SUMMARY

The council operates a policy of permitting car boot sales organised by, or to raise funds for, charities and other recognised voluntary organisations.

An application has been received from Tesco Stores Ltd for a Car Boot Sale on 1 April 2018 with pitch letting fees being donated to charity. The application further requests that a single hot food trader be permitted at the event with a portion of the trader’s takings being donated to the charities nominated by Tesco.

Tesco Stores Ltd has traditionally held a car boot sale on Easter Sunday each year. Following the car boot sales in 2016 and 2017 a single complaint was received in respect of each sale. The complaints being that commercial traders were permitted to operate at the sale.

By virtue of the Local Authorities (Functions & Responsibilities) (England) Regulations 2000 (as amended) matters relating to car boot sales are an executive function; however applications are usually determined under the officer scheme of delegation.

Cabinet is requested to consider the application submitted by Tesco Stores Ltd and is requested to resolve that permission for the sale be approved, including permitting a single hot food trader, as outlined in the recommendations to this report.
RECOMMENDATIONS

1. Grant permission for a car boot sale at Tesco car park on 1 April 2018.

2. Append the actions offered by the organiser to the permission to ensure compliance with the car boot sale policy. (Principal Licensing & Land Charges Officer to formulate suitable conditions from the actions offered).

3. Require the Principal Licensing & Land Charges Officer to advise the organiser, in writing, that, should failure to comply with the standard and additional conditions be evidenced, it may lead to any future application being referred to Cabinet.

4. Approve the request for one hot food vendor to trade at the car boot sale at this and future annual sales organised by Tesco Stores Ltd, subject to the terms outlined in the application for the 2018 event. I.e. that the trader donates a portion of their takings to the nominated charity.

REASONS FOR RECOMMENDATIONS

1. No proof of damage to the Charter Market by the annual car boot sale organised by Tesco Stores Ltd has been evidenced.

2. The organiser has outlined additional controls to support compliance with the car boot sale conditions.

3. Tesco receives no commercial gain from the event; proceeds from pitch letting fees are donated to charity.

ALTERNATIVES CONSIDERED

1. Refuse permission for the car boot sale at Tesco on 1 April 2018.

2. Approve permission for the car boot sale at Tesco on 1 April 2018 but refuse permission for the hot food trader at the event.
REPORT

1. INTRODUCTION

1.1 By Royal Charter of Henry VIII granted in 1545-46 and ratified by Edward VI in 1546-47 the Mayor of Boston was granted a market franchise. The effect of the charter was to permit a market on a Wednesday and a Saturday (The Charter Market). The charter gave the market owner, being the council, a right to protection from disturbance by a rival market established within the distance of \(6^{2/3}\) miles of the Charter Market.

1.2 A council, as market owner, has a right of action against anyone who disturbs the right to a market, whether by interfering with the running of the market or by setting up a rival market. The market owner is entitled to damages where loss can be proved and to an injunction in an appropriate case.

1.3 A car boot sale is classed as a market; a market being defined as a concourse of buyers and sellers.

1.4 To obtain an injunction the Council would need to prove actual damage. If no damage can be shown an injunction cannot be obtained against a car boot sale. If the car boot is held on the same day as the Charter Market there is an irrebuttable presumption of damage. However, if the market is held on a different day to the Charter Market proof of actual damage would be required for an injunction to be granted. Proof of damage would require getting evidence of traders moving from the market to the car boot sale. If the car boot sale sells different goods to that sold on the market there can never be an infringement of the franchise.

1.5 In the 1980s the council became aware of a growing number of car boot sales, sometimes being attended by commercial traders. To protect the Charter Market from damage, whilst still allowing a limited number of sales, the council as Markets Authority approved a policy permitting car boot sales organised by, or to raise funds for, charities and other recognised voluntary organisations. This scheme is a local policy; it is not governed by any statute. A number of conditions to be complied with developed and the current conditions are provided below:

- Any space letting fee goes wholly to charity or other recognised voluntary organisations;
- Sales can only be from cars and if stalls or tables are used they must have been carried in the boot of that car to the sale;
- Not more than four car boot sales shall be held at a particular site in any one year;
- Only private individuals shall be permitted to sell surplus household articles. No commercial traders will be allowed; and
• No car boot sales shall be held on a Wednesday or Saturday within 6²/₃ miles of Boston town centre.

1.6 More recently this Car Boot Sale policy has been incorporated into the Markets Policy which has from time to time been reviewed, the most recent revision being April 2017.

1.7 By virtue of the Local Authorities (Functions & Responsibilities) (England) Regulations 2000 (as amended) matters relating to car boot sales are an executive function.

1.8 Where there is no cause for concern, permission for a car boot sale would be granted by officers using delegated authority. Where there is cause to give an application further scrutiny, for example where complaints have been received or there has been a history of failure to comply with the conditions, the application is referred to Cabinet for consideration.

2. TESCO CAR BOOT SALES HISTORY

2.1 Tesco has, for many years (thought to be at least 15), held a car boot sale on Easter Sunday each year. The car boot sale is held in the car park adjacent to the store on Westbridge Road, Wyberton, Boston.

2.2 Following the car boot sale on 27 March 2016, an isolated complaint was received alleging that commercial traders had been present at the car boot sale.

2.3 Prior to the car boot sale on 16 April 2017, officers noted that signs had been posted in the Tesco store advising that commercial traders would not be permitted at the event.

2.4 Following the car boot sale in 2017 a further isolated complaint was received alleging that present at the sale were “a number of what can only be described as delivery type vans, of the Transit size and type in attendance and were clearly being traded from alongside at least two hot food trade trailers”.

2.5 As far as officers are aware neither complaint was lodged by a market trader.

2.6 The organiser of the Tesco Car Boot Sales was advised that should an application be received for an event in 2018, due to the previous complaints being received, the matter would be referred to Cabinet for consideration.

3. TESCO CAR BOOT SALE APPLICATION

3.1 On 22 January 2018 an application was received for a car boot sale on Easter Sunday – 1 April 2018. The pitch letting fees to be donated to
Diabetes UK and the British Heart Foundation. In addition to requesting permission to hold a car boot sale, the organiser also requested that consideration be given to allowing a single mobile hot food trader to attend the event. The application states that the trader has attended the event for the past 15 years and donates towards the charity. The donations in the past have ranged from £70 - £150. A copy of the application is attached at Appendix A.

3.2 Following receipt of the application the organiser was requested to provide information on what action they intended to take to ensure compliance with the car boot sale conditions should the permission be granted. The response provided by the organiser is provided at Appendix B.

3.3 Cabinet is requested to determine the application for the car boot sale along with the additional request for a single mobile hot food vendor to be permitted to trade. Allowing a single mobile hot food vendor would be a departure from policy. If the Cabinet is minded to depart from the policy, valid reasons for this departure should be given.

3.4 In determining the application, Cabinet is requested to consider the following:

- The event is provided for charitable purposes, Tesco Stores Limited do not profit from this event.
- The applicant has provided information on how they intend to secure compliance with the car boot sale conditions should permission be granted.
- Where another market (car boot sale) is held on the same day as the Charter Market there is an irrebuttable presumption of damage. However where a market is held on a different day, for example on a Sunday as is the case with this application, proof of damage is required. A market selling different goods can never be an infringement of the franchise.
- There is no evidence to suggest that allowing a single mobile food trader would cause damage to the Charter Market.

4. CONCLUSION

4.1 There have been two complaints (one per year in 2016 and 2017) alleging that car boot sales at Tesco have not been compliant with car boot sale conditions.

4.2 The organiser has provided information to demonstrate how they intend to ensure that this event will be compliant with the conditions should permission be granted.

4.3 Officers are of the view that although complaints have been made, no proof of damage to the Charter Market has been evidenced; officers therefore recommend that permission for a car boot sale at Tesco on 1 April 2018 be granted. It is further recommended that the actions offered by the organiser to
ensure compliance with the car boot sale policy be appended to the permission and the organiser be issued with advice that failure to comply with the standard and additional conditions may lead to any future application being referred to Cabinet for consideration.

4.4 With respect to the additional request that a single mobile food trader be permitted, officers are of the view that as the trader donates a portion of their takings to the nominated charity this would be valid grounds to consider a departure from policy. Furthermore, officers are of the view that a single mobile food trader would not cause damage to the Charter Market. Officers therefore recommend Cabinet permit this trader at this and future annual sales organised by Tesco, subject to the terms outlined in the application for the 2018 event.

FINANCIAL IMPLICATIONS

None.

LEGAL IMPLICATIONS

These are covered at section 1 of the report.

Additionally, the council has previously received counsel’s opinion on this matter, if Cabinet wish to receive information pertaining to this advice, due to legal privilege attached to the advice, Cabinet must consider moving into exempt session.

ANY OTHER IMPLICATIONS

None

CONSULTATION

CMT
Portfolio Holder
APPENDICES

Appendices are listed below and attached to the back of the report:

- APPENDIX A  Car Boot Sale Application – Tesco Stores Ltd
- APPENDIX B  Response from Car Boot Sale Organiser

BACKGROUND PAPERS

Background papers used in the production of this report are listed below:

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CHRONOLOGICAL HISTORY OF THIS REPORT

A report on this item has not been previously considered by a Council body.