenses.
- 3.4 Individuals shall be regarded as persons who are actually the organisers of the event. One individual will be permitted to apply per household.
- 3.5 An organisation shall be deemed a group, e.g. Scouts, P.T.A., Sports Clubs. All events that are for charitable purposes should only be applied for by the Charity concerned. A letter confirming that the full proceeds will be received by the organisation must be sent on application.
- 3.6 A registered charity may apply to hold a car boot sale and will need to supply their registered charities number on application. All proceeds must be received by the registered charity.

- 3.7 Any site or premises may only be used for a maximum of six car boot sales during the course of any twelve-month period. With not more than one market being held on a Sunday in any 28-day period. Should any part of the site or premises be used for a car boot sale, any other part of the site "or premises should not be deemed as a separate site or premises for the purposes of the condition. A site must be of a different location, have separate boundaries and be of a suitable distance from other operated sites, as described from time to time by the Council.
- 3.8 If, in the opinion of the Council, any organiser of a car boot sale either directly or indirectly contravenes any of these conditions, then the City Council will not issue that person with any further licenses to operate any markets within the 6 2/3rd mile boundary for a period of five years from the date of the breach.
- 3.9 Any venue used for the purposes of a car boot sale which, in the opinion of the Council, either directly or indirectly is used in contravention of these conditions will not be permitted to host any further markets of any description until such time as the matters giving rise to the breach have been remedied to the Council's satisfaction.
4. CAR BOOT SALE - LICENCE FEES
- 4.1 In respect of a car boot sale organised by commercial organisers/ operators:
A £160.00 fee to be paid on application not less than 28 days before the event.
- 4.2 In respect of a car boot sale operated by non-commercial organisers/ operators:
A deposit of £64.00 shall be required upon application not less than 28 days before the event, any balance payable within 14 days after the event. This deposit accounts for the first 20 trading places.
A fee of £3.20 shall be payable for each trading position over 20 let, payable within 14 days after the event, subject to the minimum £64.00 deposit being retained by the council.
- 4.3 In respect of a car boot sale operated by registered charities:
A deposit of £20.00 shall be payable on application not less than 28 days before the event, any balance payable within 14 days after the event. This deposit accounts for the first 20 trading spaces.
A fee of £1.00 shall be payable for each trading position over 20 let, payable within 14 days after the event, subject to the minimum £20.00 deposit being retained by the council.
- 4.4 A refund for a cancelled market is available, providing notification is received prior to the day of the event. The refund is as follows:
- In the case of commercial organisers/ operators a £150.00 refund of the fee.
In the case of non-commercial organisers/ operators a full refund of the £64.00 fee.
- In the case of registered charities a full refund of the £20.00 fee.
5. SPECIALITY MARKETS – CRITERIA
- 5.1 Speciality markets are themed markets whereby a mixture of new and second hand goods, fresh produce and other products may be sold, for example markets such as French and Continental.
- 5.2 Speciality markets will be limited to a maximum of 50 trading positions (i.e.: stalls / vehicles/ pitches) each trading position shall be of a standard size with a maximum size of 8x6 feet. (2.5 x 1.5 metres).
- 5.3 Speciality markets will be permitted for the sale of both new and second hand products.
- 5.4 Permission shall only be granted to any organisation or individual during the course of any twelve month period, to hold a maximum of three Speciality markets.
- 5.5 Individuals shall be regarded as persons who are actually the organisers of the event. One individual will be permitted to apply per household.

- 5.6 Any site or premises may only be used for a maximum three Speciality markets during the course of any twelve month period, with not more than one market being held on a Sunday in any 28-day period, should any part of the site or premises be used for a market, any other part of the site or premises should not be deemed as a separate site or premises for the purposes of the condition. A site must be of a different location, have separate boundaries and be a suitable distance from other operated sites, as described from time to time by the council.
- 5.7 If, in the opinion of the Council, any organiser of a specialist market either directly or indirectly contravenes any of these conditions, then the City Council will not issue that person with any further licenses to operate any markets within the 6 2/3rd mile boundary for a period of five years from the date of the breach.
- 5.8 Any venue used for the purposes of a Speciality market which, in the opinion of the council, either directly or indirectly is used in contravention of these conditions will not be permitted to host any further markets of any description until such time as the matters giving rise to the breach have been remedied to the Council's satisfaction.

6. SPECIALITY MARKETS - LICENCE FEES

- 6.1 In respect of a Speciality market licence the sum of £300.00 per trading day is required. The fee should be paid in full not less than 28 days before the event.
- 6.2 A refund for a cancelled market is available, providing written notification is given 7 days prior to the event. The refund will be £200.00 per trading day.

7. FARMERS MARKETS – CRITERIA

- 7.1 Farmers Markets are themed markets whereby local Farmers meet at a market to sell their own produce.
- 7.2 Farmers should live within a 30-mile radius of the operated market, and the organiser/ operator should supply the Council with a register of all Farmers trading together with the address of the farm.
- 7.3 Farmers Markets will be permitted for the sale of the Farmers own produce only. This produce shall not be produce that has been bought to directly sell on.
- 7.4 Farmers Markets will be limited to a maximum of 25 trading positions (i.e. stalls/ vehicles/pitches). Each trading position shall be of a standard size with a maximum size of 8x6 feet (2.5 x 1.5 metres).
- 7.5 Permission shall only be granted to any organisation or individual during the course of any twelvemonth period to hold a maximum of twelve Farmers Markets. Individuals shall be regarded as persons who are actually the organisers of the event. One individual will be permitted to apply per household.
- 7.6 No Farmers Market will be approved if it is proposed to operate it from a venue within 3 miles of a site previously authorised to hold such events.
- 7.7 Any site or premises may only be used for a maximum of twelve Farmers Markets during the course of any twelve-month period, with not more than one market being held on a Sunday in any 28-day period.
- 7.8 Should any part of the site or premises be used for a market, any other part of the site or premises should not be deemed as a separate site or premises for the purposes of the condition. A site must be of a different location and have separate boundaries and be a suitable distance from other operated sites, as described from time to time by the council.
- 7.9 If, in the opinion of the Council, any organiser of a Farmers Market either directly or indirectly contravenes any of these conditions, then the City Council will not issue that organiser with any

further licences to operate any markets within the 6 2/3rd boundary for a period of five years from the date of the breach.

7.10 Any venue used for the purposes of a Farmers Market which, in the opinion of the Council, either directly or indirectly is used in contravention of these conditions will not be permitted to host any further markets of any description until such time as the matters giving rise to the breach have been remedied to the Council's satisfaction.

8. FARMERS MARKETS – LICENCE FEES

8.1 A market licence fee will be charged of £300.00 per trading day, as per other market licence applications. The fee should be paid in full not less than 28 days before the event.

8.2 A refund of a cancelled market is available, providing written notification is provided 7 days prior to the event. The refund will be £200.00 per trading day.

9. REGULAR MARKETS CRITERIA

9.1 Applicants wishing to hold a regular market must provide the council with at least 28 days notice before the event.

9.2 Regular markets may be permitted with no restriction on size of market, goods sold or occasions held.

9.3 If it is proposed that the market shall be held for more than 14 days per year, the appropriate planning permission from the relevant local planning authority must be obtained. The planning approval must be granted and evidenced on application of the market. The granting of planning permission alone does not automatically grant the right to hold a licence.

9.4 Permission must be received from the venue owner and evidenced on application of the market.

9.5 The applicant should also provide:

- A plan showing the proposed layout of the market.
- A financial plan
- The company's policy on consumer protection
- The company's environmental policy
- The company's Health and Safety Policy, coupled with necessary risk assessments.
- Documentary evidence with supporting references demonstrating the applicants experience and track record.

9.6 If, in the opinion of the Council, any organiser of a Regular market either directly or indirectly contravenes any of these conditions, then the City Council will not issue that person with any further licenses to operate any markets within the 6 2/3rd mile boundary for a period of five years from the date of the breach.

9.7 Any venue used for the purposes of regular markets sale which, in the opinion of the council, either directly or indirectly is used in contravention of these conditions will not be permitted to host any further markets of any description until such time as the matters giving rise to the breach have been remedied to the Council's satisfaction.

10. REGULAR MARKETS - LICENCE FEES

10.1 In respect of a regular market the sum of £500.00 per trading day is required. The fee should be paid in full not less than 28 days before the event.

10.2 A refund for a cancelled market is available, providing written notification is given 7 days prior to the event. The refund will be £250.00 per trading day.

11. LICENCE APPLICATIONS

- 11.1 An application for a licence must be made on an official application form obtainable from: The Markets Manager, 3rd floor Market Centre, Leicester LE1 5HQ
- 11.2 Completed application forms must be returned to the above address, so as to arrive not less than 28 days before the event. The required fees outlined in sections 4, 6, 8 and 10 must accompany all applications.
- 11.3 All organisers/ operators who wish to operate markets will be required to submit a passport sized photograph with the application form. Failure to comply with this requirement will result in the application being rejected.
- 11.4 The organiser/operator undertakes not to affix any notices or signs related to the event to any street furniture, structure or trees on the public highway. Such signs contravene section 132 of the Highways Act 1980.

12. FINAL LICENCE FEE

- 12.1 All non-commercial and registered charity car boot organisers/ operators issued with a licence will be required to complete a pro-forma indicating the number of trading positions let. The pro-forma that will be sent to applicants with a licence must be returned to the Markets Manager (see 9.1 above) within 14 days of the event being held.
- 12.2 In respect of non-commercial and registered car boot organisers/ operators this pro-forma will be used to calculate the balance of the licence fee due. Any such balance must accompany the proforma.
- 12.3 Any charity not completing a pro-forma as required will not be granted any further licences until compliance.

13. GENERAL

- 13.1 All payment of licence fees paid by cheque must be crossed and made payable to Leicester City Council.
- 13.2 Periodic visits will be made to licensed markets by an officer of the City Council to ensure compliance with the licensing conditions. The standard conditions attached to any licence will include a right of access for authorised Council Officers. Any non-compliance with the conditions, including attempts to avert payment of the full licence fee, will result in future applications being refused.
- 13.3 The Council has adopted Section 37 of the Local Government (miscellaneous provisions) Act 1982. This requires that the Council be given at least one months notice of any intention to operate or hold a temporary market. Full details of these requirements including the definition of a temporary market are available from the Markets Manager. The requirements of Section 37 are separate and distinct from the application for a licence from the Council under this policy and must be complied with in each case.
- 13.4 It is the responsibility of the organiser and operator to ensure that the market does not become a nuisance to residents or neighbouring businesses, and are operated in an appropriate manner, including compliance with relevant legislation for public events and with Environmental Health and Trading Standards requirements.
- 13.5 Applications will be treated on an individual basis, however additional conditions may be applied to an organiser, operator or venue dependant upon circumstances. Such conditions will also be a condition of the licence being granted.
- 13.6 The Council may from time to time need to consult with external organisations / groups such as Police, Highways Dept, Trading Standards, Emergency Services and residential parties.

- 13.7 The Council reserves the right to take formal legal action against any person(s) or company who attempts to operate an unlicensed rival market.

Appendix 2

**NATIONAL MARKET TRADERS FEDERATION
(LEICESTER BRANCH)
RESPONSE TO APPLICATIONS FOR PLANNING PERMISSION AND RIVAL MARKETS
LICENCE TO HOLD
REGULAR SUNDAY AND BANK HOLIDAY MARKETS
– WALKERS STADIUM, LEICESTER**

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1.0 Introduction

- 1.1 This is a response, submitted by Marrons solicitors on behalf of the Leicester Branch of the National Market Traders Federation (“the Federation”), to applications by LSD Promotions Ltd and Leicester City Football Club Ltd for Planning Permission and a Rival Markets Licence respectively to hold regular Sunday and Bank Holiday Markets at the Walkers Stadium, Leicester.
- 1.2 The Federation represents the collective interests of local market traders in both Leicester and Beaumont Leys local authority markets. Its interest in the above applications is obvious, but even more so as a result of its membership (with officers and members of the Council) of the ‘Markets Forum’, to which proposals relating to rival markets have routinely been referred since its inception in 1994.
- 1.3 The Federation’s response to the applications, submitted at the express invitation of Leicester City Council (“the Council”)¹, urges the Council not to grant planning permission or to issue a rival markets licence authorising the holding of regular markets at the Walkers Stadium on Sundays and Bank Holidays on the basis that to do so would be contrary to the public interest.
- 1.4 Although the Council has responded to a number of recent FOIA requests made on behalf of the Federation, the information provided to date has raised questions as to whether the Council may be in possession of further relevant information that could inform the Federation’s response to these applications, as a result of which further FOIA requests have been made.
- 1.5 Pending receipt of any such further information, the Council should consider this to be a provisional response, which may or may not be supplemented in due course in the light of any relevant matters contained in any further information that may be disclosed.

¹ See letter of the Head of Litigation to Marrons dated 2 October 2009, paragraph 4
Leicester Market Traders Federation – Response to Applications for Planning Permission and Rival Markets Licence Walkers Stadium
Leicester (October 2009)

2.0 The duty of the Council to act in the Public Interest

- 2.1 A market has been held in Leicester for over 700 years, pursuant to a series of Royal Charters under which the Council (the current holder of the franchise) now has the sole and exclusive right to hold markets within the common law distance of 6 $\frac{2}{3}$ miles.
- 2.2 This right is held by the Council for the *benefit of the public*², axiomatically it must be exercised in the public interest. Indeed, many of the rules which have grown up under the common law for the purpose of regulating rights and duties of market franchises have been formulated with the public interest in mind³.
- 2.3 A duty to protect the franchised rights for the public has both been recognised, and consistently exercised, by the Council over many years. For example, in a report to the Council's Property and Services Committee in September 1993⁴, the Director of Resources acknowledged that:
"...These market rights belong to the citizens of Leicester and it should be viewed as obligatory to continue to protect such rights"
- 2.4 As a result, the Council opposed Government plans to withdraw franchise market rights inter alia on the grounds that the viability of the central market could well be affected. Such plans were subsequently abandoned by the Government in May 1994.
- 2.5 Furthermore, in approving the most recent revision to the Rival Markets Policy to enable monthly Farmers Markets to be held in Blaby, the Cabinet Lead and the Leader agreed:
*"...that the City Centre Market should be supported and protected"*⁵

² 'The justification for the grant of a monopoly of market is that the existence of the market is for the benefit of the public. If the market keeper is not to get his outlay back and something more, he will give up the market, and where will the public be then?' per Hamilton L.J. in *A.G. v Horner (No.2)*[1913] 2 Ch.140 at p.198 (referring also to the observations of Lord Macnaghten in *Simpson v. A.G.* [1904] A.C. 476 at p.483). See also the remarks of Slade L.J. in *Sevenoaks District Council v. Patullo & Vinson Ltd* [1984] 1 All ER. 544 at p.551

³ See *Pease & Chitty's Law of Markets and Fairs* at p. I-4

⁴ In relation to a consultation paper published by the Department of Environment which tabled proposals for the withdrawal of franchise market rights

⁵ Minutes of the Meeting of Cabinet, 15 October 2007 – Minute 112

Leicester Market Traders Federation – Response to Applications for Planning Permission and Rival Markets Licence Walkers Stadium Leicester (October 2009)

3.0 Legal Protection of the Markets

- 3.1 It is perhaps unsurprising, in the light of all the above, that the Borough Records⁶ reveal the constant efforts of the Corporation over the centuries to protect its market rights, as set out in a report⁷ which concludes:
“The growth of Leicester’s markets in their economic importance and legal status is clear, as is the constant battle of the Corporation of Leicester to protect the rights of its citizens and markets”.
- 3.2 Caselaw⁸, in which the Council sought, and successfully secured, High Court injunctions to prevent rival markets operating within 6 $\frac{2}{3}$ miles of the existing Charter Market), provides further and more recent examples of the efforts that the Council has made to legally protect its market rights.

Rival Markets Policy and Market Forum

- 3.3 The Council has, since 1985/6 sought to protect its markets through its “Rival Market Policy”. Since 1994 this has been supported by the introduction of a “Market Forum”, the objective of which is:
“...to increase the profitability of the market and to improve the overall service”
- 3.4 The terms of reference for the Market Forum⁹ include:
“iv) Rival Markets
e.g: To report any events operating contrary to the rival market policy...
viii) To explore extending its current facilities
e.g: Introduction of a market kiosk, other markets, ie **Sunday Markets**¹⁰ etc”.
- 3.5 In relation to the terms of reference, the 1994 Report comments:
“It is hoped that by discussing such topics openly and positively the combination of the Leicester City Council and their Market Traders will be able to use their knowledge **to the benefit of the Citizens of Leicester**¹¹”
- 3.6 The Council introduced its Rival Markets Policy in 1985/6. The Policy appears to have been subsequently revised on a number of occasions, the last of which was in January 2008.

⁶ In the care of Leicestershire Records Office

⁷ ‘Leicester Market Rights – A Report on the documentary evidence for the rights of Leicester’s Markets from the Borough Records in the care of Leicestershire Record Office’ (Robin P. Jenkins) (date unknown)(Copy attached)

⁸ (*Leicester Corporation v Maby* (1972) 70 LGR; 136 LGR. Rev.402, and *Leicester City Council v Oxford and Bristol Stores Limited* (21 December 1978)(unreported)

⁹ Report of the Director of Resources to the Property Services Committee (10 August 1994) (“the 1994 Report”)

¹⁰ Emphasis added

¹¹ ditto

Leicester Market Traders Federation – Response to Applications for Planning Permission and Rival Markets Licence Walkers Stadium Leicester (October 2009)

- 3.7. The Policy outlines the conditions under which the Council may be prepared to issue a licence to operators allowing rival markets to be held within a radius of 6 $\frac{2}{3}$ miles of any retail market operated by the Council.
- 3.8 Although not expressed in the Policy itself, the following matters may reasonably be inferred from the historical and factual background:
- (i) the purpose behind the requirement in the Policy to license rival markets is to protect the local authority's franchised market rights;
 - (ii) such rights belonging to the citizens of Leicester, axiomatically the Policy subject to which rival market licence applications are determined, must be applied with the public interest in mind.

The right to be consulted on applications for Rival Markets Licences

- 3.9 It is perhaps unsurprising in these circumstances, that it has been the custom and practice of the Council over many years to consult the Market Forum both regarding proposed revisions to the Rival Markets Policy and upon significant applications for Rival Markets Licences.
- 3.10 Thus the Market Forum were consulted on the most recent revision of the Rival Markets Policy (January 2008) in September 2007 prior to its consideration by Cabinet (to which its recommendations were reported), and upon the application now under consideration in November 2008 prior to its subsequent rejection by the Corporate Director of Regeneration and Culture in consultation with the Cabinet Lead Member.
- 3.11 On this basis, the Federation considers that it has a legitimate expectation to be consulted on such matters generally, and in any event specifically in relation to the purported re-determination of this application. The inclusion, within the terms of reference of the Market Forum, of exploring extending the current market's facilities including e.g. Sunday Markets, only serves to strengthen the Federation's expectation that it will be consulted upon any major rival Sunday market proposal of this nature.
- 3.12 In the circumstances, the Council's Head of Litigation's suggestion, in his letter dated 2 October 2009, that no legitimate expectation of prior consultation exists and that the Council's duty does not extend beyond merely reporting decisions already made in respect of rival market licence applications, is frankly perverse, and in any event contrary to the evidence.
- 3.13 Furthermore, the mere notion that a decision that could have a profound impact on one of the key city centre facilities should be taken without carrying out such consultation, is fanciful, and contrary to the wishes of Government. Indeed in a paper published for town centre managers in April 2009¹², the Government, in line with its general policy to promote public participation in planning, re-iterated that:
- "...the more that local people have a say in decisions that affect their town centre – whether that be on future planning proposals or options for using vacant shops – the more likely it is that they will feel connected to it, and will want to support it. They can help local authorities think creatively, and often have innovative ideas for improving the delivery of local services".*

¹² 'Looking after our Town Centres'(DCLG)(April 2009). Reference number: 09 CRLD 05879 ISBN: 978-1-4098-
Leicester Market Traders Federation – Response to Applications for Planning Permission and Rival Markets Licence Walkers Stadium
Leicester (October 2009)

3.14 As far as the Federation is aware, the application for a Rival Markets Licence in this case was determined by the Corporate Director of Regeneration and Culture in consultation with the Cabinet Lead Member some time between 18 November 2008 and 15 January 2009, following which the applicants were informed of the decision to refuse the application, and, subsequently, the reasons for it. It is noted, from the Council's response to our FOI Act Request, that there is no right of appeal against such a refusal.

3.15 The Federation therefore questions the *vires* of the Council now to re-determine the application in any event, which it purports to do, not as a result of a fresh application, but as a result of a request from the applicant that the previous decision "*might be reconsidered*"¹³. In the absence of any right of appeal against the former refusal, under what authority does the Council purport now to "reconsider" an application that has already been finally determined and its determination notified to the applicant?

3.16 Furthermore, even if (which is denied) the Council does have power to re-determine the application, it is noted that it is intended that the re-consideration and decision "...*would be taken by a different director in consultation with a different councillor...*"¹⁴. Given, however, that the authority to grant permissions under the Rival Markets Policy would appear to be vested in the Corporate Director of Regeneration and Culture in consultation with the Cabinet Lead Member¹⁵, under what authority is it suggested that a "*different director in consultation with a different councillor*" would be acting?

¹³ Letter Head of Litigation to Marrons 2 October 2009 paragraph 17

¹⁴ *ibid* paragraph 4

¹⁵ Minutes of the Meeting of Cabinet, 15 October 2007 – Minute 112
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4.0 Merits

4.1 The Council has successfully operated a market in the City Centre for many years. The market is part of the country's heritage and tradition.

4.2 The local authority market makes a vital contribution to the commercial viability of the city centre. By way of example, the Council's Business web-page currently includes the following:
"LEICESTER MARKET WINS NATIONAL AWARD

Leicester is Britain's favourite market - OFFICIAL.

During the months of December 2008 and January 2009 the nation had been casting its online votes at the NABMA website for its favourite markets. In the tightest of decisions it was the well-known Leicester Market that polled the highest votes.

BBC MasterChef winner Thomasina Miers presented the trophy to the jubilant Leicester Markets team led by Councillor Paul Westley and Markets Manager Nick Rhodes.

NABMA Chief Executive, Graham Wilson congratulated Leicester. **"Such a public accolade is a real endorsement of the importance that the city and its visitors place on its markets"**.

The results of such an event not only reflects the popularity of the market and the confidence that people have in the market but also substantiates the statement that THE MARKET PLAYS A VITAL ROLE IN THE LIFE OF THE CITY".¹⁶

4.3 In purely financial terms, the Council will be conscious of the fact that the market is an extremely valuable asset to the City, posting a surplus of £585,000 in 2008¹⁷.

Retail Planning Policy considerations

4.4 The market is, furthermore, an important component of the overall balanced retail offer within the City Centre, the vitality and viability of which all levels planning policy seek to sustain and enhance.

4.5 Thus the Council itself is committed, through its own Local Plan:
• to sustain and enhance the vitality and viability of the City Centre, in particular its role for comparison goods shopping;¹⁸

4.6 In the above context, 'City Centre' means the *Central Shopping Core*, outside of which national and regional retail planning policies are restrictive towards proposals for retail development. Thus the **East Midlands Plan RSS (March 2009)**, which recognises Leicester as a '*nationally ranked shopping centre*' which should be encouraged to develop its role, requires that:
'Local Authorities, emda and Sub-Regional Strategic Partnerships¹⁹ should work together on a Sub-area basis to promote the vitality and viability of existing town centres'

National Policy Support for Town/City Centres

4.7 In planning policy terms, the Government is committed to a 'town-centre first' approach of which promoting the vitality and viability of town centres is a key part.

4.8 Thus **PPS6 'Planning for Town Centres'**²⁰ paragraph 1.3 provides:
"The Government's key objective for town centres is to promote their vitality and viability by:
-planning for the growth and development of existing centres; and
-promoting and enhancing existing centres, by focusing development in such centres and encouraging a wide range of services in a good environment, accessible to all".

¹⁶ Emphasises added

¹⁷ Minutes of the Meeting of the Markets Forum, 12 March 2009, Minute 53

¹⁸ City of Leicester Local Plan (January 2006) – paragraph 8.3

¹⁹ Policy 22

²⁰ (March 2005)

Leicester Market Traders Federation – Response to Applications for Planning Permission and Rival Markets Licence Walkers Stadium Leicester (October 2009)

4.9 Furthermore, the Government has recently consulted on a new **PPS4 'Planning for prosperous Economies'** which proposes, in updating PPS6, to maintain the commitment to town centre development i.e.

'6. The Government's objectives are to...

- ...promote the vitality and viability of town and other centres as important places for communities and ensure that they are economically successful recognising that they are important drivers for regional, sub-regional and local economies. To do this, the Government wants:
 - new economic growth and development to be focused in existing centres, with the aim of offering a wide range of services in an attractive and safe environment
 - competition between retailers and enhanced consumer choice through the provision of innovative and efficient shopping, leisure, tourism and local services in town centres, which allow genuine choice to meet the needs of the entire community, and particularly socially excluded groups
 - the historic, archaeological, architectural heritage of centres to be conserved and, where appropriate, enhanced to provide a sense of place and a focus for the community and for civic activity'

4.10 Policy EC6 in the proposed new PPS4 contains policy guidance on the local planning approach to planning for consumer choice and promoting competition for town centre development i.e.

'EC6.1 Local planning authorities should proactively plan for consumer choice and promote competitive town centre environments by:

1. supporting the diversification of uses in the town centre as a whole
2. planning for a strong retail mix so that the range and quality of the comparison and convenience retail offer meets the requirements of the local catchment area
3. recognising that smaller shops can significantly enhance the character and vibrancy of a centre and make a valuable contribution to consumer choice
4. retaining and enhancing existing markets and, where appropriate, re-introducing or creating new ones, ensuring that markets remain attractive and competitive by investing in their improvement²¹
5. planning for a range of tourism, leisure and cultural activities, which appeal to a wide range of age and social groups, and ensuring that these are distributed throughout the centre and
6. taking measures to conserve and, where appropriate, enhance the established character and diversity of their town centres'

4.11 In a recent response to a House of Commons Communities and Local Government Committee Report on "**Market Failure? – Can the traditional markets survive?**"²² the Government has welcomed:

'...the Select Committee's report into traditional retail markets and the recognition it gives to **the importance of local support for markets and our work to include markets in our national planning policy**'²³.

4.12 The Government response agrees with the Committee's assessment of the valuable contribution that street, covered and farmers' markets can make to local choice and diversity in shopping, as well as to the vitality of town centres, and that efforts to secure the survival of street markets can lead to regeneration of the wider area, and is pleased to note that the Committee:

'...agrees that local authorities are best placed to have a vision for their town centre and to be **the key source of public support for markets**'²⁴.

²¹ emphasis added

²² ISBN: 9780101772129. ID P002326296 10/09 521 19585

²³ emphasis added

²⁴ ditto

- 4.13 The commitment to a ‘town-centre first’ policy and the promotion of the vitality and viability of town centres is noted in the response as ‘a key part’ of the overall approach with successful town centres needing investment and a strong retail mix – *of which Markets are part*. However, the response warns that the mix :
‘...cannot be delivered from a desk in Whitehall. That is why we require local authorities, as an integral part of the vision for their town centres, **to seek to retain and enhance existing markets** and, where appropriate, re-introduce or create new ones’.
- 4.14 Where it is appropriate to introduce or create new markets, the clear intention is that these should be in town centres in accordance with current and emerging retail planning policy. Thus paragraph 15 of the Government’s response states:
‘15. Government has strong planning policies for markets. Planning Policy Statement 6 (PPS6): *Planning for town centres* (2005) requires local authorities, as part of their vision for their town centres, to seek to retain and enhance existing markets and, where appropriate, re-introduce or create new ones. PPS6 also states that local authorities should ensure that their markets remain attractive and competitive by investing in their improvement’.
- 4.15 Paragraph 16 continues:
‘16. We encourage local authorities to adopt a proactive positive planning approach to their centres and to facilitate a diverse and competitive economy. Through flexible town centre strategies local authorities can **encourage new retail and other opportunities such as markets and protect the vitality and viability of their town centres**, ensuring that a mix of uses is maintained, in order to meet the needs of the community and promote consumer choice’²⁵ .
- 4.16 Reference is then made to the consultation on the proposed new PPS4 ‘*Planning for prosperous Economies*’ the aim of which is:
‘...to create a coherent and modern set of policies designed to meet the challenges town centres and other areas face both now and over the longer term. As part of this, **PPS4 maintains our strong policy approach to markets**’²⁶ .
- 4.17 The Response also points out that markets can play an important role in area regeneration – making a visible and powerful contribution to economic and social life within towns and cities. By providing a focal point for economic and social interactions, attracting visitors to key centres, and providing employment opportunities to local residents, street markets can catalyse better outcomes for people and places.
- 4.18 As we have already noted, the Government’s commitment to town and city centres is encapsulated in its current and emerging development control policies. Thus, **PPS6 paragraph 3.4** provides, in relation to proposals for retail development:
‘3.4 In the context of development control and subject to the policies set out below, local planning authorities should require applicants to demonstrate:
a) the need for development (paragraphs 3.8–3.11);
b) that the development is of an appropriate scale (paragraph 3.12);
c) that there are no more central sites for the development (paragraphs 3.13–3.19);
d) that there are no unacceptable impacts on existing centres (paragraphs 3.20–3.23); and
e) that locations are accessible (paragraphs 3.24–3.27).
3.5 Subject to the policies set out below, local planning authorities should assess planning applications on the basis of the above key considerations and the evidence presented. **As a general rule, the development should satisfy all these considerations**. In making their decision, local planning authorities should also consider relevant local issues and other material considerations’²⁷ .

²⁵ Emphasis added

²⁶ ditto

²⁷ Emphasis added

Need

4.19 **PPS6 paragraph 3.9** provides:

'3.9 Need must be demonstrated for any application for a main town centre use which would be in an edge-of-centre or out-of-centre location and which is not in accordance with an up-to-date development plan document strategy'.

4.20 The Walkers Stadium is at best an edge of centre location, but more likely out-of-centre given that it is not within easy walking distance (i.e. up to 300 metres) of the primary shopping area²⁸.

4.21 The background documentation to the planning application submitted in October 2006 and considered by the Planning and Development Control Committee on 18 March 2008 contains no evidence that demonstrates a *need* for a Regular Sunday Market to be held at the Walkers Stadium²⁹.

4.22 Furthermore, the only reference to '*need*' in the papers disclosed under the FOI in response to various Freedom of Information Act requests, is in paragraph 6 of the applicants' Business Plan which states as follows:

'6. AIMS AND OBJECTIVES

Leicester City Council has identified a need for a Sunday market and chose Walkers Stadium as the 'ideal venue'

4.23 The issue of the choice of the Walkers Stadium to hold the marke is addressed below in the context of the sequential test and retail impact, however, the suggestion that it is the City Council that has apparently identified the *need* for a Sunday market is particularly intriguing, given that no evidence has been unearthed to support such a contention - in particular there is no reference in the Report of the Service Director, Planning and Policy to the Planning and Development Control Committee on 18th March 2008 that demonstrates that such a need exists in any event.

²⁸ PPS6 Table 2

²⁹ As disclosed on the Council's electronic Planning Database

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4.24 This begs the question as to whether such evidence is in fact available to the Council. If it is, then the Federation is, of course, entitled to see it, and a request for such information has accordingly now been made the subject of a further FOIA request. If no such evidence exists, however, then quite clearly the first requirement of PPS6 paragraph 3.4 has not been met.

Scale

4.25 What evidence has been submitted to/considered by the Council as to whether the proposed market at the Walkers Stadium is of an appropriate scale? Again no evidence has been seen in the background papers to suggest that this issue has been considered at all.

Sequential Test

4.26 PPS6 paragraph 3.14 provides:
'3.14 In selecting sites, ³⁰all options in the centre should be thoroughly assessed before less central sites are considered' .

4.27 Assuming (for the sake of argument) that a need for a Sunday market can be demonstrated, did the Council, before choosing the Walkers Stadium as *'the ideal venue'*,³¹ assess all of the options for holding a market in the Central Shopping Core? If not, then axiomatically the choice of a 'less central site' is fundamentally flawed.

Impact on the vitality and viability of the Central Shopping Core

4.28 PPS6 paragraph 3.20 requires that:
'Impact assessments should be undertaken for any application for a main town centre use which would be in an edge-of-centre or out-of-centre location and which is not in accordance with an up-to-date development plan strategy'.

4.29 Once again there is no reference in any of the background papers, including the relevant Committee Report, to any retail impact assessment having been undertaken in accordance with established national planning policy.

4.30 Finally, an applicant is required to demonstrate that the development will be in an *accessible* location. Whilst we do not doubt that the Walkers Stadium is accessible, we are bound to say that in providing 1,200 car parking spaces and in anticipating 1,500 cars attending the market on a weekly basis, the proposed development's obvious reliance on car bound journeys raises a huge question-mark over its overall sustainability credentials.

³⁰ Emphasis added

³¹ See paragraph 4.11 above

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- 4.31 In the absence of any evidence to the contrary, it is patently obvious that in considering the application for planning permission, the Council has failed to require the applicant to demonstrate any of the requirements set out in PPS6 paragraph 3.4 i.e. that there is a *need* for the development, that the development is of an appropriate *scale*, that there are *no* more *central sites* for the development, that there are no unacceptable *impacts* on existing centres, or that the proposed development is *accessible by sustainable transport means* i.e. otherwise than by car.
- 4.32 If the Council had had regard to such matters, and assuming for the sake of argument that there was a demonstrable need for a regular Sunday market in Leicester, the fact would surely not have been lost on the Council that floorspace, currently unused on Sundays and Bank Holidays, does exist within the Central Shopping Core, i.e. in the central market place, in any event. **PPS6 paragraph 3.19** provides:
 'Where it is argued that otherwise sequentially-preferable sites are not appropriate for the particular development proposed, applicants should provide clear evidence to demonstrate why such sites are not practicable alternatives in terms of:
- Availability: the sites are unavailable now and are unlikely to become available for development within a reasonable period of time (determined on the merits of a particular case). Where such sites become available unexpectedly after receipt of the application the local planning authority should take this into account in their assessment of the application; and
 - Suitability: with due regard to the requirements to demonstrate flexibility (paragraphs 3.15–3.18), the sites are not suitable for the type of development proposed; and
 - Viability: the development would not be viable on these sites'.
- 4.33 If the Council has not assessed the availability of the market place for a Sunday market, its suitability for the same, or whether a Sunday market would be viable on that site, then it is frankly in no position to choose an out-of-centre site in preference to an in-centre location.
- 4.34 Furthermore, even if it was concluded that the central market place was not suitable/viable for a Sunday market to be held there, and there were no other centrally located sites available, the Council is not in a position to grant planning permission for the markets to be held in an out of centre location without first assessing the impact of the same on the vitality and viability of the Central Shopping Core.
- 4.35 The emerging policy for town centres in draft PPS4, which maintains and builds upon the 'town-centre first' approach, then goes on to provide:
- 'EC21. 1 Having considered the evidence, local authorities should determine planning applications for town centre uses that are **not in a centre** or allocated in an up to date development plan in the following way:
1. **refuse** planning permission where the applicant has not demonstrated compliance with the requirements of ...**(the sequential approach)**
 2. **refuse** planning permission where there is clear evidence that the proposal is likely to lead to **significant adverse impacts** in terms of mitigation of or adaptation to climate change or any one or more other key impacts under Policy EC20.1(3) (the impact assessment)³²
- 4.36 The Right Honourable Patricia Hewitt, Member of Parliament for Leicester West writes in a letter dated 14th October 2009³³
- 'I do not believe that this proposal should go ahead unless a full and thorough impact assessment and consultation draws conclusive evidence that shows that it will not have a negative impact on Leicester market'

³² Emphases added

³³ Copy appended hereto

- 4.37 It is no good, with respect, reviewing the impact of the Walkers Market on trade within the Central market and Central Shopping Core generally after six months as was suggested by the Cabinet Lead to be the intention of the Council in granting the market licence. Impact assessment should be carried out, as required by Government Planning Policy, before planning permission and a market licence are granted.
- 4.38 Annex A of the draft PPS warns that ‘Retaining or improving retail diversity and consumer choice and safeguarding town centre vitality and viability will be challenging in the short term’ and thus; ‘The inclusion of retail diversity and consumer choice as considerations in the impact test should **encourage development which supports a good retail mix. The proposed impact test will also require local authorities to consider the effects of new development upon existing town centre trade and turnover.** This will enable local authorities to make decisions appropriate to their local circumstances when considering development proposals’³⁴.

The Cabinet Lead’s approach

- 4.39 In her Briefing Note to market traders circulated at a meeting held on 28 August 2009, the Cabinet Lead claimed that in considering the Walkers Stadium application the Council...
“...had to balance out two issues. Firstly that a successful Sunday market at the Football Club would be good for Leicester as a whole, it would attract people to the City on a Sunday, and would add to the city’s profile and prosperity”
- 4.40 With respect to the Cabinet Lead, such a view is entirely misconceived. There can be no question of a market at the Walkers Stadium, given its location well outside the Central Shopping Core, encouraging linked trips between itself and the City Centre, and thus no evidence to support the contention that the Walkers Stadium market would attract people into the City Centre. Indeed, the Walkers Stadium Market would be an ‘end destination’ in itself.
- 4.41 Thus, the antithesis of what Councillor Russell said in her briefing note in August 2009 would be a more likely scenario i.e. the existence of such a major retail facility outside the Central Shopping Core would not only fail to attract people into the Core, but would most likely draw trade out of it, thereby potentially undermining its vitality and viability.
- 4.42 In light of all of the above, the Council should be in no doubt that the Federation would therefore view any decision to confirm the grant of planning permission for a regular Sunday Market to be held at the Walkers Stadium, particularly in the absence of considering *need*, applying the *sequential test*, and considering the *impact* of such a proposal on the *vitality and viability* of the Central Shopping Core, to be contrary to extant and emerging Government Policy, fundamentally flawed and susceptible to legal challenge.
- 4.43 The grant of planning permission is, of course, in this case, a pre-requisite to the grant of a Rival Markets Licence³⁵. If, therefore, the planning permission is impugned, any corresponding grant of a Rival Markets Licence will itself also be vulnerable and, as a result, unreliable.

LSD Promotions Ltd – other market operations

³⁴ Emphasis added

Leicester Market Traders Federation – Response to Applications for Planning Permission and Rival Markets Licence Walkers Stadium Leicester (October 2009)

³⁵ Rival Markets Policy (January 2008) paragraph 9.3

Leicester Market Traders Federation – Response to Applications for Planning Permission and Rival Markets Licence Walkers Stadium Leicester (October 2009)

- 4.44 The following statement appears in the executive summary of LSD Promotions Ltd's Business Plan for the Walkers' Stadium market:
"LSD Promotions Ltd has been operating/managing market on behalf of Local Authorities and Private Developers for over 20 years, the company currently organises and has a wealth of experience in street markets in a selection of towns and cities across the Midlands"
- 4.45 A number of testimonials are then attached to the Business Plan, including the following, in response to which we have the following comments:
- i. *Wyre Forest District Council – Re: Kidderminster Street Market*
 It is to be noted that this is Kidderminster's only market, held in the town centre on Thursdays and Saturdays under rights granted in 1240. LSD therefore operate the market pursuant to the Local Authority's franchised rights and not as a Rival Market.
 - ii. *Wolverhampton City Council – Re: Wolverhampton Farmers Market*
 This market, held on the first Friday in each month, is held in the City's main shopping area. The market is not a Rival Market but compliments the daily market, held pursuant to rights granted in 1204.
 - iii. *Dudley MBC – Re: Halesowen Street Market*
 This is Halesowen's only market, held in the town centre on the second and fourth Saturday of each month, pursuant to a number of market charters including in particular a grant in 1344 by Edward III to the abbot and convent of a weekly market on Mondays, confirmed in 1609, with Saturday becoming the market day in 1869. As with Kidderminster, therefore, LSD operate this market pursuant to the Local Authority's franchised rights and not as a Rival Market.
 - iv. *Stourbridge Street Market*
 The testimonial, dated 4th September 2008, is from the former Stourbridge Town Centre Manager. Presumably the Council is aware, however, that later in 2008, LSD 'pulled the plug' on the market (the rights for which were granted in 1486, by Henry VII) blaming the lack of a suitable location when work on the town centre development began. The popular market, however, re-opened under new operators in February 2009.
 - v. *Shrewsbury & Atcham Borough Council – Re: Shrewsbury Sunday Market*
 Since the testimonial, dated 2 September 2008, was obtained, LSD Promotions have also pulled out of operating Shrewsbury Market, which continues under new operators (Town and Country Markets).

5.0 Summary and Conclusions

- 5.1 A market has been held in Leicester for over 700 years, pursuant to a series of Royal Charters under which the Council now has the sole and exclusive right to hold markets within the common law distance of 6 $\frac{2}{3}$ miles.
- 5.2 This right is held by the Council for the *benefit of the public*³⁶, axiomatically it must be exercised in the public interest.
- 5.3 A duty to protect the franchised rights for the public has been consistently exercised, by the Council over the years. For example the Council opposed Government plans in 1994 to withdraw franchise market rights inter alia on the grounds that the viability of the central market could well be affected, and in applying its Rival Markets Policy has agreed that the City Centre Market should be supported and protected.

³⁶ 'The justification for the grant of a monopoly of market is that the existence of the market is for the benefit of the public. If the market keeper is not to get his outlay back and something more, he will give up the market, and where will the public be then?' per Hamilton L.J. in *A.G. v Horner (No.2)* [1913] 2 Ch.140 at p.198 (referring also to the observations of Lord Macnaghten in *Simpson v. A.G.* [1904] A.C. 476 at p.483). See also the remarks of Slade L.J. in *Sevenoaks District Council v. Patullo & Vinson Ltd* [1984] 1 All ER. 544 at p.551

- 5.4 The Borough Records reveal the constant efforts of the Corporation over the centuries to protect its market rights. This has also been reflected more recently in applications by the Council to the

High Court for injunctions to prevent rival markets operating within 6 $\frac{2}{3}$ miles of the existing Charter Markets.

- 5.5 The Council has, since 1985/6 sought to protect its markets through its “Rival Market Policy”, supported, since 1994 by the introduction of a “Market Forum”.
- 5.6. The Rival Markets Policy outlines the conditions under which the Council may be prepared to issue a licence to operators allowing rival markets to be held within a radius of 6 $\frac{2}{3}$ miles of any retail market operated by the Council, for the purposes of protecting the Council’s franchised market rights;
- 5.7 Unsurprisingly, therefore, it has been the custom and practice of the Council to consult the Market Forum both regarding proposed revisions to the Rival Markets Policy and upon significant applications for Rival Markets Licences, including the current application prior to its initial refusal, on which basis the Federation considers that it has a legitimate expectation to be consulted on such matters generally, and in any event specifically in relation to the purported re-determination of this application.
- 5.8 As the application for a Rival Markets Licence in this case appears to have been determined some time between 18 November 2008 and 15 January 2009, following which the applicants were informed of the decision to refuse the application, and, subsequently, the reasons for it, and there is apparently no right of appeal against such refusal, the Federation questions the *vires* of the Council now to re-determine the application in any event.
- 5.9 Furthermore, even if (which is denied) the Council does have power to re-determine the application, given that the authority to grant permissions under the Rival Markets Policy would appear to be vested in the Corporate Director of Regeneration and Culture in consultation with the Cabinet Lead Member, the Federation also questions the authority of a “*different director in consultation with a different councillor*” to do so.
- 5.10 The Council has successfully operated a market in the City Centre for many years. The market is part of the country’s heritage and tradition.
- 5.11 The local authority market makes a vital contribution to the commercial viability of the city centre. By way of example, the Council’s Business web-page currently heralds the market’s achievement in gaining the title of ‘*Britain’s Favourite Market*’ as voted by visitors to the NABMA website, and NABMA’s Chief Executive’s reference to the market playing a *vital role in the life of the City*.
- 5.12 In purely financial terms the market is an extremely valuable asset to the City, posting a surplus of £585,000 in 2008.
- 5.13 The market is, furthermore, an important component of the overall balanced retail offer within the City Centre, the vitality and viability of which at all levels planning policy seeks to sustain and enhance. In this context ‘*City Centre*’ means the *Central Shopping Core*, outside of which, pursuant to national and regional retail planning policy, proposals for retail development are restrictive.
- 5.14.1 Examination of the background information disclosed by the Council in relation to the planning application has failed to detect any evidence of compliance with the requirements of PPS6 paragraph 3.4 i.e. that the applicant has demonstrated:
- that there is a *need* for a Sunday Market in Leicester;
 - that the proposed Sunday Market at the Walkers Stadium is of an appropriate *scale*;

- that there are no more *central sites* for the Sunday market to be held, including the currently unoccupied central market place;
- that there would be no *unacceptable impacts* on the Central Shopping Core; or
- that the proposed market would be *accessible* by sustainable transport means i.e. otherwise than by car.

- 5.15 Had the Council had regard to such matters, and assuming that there was a demonstrable need for a regular Sunday market in Leicester, the fact is that floorspace, currently unused on Sundays and Bank Holidays, does appear to exist within the Central Shopping Core, i.e. in the central market place, in any event, the availability, suitability and viability to hold a regular Sunday market of which does not appear to have been assessed by the Council before choosing an out-of-centre location.
- 5.16 Furthermore, even if it was concluded that the central market place was not suitable/viable to hold a Sunday market, and there were no other centrally located sites, planning permission could not be granted for the markets to be held at an out of centre location without assessing the *impact* of the same on the vitality and viability of the Central Shopping Core.
- 5.17 As it is, there can be no question of a market at the Walkers Stadium, given its location well outside the Central Shopping Core, encouraging linked trips between itself and the City Centre, and thus no evidence to support the contention that the Walkers Stadium market would attract people into the City Centre. Indeed, the Walkers Stadium Market will be an 'end destination' in itself, and thus would be likely to draw trade out of the Central Shopping Core, thereby potentially undermining its vitality and viability.
- 5.18 In light of all of the above, the Federation would view any decision to confirm the grant of planning permission for a regular Sunday Market to be held at the Walkers Stadium, particularly in the absence of considering *need*, applying the *sequential test*, and considering the *impact* of such a proposal on the *vitality and viability* of the Central Shopping Core, to be fundamentally flawed and susceptible to legal challenge.
- 5.19 The grant of planning permission being a pre-requisite to the grant of a Rival Markets Licence³⁷, if the planning permission is impugned, any corresponding grant of a Rival Markets Licence will itself also be vulnerable and, as a result, unreliable.
- 5.20 Of the testimonials produced on behalf of LSD Promotions Ltd in relation to its other market operations in the midlands it should be noted:
Kidderminster Street Market is Kidderminster's only market, held in the town centre under rights granted in 1240. It is not, therefore a 'rival market'
Wolverhampton Farmers Market is held in the City's main shopping area. The market therefore compliments the daily market, also held in the main shopping area, held pursuant to rights granted in 1204.
Halesowen Street Market is Halesowen's only market held in the town centre pursuant to a number of market charters. As with Kidderminster, therefore, the market is operated pursuant to the Local Authority's franchised rights and not as a Rival Market.

³⁷

Rival Markets Policy (January 2008) paragraph 9.3
 Leicester Market Traders Federation – Response to Applications for Planning Permission and Rival Markets Licence Walkers Stadium
 Leicester (October 2009)

Stourbridge Street Market (the rights for which were granted in 1486, by Henry VII) closed in the latter part of 2008 when LSD 'pulled the plug' blaming the lack of a suitable location when work

on the town centre development began. The popular market, however, re-opened under new operators in February 2009.

Shrewsbury Sunday Market is also now under new operators, LSD Promotions Ltd having pulled out last year.

- 5.20 In the light of all of the above, it is respectfully submitted that in the public interest, and having regard in particular to national, regional and local planning policy, the proposed development should be rejected and the applications for planning permission and a rival markets licence respectively should be refused.

MARRONS

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Meridian Business Park
Leicester
LE19 1WY
simonstanion@marrons.net
23 October 2009


Leicester Market Traders Federation – Response to Applications for Planning Permission and Rival Markets Licence Walkers
Stadium Leicester (October 2009) 20

ANNEX

COPY LETTER THE RIGHT HONOURABLE PATRICIA HEWITT MEMBER OF PARLIAMENT FOR LEICESTER WEST DATED 14 OCTOBER 2009

Leicester Market Traders Federation – Response to Applications for Planning Permission and Rival Markets Licence Walkers Stadium Leicester (October 2009) 21

Rt. Hon. Patricia Hewitt Member of Parliament for Leicester West



HOUSE OF COMMONS
LONDON SW1A 0AA
Our Ref: PHM/JW/ALFO01003/01091385

Please reply to:
Ground Floor
5 Frog Island
Leicester
LE3 5AG

14 October 2009

To Whom It May Concern:

Re: Proposed Sunday market at Walker's stadium

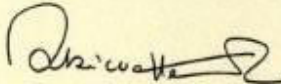
I have recently been contacted by my constituent, Dawn Alfonso of 34 Heacham Drive, Leicester, LE4 0LF, as she is very concerned about the impact that the abovementioned proposal could have on the trading environment for Leicester's main city market.

Ms Alfonso is a trader at the Leicester market and a leading activist in the local branch of the National Market Traders Federation. She believes that a Sunday market at Walkers Stadium would erode trade by drawing customers away from the city centre and that this would be the case even if the two markets were to be pitched on different days of the week as proposed.

In my opinion, Leicester's market is one of the city's great historical assets. It is the largest undercover market in Europe and can trace its history back over 700 years. Given its rich cultural and economic contribution to the city, I have long supported Leicester Market and believe that it should receive more in the way of investment and development. I would be concerned by any proposal which has the potential to threaten the market's future.

In the case of the Sunday market at Walker's Stadium, I was particularly concerned to learn that Leicester market traders were not fully consulted. I do not believe that this proposal should go ahead unless a full and thorough impact assessment and consultation draws conclusive evidence that shows that it will not have a negative impact on Leicester market.

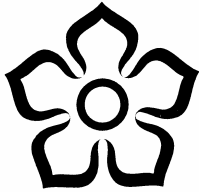
Yours sincerely



PATRICIA HEWITT MP
Member of Parliament for Leicester West

CONSTITUENCY OFFICE: 5 FROG ISLAND, LEICESTER LE3 5AG
TEL: 0116 251 6160 FAX: 0116 251 0482
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you do not wish to receive further communication from Patricia Hewitt MP, please write to the above address



Leicester
City Council

Minutes of the Meeting of the

APPENDIX B

MINUTE EXTRACT

MARKETS FORUM

Held: TUESDAY, 10 NOVEMBER 2009 at 5.00pm

P R E S E N T :

Councillor Potter (Chair)
Councillor Coley Councillor Lloyd-Harris
Councillor Naylor Councillor Westley

Co-opted Members:

Dawn Alfonso	Leicester Market Traders Federation
Paddy Deevey	Leicester Market Traders Federation

Officers in Attendance:

Andrew L. Smith	Director - Social Care & Safeguarding
Anthony Cross	Head of Environment & Advocacy Law
Nick Rhodes	Head of Markets
John Thorpe	Democratic Support
Jerry Connelly	Member Support Officer

In Attendance:

Cllr Newcombe	Joint Task Group Leader Markets Review
Cllr Hall	Joint Task Group Leader Markets Review
Adrian Pole	Leicester Market Traders Federation
Karen Hill	Leicester Market Traders Federation
Dave Swingler	Leicester Market Traders Federation
Kate Chamberlin	Leicester Market Traders Federation
Simon Staniland	Legal representative Leicester Market Traders Federation

* * * * *

10. DECLARATIONS OF INTEREST

Councillor Westley declared a personal interest in the business to be

discussed, as his cousin was a market trader in Leicester. Councillor Westley stated that as the issues regarding item 5 'Rival Market Application at Leicester City Football Club' the matter would be submitted to Cabinet for a decision following consideration at this meeting as a member of the Cabinet he would withdraw from this meeting during consideration of the item.

Councillor Potter declared a personal interest in that she was previously a market trader. Councillor Potter stated that she was also a member of the Overview & Scrutiny Management Board and the Joint Regeneration and Transport and Culture and Leisure Task Group which had considered the review regarding the market.

Councillor Hall stated that he was the Joint Chair of the Joint Regeneration and Transport and Culture and Leisure Task Group which had considered the review regarding the market and declared a personal interest as a season ticket holder of Leicester City Football Club.

Councillor Naylor stated that he was the Joint Chair of the Joint Regeneration and Transport and Culture and Leisure Task Group which had considered the review regarding the market.

11. APOLOGIES FOR ABSENCE

No apologies for absence were received.

12. MINUTES OF THE PREVIOUS MEETING

The minutes of the last meeting were accepted as a correct record and signed by the Chair.

13. MATTERS ARISING FROM THE MINUTES

It was noted that there would be no Christmas Market this year though Italian and Farmers markets had been planned for December. A new location was being sought for a German Christmas market to be arranged for 2010.

It was noted that the first market had been scheduled for Saffron Lane Sports Centre the previous Sunday but this unfortunately had been rained off.

14. RIVAL MARKET APPLICATION AT LEICESTER CITY FOOTBALL CLUB

The Director Planning and Economic Development submitted a report which gave details of an application from LSD Promotions to hold a market at Leicester City Football Club weekly on a Sunday and on Bank Holidays. It was stated that the purpose of the report was to seek comments from the Forum which would then be taken forward as part of the report to Cabinet rather than to attempt to reach a decision at this meeting.

It was stated that the report sought to set out the potential benefits and risks of the application and to consider it within the context of the current approved Rival Markets Policy so as to maintain the strength and viability of the existing markets. Consideration of the application involved consideration against the two separate regimes of planning procedures and the Rival Markets Policy. Under the Rival Markets Policy an application could be rejected or approved

with or without special conditions. It was suggested that a potential way forward in this case would be to grant with special conditions to:

- limit the period of the licence
- provide regular review points
- use quantitative data and qualitative surveys to assess impact using trigger points
- revoke the licence if significant adverse detrimental effect was demonstrated
- build in opportunities to promote and support the Council's markets.

It was stated that the Planning application had been approved in March 2008 with no comments received. The permission had not yet been issued as the legal agreement had not been completed.

Members of the Forum and representatives expressed concern that consultation with the Forum was an 'after thought' and raised a number of specific concerns that:

- the offer of goods which would be available would not be sufficiently different from that available at the City Centre market to avoid a significant detrimental effect and it was suggested that the website for LSD showed fruit, vegetable and meat stalls which would be in direct competition. It was suggested that it was not acceptable that the Council did not know what the offer of stalls was to be.
- The criteria to revoke the licence if significant detrimental affect was demonstrated was not properly defined or measurable.
- It could not be clearly stated when the impacts would be clear.
- No comments had been made on the Planning application as there had been no detail given. It was suggested that as permission had not been issued the decision could be re-considered especially as it was suggested that there had been a failure to consider material considerations.
- The suggested fee was lower than that paid to other authorities.
- The City Centre market was considering a Sunday market.
- Demonstrable harm could only be shown after the harm to the City Centre market had taken place.
- The power to revoke would be very difficult to operate in practice especially if the rival market had been operating some time and had proved popular.
- The application reduced options to develop a different offer for the Market on a Sunday and options to use Planning powers to develop the buildings in the Market Square.
- There had been no consideration of holding the market suggested for Leicester City Football Club in the Market Square.
- A market tried at the Stadium a few years ago had been unsuccessful.
- The Council stood to loose much of the income it received in market rents.
- Rather than being separate as the Council suggested the planning and Rival Markets processes were linked and so the Council was fundamentally wrong and needed to consider the required development

tests within the Planning Policy Guidance which it had not done. It was felt that the application did not meet these tests. Even if the Council did not feel that Planning Policy Guidance should be applied it was suggested that it should have still considered the tests of need and impact.

It was suggested that many traders were currently operating at a loss

In response it was noted that the Council had a duty to consider all applications and the short and long term improvements to the City Centre indoor and outdoor markets highlighted in the Task Group review considered earlier on this agenda would be considered by Cabinet. It was stated that the application had explained that it sought a different sort of market and a leisure opportunity but there had been no direct reference to the goods to be sold. It was accepted that it was difficult to assess traders income which was why the qualitative and quantitative approach to assessment had been selected and trigger points had been inserted at 6, 12 and 18 months to specifically assess impact. In terms of the two separate regimes of Planning and the Rival Markets Policy these were seen as different and detailed comments would be responded to outside the meeting.

It was noted that the application had stated there would be some fixed stalls so current traders could choose to trade at the market without the need to purchase a stall and that no further applications had received since the LSD applications. It was stated that if further days other than that stated were requested then a different application would have to be submitted

On behalf of the Market Traders Dawn Alfonso presented a petition of 20,638 signatures to the Chair regarding the application, which she asked be submitted to the next Council meeting. Councillor Potter and Councillor Naylor stated that they had signed the petition.

The Chair confirmed that a decision on the matter would be taken at a meeting of the Cabinet early in the New Year and that Cabinet would be made aware of the views expressed at this meeting. The Chair stated that she intended to attend the Cabinet meeting where the decision was made. No trading would take place at the Walkers Stadium until Cabinet had made its decision. Councillor Coley stated that as an opposition group leader he would also be present at the Cabinet meeting and would reflect the views of this meeting.

RESOLVED:

That the views expressed at this meeting be noted and passed to Cabinet for its consideration.

APPENDIX C (i)

LETTER FROM LEICESTER CITY FOOTBALL CLUB

11 December 2009

Submissions for Holding a Sunday Market at The Walkers Stadium

Leicester City Football Club has been in discussions with LSD Promotions regarding an open air market to be held at The Walkers Stadium on Sundays and Bank Holidays. We believe the addition of an open air market on Sundays and Bank Holidays would be a great complementary amenity to the City of Leicester, the County of Leicestershire and indeed the current City Centre Market.

There is in fact already a precedent for holding a Sunday Market at The Walkers Stadium. A Sunday market was opened at the Walkers stadium during October 2006 to operate on every Sunday (excluding match days). The Event Management Plan, produced by Leicester Markets, aimed the event at 'a wide demographic of people from the City and county'.

The objectives of the market were to:

- Generate substantial high profile media coverage for the City and county
- Raise awareness of the vibrancy, creativity and diversity of Leicester
- Celebrate the strengths of local identity and community
- Ensure that money is spent in the local economy
- Be a key marker in the journey to position Leicester as a key European city by 2010

The operational times for the market were from 06.00 to 18.00

To the best of our knowledge, there was no opposition to implementation of the market at that time nor has any evidence been presented that the Sunday Market in operation at The Walkers Stadium had any detrimental impact to the City Centre Market.

The proposal for the market to be held at The Walkers Stadium is both different from and complementary to the City Centre Market. The style of the market at The Walkers Stadium will have more of a leisure, family day out focus. This is in contrast to the daily essential shopping style of the City Centre Market.

The Stadium Market will seek to attract family groups for a day out with a difference to include things such as lunch in the Stadium Restaurant, use of the Club shop and tours of The Walkers Stadium and its facilities. Additionally, the Stadium Market will include children's entertainment, fun rides, bouncy castles, and soft play areas. It will also offer a land train to transport shoppers from the Market to the car park.

Additionally, the Stadium Market will include unusual and handcrafted goods in addition to the general stalls, with a special indoor section reserved for local artists and craft producers to showcase their work.

Environmental and community groups will be offered free stalls on an ad hoc basis to enable them to promote community-based, public service and environmentally friendly activities. Advertising will be made to promote the advantages of cycling and car-pooling as well as highlighting awareness for reducing the carbon footprint. Generally, the stalls will be predominantly non-food in orientation, but there will be food stalls to include a range of specialist and organic foodstuffs. Stalls will also be provided for “buy local” campaigns to encourage people to purchase fresh local market produce – reducing the need for over packaging.

The Stadium Market is planned to be opened on Sundays when the City Centre Market is closed. This will enable traders from the City Centre Market to put an additional stall at the Stadium Market. Even if this situation changes, we believe the two markets will complement each other and increase Leicestershire’s retail options. In fact, having a market at the Walkers will further reduce the need for traders and shoppers to travel outside the county for Leisure markets.

It should also be noted that there are adequate provisions in the proposed market license to protect the City Market in the event that there was an adverse impact.

We would like to proceed in the same vein as the opening of the Stadium Market in 2006. As Councillor Mugglestone said at the time “This is an extra service for the local community. The Football Club is an ideal venue for this type of market, and is something a bit different to the market in the City centre which is held during the rest of the week”

We look forward to receiving a positive response and, subject to planning approval, the granting of a license at the Walkers stadium.

Yours sincerely,

Lee Hoos
Chief Executive Officer

Dear Mr. Rhodes

Application for a license to hold regular markets at Walkers Stadium, Leicester.

We would like to make the following comments to be included as a consideration in your report to Cabinet prior to the meeting on 25th January, 2010.

Our view is that the market planned for the Stadium will not affect the City Centre market for various reasons and will be an asset to the City of Leicester.

- The style of market planned for the Football Club will be very different with more of a leisure focus, in contrast to the daily essential shopping style of the City market.
- The Stadium market will include children's entertainment, fun rides, bouncy castle and soft play, and a land train which will transport shoppers from the market to the car park.
- The market's aim will be to attract family groups for a day out with a difference to include lunch in the Stadium restaurant, use of the Club shop, and tours of the Football Stadium and it's facilities.
- Environmental groups will be given priority with emphasis placed on the advantages of cycling and car sharing, and reducing the carbon footprint.
- Stalls will also be provided for buy local campaigns to encourage people to purchase local and fresh market produce, reducing the need for over packaging.
- The Stadium market is planned for Sundays when the City market is currently closed, however if this situation changed in the future, both markets will compliment each other and increase Leicester's retail option.
- It is planned for a promotional stall and litter bin advertising space to be reserved on the Stadium market bins to promote Leicester's City market and opening hours.
- The style of market planned for the Stadium will include unusual and handcrafted goods in addition to general stalls, with a special indoor section reserved for local artists and craft producers to showcase their work.
- General stalls will be largely non-food, but the market is also planned to include a range of specialist organic and locally produced foods.
- Having a local Sunday/Bank Holiday market will further reduce the need for traders/shoppers to travel outside Leicestershire for leisure markets.
- The Walkers Stadium market will be open-air.

In 2006 Leicester City Council introduced the first Sunday markets to Leicester City Football Club, and opened the first market at Walkers Stadium with over 350 stalls. We echo the sentiments of Councillor John Mugglestone who is recorded as saying at the time "This is an extra service for the local community, the football club is an ideal venue for this type of market, and is something a bit different to the market in the City centre which is held during the rest of the week".

We have already accepted conditions within the license that protects the City market.

Yours sincerely,

Dermot McGillicuddy

Director, LSD Promotions Ltd

APPENDIX C (iii)

LETTER FROM MARRONS SOLICITORS REPRESENTING THE MARKET TRADERS

MARRONS

1, Meridian South, Meridian Business Park, Leicester LE19 1WY.
Tel: 0116 289 2200 Fax: 0116 289 3733 DX 710910 Leicester Meridian www.marrons.net

Anthony Cross
Head of Litigation – Legal Services
Leicester City Council
DX10908 Leicester

SolC
✓



By DX and email: Anthony.Cross@leicester.gov.uk

12 November 2009

Our Ref: SPS VT 4557-1-7
Your Ref: AJC/DG

Dear Mr Cross

**PLANNING PERMISSION / MARKET LICENCE –
WALKER'S STADIUM – LEICESTER CITY FOOTBALL CLUB**

I write further to your letter of 6th November to which I indicated, at the Market Forum meeting on Tuesday, I would provide a written response.

1) *The focus of our response on planning issues*

I make no apology for this. As I said at the meeting on Tuesday, I consider the suggestion that comments were only invited on markets licence matters as an argument purely of 'form over substance'. The considerations that are material to the determination of the planning application in this case are equally relevant to the determination of the markets licence application, and in terms of the relative merits of the applications the distinction that the Council appears to seek to draw between the two separate regimes is entirely illusory.

2) *No representations received by the Council's Planning Section on behalf of my clients*

This is hardly surprising, given that the application is for the alteration of conditions (10 in all) attached to the existing planning permission for the Walkers Stadium to allow a number of additional uses of the Stadium of which Sunday/Bank holiday markets is but one. The simple fact of the matter is that my clients were not informed of the application and cannot reasonably be taken to have known – given the description of the application – of its implications. Had they been aware of the nature of the application they would undoubtedly have made representations, and given that planning permission has not yet been issued, it would be right in any event to remind you that insofar as the representations that have now been (and are hereby) made on their behalf raise new material planning considerations, the planning committee are obliged to take them into account notwithstanding the resolution to approve the application (see further below).

PARTNERS: Kevin Sumner Ltd (Co No 04960853), John Edmond Ltd (Co No 04960000), Moredun Thomson Ltd (Co No 04960097)
Nicholas Robinson Ltd (Co No 04960015), Simon Stanion Ltd (Co No 04960084), Louise Mee Ltd (Co No 04964164)
CONSULTANT: Peter Marron Ltd (Co No 04960803)
ASSOCIATES: Philip Partridge (Legal Executive), Emma Tattersoll, Justin Price-Jones
PRINCIPAL TOWN PLANNER: David Prichard

The partners are corporate partners wholly owned by solicitors and the firm is regulated by the Solicitors Regulation Authority, SRA No 304531. Lexcel approved.

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- 3) Noted
- 4) Noted, but not accepted.
- 5) Noted
- 6) As I again said at the meeting on Tuesday, with respect to the Director of Planning and Economic Development, his views upon the matter, as set out in your letter and below, are, for the following reasons, plainly wrong:

- *The national, regional and local policy objectives of promoting and enhancing the vitality and viability of existing centres, retaining and enhancing existing markets and, where appropriate, reintroducing and creating new ones are being supported.*

It is frankly a nonsense to suggest that facilitating the creation of a new market in an 'out-of-centre' location is in line with national, regional and local policy objectives of promoting and enhancing the vitality and viability of existing centres.

So that we may be clear about what national planning policy for town centres (PPS6) actually says about this, paragraph 2.27 of PPS6 provides:

"Markets

2.27 Street and covered markets (including farmers' markets) can make a valuable contribution to local choice and diversity in shopping **as well as the vitality of town centres** and to the rural economy. **As an integral part of the vision for their town centres**, local authorities should seek to retain and enhance existing markets and, where appropriate, re-introduce or create new ones. Local authorities should ensure that their markets remain attractive and competitive by investing in their improvement"¹.

It is important to remember that the above guidance is given in the overall context of a planning policy statement which has as its key objective for town centres, the promotion of their vitality and viability by:

- planning for the growth and development of existing centres; and
- promoting and enhancing existing centres, **by focusing development in such centres** and
- encouraging a wide range of services in a good environment, accessible to all".

(paragraph 1.3)

and in the context of development control decisions:

"In selecting sites, **all options in the centre should be thoroughly assessed** before less central sites are considered".

(paragraph 3.14)

¹ All emphasises herein have been added

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The only sensible way to interpret paragraph 2.27 of PPS6, therefore, is that the retention, enhancement, re-introduction or creation of new markets is to be encouraged in town centres where they can make a valuable contribution to their vitality and local choice and diversity in shopping.

In the light of the above, perhaps the Director could please explain further, and in what way, the release of an out-of-centre site for use as a market supports this policy.

- *Two separate control/management regimes exist to help deliver these policy objectives, the planning regime and the market licence regime through the Rival Markets Policy.*

I have already explained why I consider the distinction drawn between the two schemes to be entirely illusory.

- *The Rival Markets Policy provides the basis for the Council to consider new market proposals and their potential impact on the Council's markets. The Council's approach therefore is to focus on protecting the city centre market by the proposed special conditions to be included on any markets licence granted.*

I resisted the temptation on Tuesday to debate with the Forum the merits or otherwise of the Council's Rival Markets Policy, however it is of particular note that nowhere in the Policy is there in fact any mention of potential impact on the Council's markets. Indeed, paragraph 2.2 of the Policy seems to suggest that it has a different purpose altogether i.e.

"The licensing policy enables Leicester City Council to regulate markets within its radius to ensure that proposed markets do not become a nuisance to residents, neighbouring businesses and are operated in an appropriate manner"

Neither is impact among the 'REGULAR MARKETS CRITERIA' in paragraph 9 of the Policy. In particular, paragraph 9.2 which suggests that *"Regular markets may be permitted with no restriction on size of market, goods sold or occasions held"* is unqualified by any consideration of impact, and an applicant is not required to provide any documentation, statement or evidence relating to impact by virtue of paragraph 9.5.

It is therefore difficult, with respect, to discern from the Rival Markets Policy, that it is aimed at assessing potential impact on the Council's markets at all. Indeed, if this is the real purpose behind the Policy then why does it not expressly say so?

- *The impact of the proposed market on the city centre market and related retail function did not feature in the planning report to Committee because this was not considered relevant to the planning application based on available policy guidance.*

For the reasons I set out below, the planning report was fundamentally flawed in not considering impact (or indeed other relevant retail planning issues):

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- *The Council's interpretation of PPS 6 is that these provisions cannot effectively be applied to this market proposal principally as:*
 - *The assessment of retail proposals in PPS 6 (chapter 3) is concerned with retail "development" (eg. supermarkets, superstores, retail parks, etc). Importantly, markets are not listed in Annex A, Table 3, as a "type of development".*

This is an extremely surprising response, as it appears, with respect, either to demonstrate a lack a basic understanding of what, as a matter of law, "development" actually means, or it completely ignores what PPS6 itself says as regards the types of proposals relating to town centre uses to which the development control policies set out in Chapter 3 of the PPS apply.

If the market proposal amounts to the making of a material change in the use of the Walkers Stadium, then it is, of course, "development" by virtue of Section 55(1) Town and Country Planning Act 1990. Whilst I note, from the draft planning permission that the Council appears to consider that the use of the Stadium for the holding of regular markets could be sufficiently controlled by condition (proposed Condition 16) to ensure that it remained 'ancillary' to the D2 use, it appears to me that as a matter of fact and degree the regular market use would be more than ancillary and would in fact be a primary use in its own right. If there was any doubt, however, that this was so and that "development" was involved, PPS6 itself puts the matter of its relevance to the determination of the planning application in this case beyond doubt in any event i.e.

"This Chapter sets out the considerations which should be taken into account by local planning authorities in determining planning applications for all proposals relating to main town centre uses for:

- ...applications to vary or remove existing planning conditions, which would have the effect of creating additional floorspace (e.g. mezzanine floors) or changing the range of goods sold, thereby changing the scale and/or character of the development"
- (paragraph 3.1)

There can be no doubt that even if the market proposal would not comprise "development" (which is in any event, for the reason set out above, not accepted), it would involve the creation of additional retail floorspace and change the range of goods that could be sold at the Stadium, thereby changing the scale and/or character of the development. Axiomatically the development control policies in PPS6 are clearly material to the determination of the application. The fact that markets are not listed in Annex A, Table 3, as a "type of development" is, with respect, nothing to the point.

- *References to retail "development" in the PPS are also linked to proposed and existing floor space considerations. These are clearly attributable to built development types and not markets where this would be extremely difficult to apply because of their very flexible nature.*

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As the matter is in any event settled by paragraph 3.1 of PPS6 (above) I need comment no further on this.

- *In terms of retail impact (paragraph 3.23), assessments are required for all retail and leisure developments over 2,500 square metres gross floor space (where the proposal relates to a larger centre). A crude assessment of the overall apron on which the proposal would take place indicates it would not exceed this threshold.*

This is, with respect, simply wrong. Paragraph 3.20 makes it abundantly clear that:

“Impact assessments should be undertaken for **any** application for a main town centre use which would be in an edge-of-centre or out-of-centre location and which is not in accordance with an up-to-date development plan strategy...”

What paragraph 3.23 does is simply to qualify the **level of detail and type of evidence and analysis** that should be required i.e. that it should be proportionate to the scale and nature of the proposal. Thus detailed impact assessments (which address the issues in Paragraph 3.22) are only required for retail and leisure developments over 2,500 square metres gross floorspace, but they may occasionally be necessary for smaller developments.

Thus the fact that the proposal would not exceed 2,500 square metres floorspace does not mean that impact assessment is not required, it merely informs the level of detail and type of evidence and analysis required – although in this case there may well be an argument for requiring a full retail impact assessment in any event.

Self-evidently, no impact assessment was undertaken in this case (or even considered by the Council as necessary).

- *Markets are provided with their own specific section within the PPS unlike any other form of retail provision suggesting such proposals are being treated differently to built retail development. Paragraph 2.27 indicates that markets can make a valuable contribution to local choice, diversity and vitality of town centres and that local authorities should consider the retention and enhancement of markets and, where appropriate, the reintroduction of new ones as an integral part of their visions for town centres; also that local authorities should ensure markets remain attractive through investment in improvement. This paragraph does not suggest any formal means to assess the impact of proposals and is related more to visions and investment decisions of local authorities.*

This is, with respect, simply a bad point. The fact that markets are expressly referred to in PPS6 is, perhaps, the clearest indication possible (if indeed such is required) that the policies in the PPS are intended to apply to them. If it was intended that the development control policies in the PPS (including impact assessment) should not apply to markets then it would have expressly said so.

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- *Emerging PPS 4 reflects the contents of PPS 6 in relation to retail impact and markets.*

Noted and agreed.

The implications for the Council of not having taken the development control policies in PPS6 into consideration are, of course, profound. In addition to not having assessed impact, the Council have not required the applicant to demonstrate need, that the market is of an appropriate scale, and that it could not in any event be accommodated on a more centrally located site (perhaps even the market square itself). Axiomatically any planning permission issued without having regard to these material considerations would be fundamentally flawed and susceptible to challenge.

More worryingly, perhaps, the applicant's Business Plan (August 2008) submitted with the Rival Markets Application appears to suggest (paragraph 6):

"Leicester City Council has identified a need for a Sunday market and chose Walkers Stadium as the 'ideal venue'

You will, I am sure, appreciate that it would be a matter of considerable concern to my clients if a 'need' for a Sunday market had been identified by the Council - and even more so that the Walkers Stadium would be the 'ideal venue' for such a market - without any consultation having taken place, and it is of course a matter of record there has been no such consultation with the Market Forum in any event. This is a matter which clearly requires explanation because if the applicant's above statement is correct then it raises issues of propriety, and if it is wrong, questions as to why this was not taken up by the Council with the applicants at the time.

Either way, my clients are not aware of any study that has been undertaken by the Council to support the identification of a 'need' for a Sunday Market, or, in the event that such a need was identified, that the Walkers Stadium would be the 'ideal venue' for the same. If such a study, however, has been undertaken then could I please be provided with a copy of the same as soon as possible.

One final point on this issue, however, needs to be made. It is particularly surprising that the Council should choose to deny, when challenged, that PPS6 is relevant to the determination of the planning application, when its relevance was clearly acknowledged by the Council in the context of the proposed imposition of planning conditions. In this regard you may wish to consider proposed condition 16 on the draft planning permission which provides:

"2) Notwithstanding condition 15, the stadium car park may be used for car boot sales or public markets on Sundays or Bank Holidays as permitted by condition 13-4 of this planning permission. The restriction to Class D2 does not apply to such events. (To ensure that the amount of retailing space is compatible with its ancillary function, and does not form a separate retail element in addition to that already approved elsewhere in the development **and would thus be detrimental to the vitality and viability of the City Centre and these other shopping**

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areas, contrary to local and central government policies relating to out-of-centre retail development...)

This apparent inconsistency, with respect, also requires explanation, for as matters stand the Council's present denial of the relevance of PPS6 in the face of its clear application in proposing to impose the above condition, appears to be disingenuous.

I should also, perhaps, repeat the concern I expressed at the meeting on Tuesday when Andrew Smith admitted that he *'had no idea of the range of goods that were intended to be sold at the proposed market'*. As Councillor Naylor rightly observed, how can the Council possibly consider itself competent to determine either application, particularly in terms of potential impact on the Council's markets, if it does not even know the range of goods that are intended to be sold? I would have thought, with respect, that this was one of the first questions that ought to have been (and now should be) asked before considering the merits of either application².

In the circumstances, it must be patently evident that the resolution of the planning committee to grant planning permission should be re-visited. Indeed, in the light of material planning considerations that were clearly not before the planning committee when it resolved to grant planning permission, it must do so (see *R (on the application of Kides) v South Cambridgeshire District Council and others* [2002] EWCA Civ 1370).

In conclusion, whilst thanking the Council for the opportunity to respond to these issues on behalf of the market traders, both in writing and at the Market Forum meeting on Tuesday, I strongly urge the Council to now carefully consider its position in the light of all of the representations that have been submitted, and in particular the issues raised in this letter, which reveal both serious flaws in the decision making process to-date and potential issues of propriety in the overall way that the matter has been handled by the Council. Given that neither planning permission nor a rival markets licence has yet been issued, however, there is still time for the Council to remedy the situation without my clients having to seek formal redress.

In the light of all of the above I submit on behalf of the market traders who I represent, that both the planning application and rival markets licence application should be refused. It follows that if the Council were to maintain its current position in relation to these matters, the consequences would be sadly inevitable.

Yours sincerely



SIMON STANION
simonstanion@marrons.net

² As the Council would, of course, have the power (where appropriate) to limit by condition the range of goods sold – see PPS6 paragraph 3.31