

Wyre Forest District Council

Record of a Council Decision delegated to be made by an Officer

This includes a record of an Executive Decision made by an officer under Regulation 13, Part 4 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

Item decided: To license Kidderminster Town Council to hold a market in the pedestrianised area of Exchange Square, Vicar Street and High Street, Kidderminster, during the period 1 October 2022 to 30 September 2025.

The licence will provide important parameters and limitations, broadly to reflect arrangements that have operated for many years but also providing some additional flexibility for the Town Council. These are:

- market stalls not to be arranged in any way that causes a nuisance or obstruction to the shop fronts;
- stalls to be open for minimum hours of 8.30am to 4.30pm and to be removed by 7pm (although with flexibility for the Town Council to hold evening markets where stalls have to be removed by 10pm on no more than six occasions in a year);
- Town Council to make arrangements to clear away rubbish at the end of every day;
- the ability to hold markets on Thursday and Saturday each week and a maximum of three markets in each period of a week, other than in December when markets may be held on any day of the week.

In addition the Town Council will be responsible for obtaining any other consents or licences that may be required, including in respect of highways matters and liquor licensing where alcohol is to be sold from stalls.

The District Council will reserve the right to organise or to issue licences for other markets in the pedestrianised area but only on days and at times that do not coincide with any market organised by the Town Council, and subject to provision of at least one month's notice to the Town Council.

Officer who has taken the decision	Ian Miller, Chief Executive
Date of the decision	24 February 2022
Reason for the decision/alternatives considered	<p>The background to markets in Kidderminster is set out in the attached note.</p> <p>The option of WFDC continuing to procure the market operator was considered and discounted. While WFDC has historically received a modest income from the market operator under the contract (£15k/year), it is considered that licensing the Town Council to hold a market better fits with</p>

	<p>the Council’s localism strategy; mimics the arrangements already made in Bewdley; and reflects the growing range of responsibilities of the Town Council. It also better reflects the reduced capacity in WFDC, as it will avoid the need for WFDC to undertake a procurement exercise, draw up and enter a contract with the operator and liaise with the operator during the contract period. Otherwise, the terms of any contract with an operator would be a matter for the Town Council.</p> <p>Recognising that the redevelopment of the Bullring area is expected to be undertaken within the next 3 years or so, the license is for a period of 3 years in order to allow alternative arrangements to be considered for 2025 onwards.</p>
<p>Date and source of Delegated Decision (if appropriate)</p>	<p>The scheme of delegation in section 4 of the Constitution provides members of Corporate Leadership Team with “full powers to act in all matters within their area of responsibility. This delegation includes responsibility for all day to day management and operational decisions, and taking action under statutory provisions relevant to their areas of responsibility including powers of enforcement; but is subject to any specified exclusions or limitations.” (emphasis added). There are not believed to be relevant exclusions or limitations in this case.</p> <p>The arrangements in Bewdley, where the Town Council oversees the provision of the Sunday market, were dealt with by officers and there was no formal decision taken by Cabinet.</p>
<p>Council/Cabinet member consulted – if applicable</p>	<p>Cllr Helen Dyke, Leader of the Council</p>
<p>Any interest declared by the Consultee or officer</p>	<p>Cabinet member – member of Kidderminster Town Council Officer – None</p>

Background – markets in Kidderminster town centre

1 In August 2021, the previous market operator, EG Skett, notified the Council that it was ceasing trading. The contract had been awarded to them in April 2016 following a competitive tendering exercise; the five year initial term ended in April 2021 and the contract entered an ‘option period’ which allowed the contractor to terminate the contract by giving notice. Following the notification from EG Skett, the Council opened a dialogue with LSD Promotions to provide 12 months of interim operation and the then Corporate Director: Economic Place & Prosperity made arrangements to agree an exception to the Council’s Contract Procedure Rules to facilitate such an arrangement. It was also agreed that the Council open a dialogue with Kidderminster Town Council (KTC) as a prospective partner with a view to arrangements being put in place to enable them to procure and oversee the market “under a delegation from the Council”.

2 WFDC granted LSD Promotions a 12 month licence from October 2021 for the market operation. KTC is keen to take over the market operation from October 2022 and intends to go out to tender in summer 2022 to procure the next operator. The decision to license KTC to hold markets in certain streets in the centre of the town is required in order to authorise KTC to take over the organisation of markets which has been done for many years by WFDC, under historic charter powers that it inherited in 1974.

3 The Government has recently amended legislation to provide a permanent permitted development right for councils to use land for and erect moveable structures for markets, under class BA. The Town Council therefore does not require any planning permission for holding a market.

[F317 *Class BA - holding of a market by or on behalf of a local authority*

F317 Sch. 2 Pt. 12 Class BA inserted (25.6.2020) by *The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020* (S.I. 2020/632), regs. 1(3), **21**

Permitted development

BA. *The use of any land for the purposes of holding a market by or on behalf of a local authority and the provision on the land of any moveable structure for the permitted use* **F318**

F318 Words in Sch. 2 Pt. 12 Class BA para. BA omitted (11.1.2022) by virtue of *The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 3) Order 2021* (S.I. 2021/1464), arts. 1(2)(c), **6(2)**

Development not permitted

BA.1 Development is not permitted by Class BA **[F319** if the land—

(a) is, or is within, a site of special scientific interest; or

(b) is, or contains, a scheduled monument. **]]**

F319 Words in Sch. 2 Pt. 12 Class BA para. BA.1 substituted (11.1.2022) by *The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 3) Order 2021* (S.I. 2021/1464), arts. 1(2)(c), **6(3)**

Interpretation of Part 12

C. For the purposes of Part 12, “local authority” includes a parish council.

[The Town and Country Planning \(General Permitted Development\) \(England\) Order 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1980/66/section/115B)

4 The market is held on pedestrianised highway that is not in the ownership of WFDC and therefore no permission is required from WFDC for use of the land for a market. This may however require the consent of the county council under section 115B of the Highways Act 1980 to place objects and structures on the highway etc. and may also require temporary road closure orders (just as Bewdley Town Council has to secure such closures for the markets that it operates).

<https://www.legislation.gov.uk/ukpga/1980/66/section/115B>

WFDC's powers to regulate markets

5 The powers in respect of markets, now exercised by WFDC, were originally set out in a charter of Henry I which granted a barony to "Manser Byssett" (more commonly known as Manasser Biset) and lays out, among other things, the tolls to be paid on selling goods at fairs, markets etc. These historic powers were confirmed in a charter by Charles I in 1636, which vested powers in the Bailiff and Burgesses of the Borough of Kidderminster and their successors. This includes a grant of "the manors, messuages, lands, tenements, fairs, holidays and markets, which anciently they held and enjoyed for corn, grain, cattle and animals and all other things together with tolls, tollages, customs, stallage, pickage and other emoluments to the same fairs, holidays and markets". The 1636 charter goes on to provide that "they...may be able to and can have, hold and enjoy for ever all markets, fairs, tolls, liberties, free customs, privileges and authorities aforesaid".

6 The effect of the charters, and the powers under them which have been discharged by local government bodies since 1636, is that the Council has sole rights to hold and/or grant permission to hold markets in the District, an area that covers up to 6 2/3 miles from the boundary of Kidderminster. WFDC has systems in place to grant licences for markets, car boot sales etc. although few applications are received. Generally, therefore, the only use made of the powers under the charters are by WFDC itself as it has the right to hold markets and receive rents/fees. For clarity, the license to KTC will be limited both spatially (i.e. within a specified geographic area) and temporally (so that markets cannot be held seven days a week throughout the year, as this would be considered potentially disadvantage some retail shops in the town centre). If KTC or anyone else wishes to hold markets in other areas, or at times inconsistent with the licence, WFDC's consent would still be required.