

A photograph of a woman with long brown hair, wearing a plaid shirt, looking down at a basket of lemons at a market stall. In the background, other people and market stalls are visible under a white canopy with red and white striped trim. The scene is brightly lit, suggesting an outdoor market.

# NABMA

the voice of markets

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## LOCAL COUNCILS MARKETS MANUAL

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Purple Broccoli  
50p each

Purple Cauliflower  
80p each



# INTRODUCTION

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**Many principal councils are devolving market functions and are now working in partnership with the first tier of governance. As a result, more local town, parish and community councils are taking on the management of their local market and arranging additional speciality events to help support the economic and tourism recovery of their local communities and town centres, particularly coming out of Covid 19.**

Markets are regarded to be in the top influencing factors to help create vibrant and vital centres and are important assets offering start up business opportunities, encouraging local shopping and assisting food provenance.

This manual, presented by the National Association of British Market Authorities (NABMA) in partnership with the Society of Local Council Clerks (SLCC) looks at the historic legal framework of markets. It reflects on the powers available to local councils, the policies to have in place and management arrangements and provides some Case Studies of successful markets delivered by local councils.



David Preston, NABMA Chief Executive

# WHAT IS A MARKET?

**The basic definition of a market is a concourse of buyers and sellers. This definition was formally established over a hundred and twenty years ago (1) and is still regarded as the essence of what constitutes a market.**

Many different activities are regarded as falling within this simple definition. Car boot sales, for example, are held to be a market event under a High Court ruling in 1991 (2). Other events such as antique fairs, speciality food events and continental attractions can also fall within the definition of a market.

In terms of the minimum number of stalls or pitches to constitute a market, it is necessary to refer to Section 37(6) of the Local Government (Miscellaneous Provisions) Act 1982 which states that a concourse of buyers and sellers comprises not less than five stalls etc.

Over the years the following have been regarded as relevant tests in determining whether an event constitutes a market:

- a) can anyone come and buy and sell?
- b) is there an operator who is responsible for management of the event?
- c) are goods sold at the event normally found in markets generally?
- d) are there a variety of sellers?
- e) what degree of security of tenure is offered to traders

It is important to have regard to the definition of a market in considering the use and value of market powers which are dealt with subsequently in this publication.

- (1) Downshire (Marquis) v O' Brien (1887)
- (2) Newcastle City Council v Noble (1990)



# MARKET POWERS

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**The right to operate a market can arise in different ways. Local Councils can operate markets under one of the following:**

- a) Royal Charter or Letters Patent
- b) Prescription or Immemorial User and Lost Modern Grant
- c) Part III of the Food Act 1984
- d) Local custom

Many Royal Charters or Letters Patent go back hundreds of years, but often their relevance or significance are unknown because the details are lost in antiquity. In such a situation, NABMA advises that the Charter or Letters Patent should be maintained to provide an historical background but, in order to provide an effective legal framework for the operation of the market, reliance should also be placed on Part III of the Food Act 1984.

Part III of the Food Act 1984 is the modern legislative framework for operating markets and all Local Councils are entitled to avail themselves of the powers included in Part III. This enables Local Councils to establish a market ( Section 50 ), fix days and hours when the market will operate ( Section 52 ), determine charges (Section 53 ) and also provides a miscellany of other provisions regarding the management and operation of the market.

Sometimes there is no official record of when the market was set up but there may be evidence through local historical documents or other reference material that a market has been in existence for a long time. In such circumstances, the market might well have gained legal status through what is called prescription or immemorial use. Where this arises, it is also worthwhile to supplement the status of the market with the provisions of Part 111 as described already.

A lost modern grant arises in a situation where there is a substantial belief that market rights were granted at some time in the past and, again, this may be evidenced by historical background information where the actual documentation granting the rights to the market cannot be found. In this situation the same approach with regard to Part 111 is again recommended.

Whatever powers a Local Council relies on to run its market it is important that a formal statement exists, normally evidenced by a resolution of the Council, setting out the Local Council's legal powers. This is vital in dealing with any challenge to the holding of the market. This statement should be reviewed at periodic intervals, perhaps every two or three years, to ensure that it is up to date. Additionally, the market powers can be used as a basis for a market licensing policy which every holder of market powers is allowed to operate.

# MARKETS LICENSING POLICY

**A Local Council enjoying the powers to operate a market is entitled to create a market licensing policy enabling it to license and control other market events within a six and two-third miles radius of its own market.**

This is one of the most important benefits of enjoying market powers and has been used by many local authorities for many years to raise income or more recently to maintain the number and quality of market events held in their area.

The six and two-third miles rule goes back to the Middle Ages and it has been challenged unsuccessfully on many occasions as anti-competitive. However, in recent years there have been important changes introduced in the way that a market licensing policy must be administered. Following the emergence of the European Services Directive in 2006 and a High Court case in 2003 (1) it is now important for a Local Council

wanting to administer a market licensing arrangement to introduce a policy document setting out the basis on which applications for a market event will be considered and the criteria against which a decision will be made.

Any Local Council wanting to set up a market licensing system should approach NABMA for advice on how to proceed. NABMA has draft documents that can be adapted for the use of any Local Council.

In a situation where a Local Council operates alongside District or Unitary Council there may be an overlap in the exercise of a market licensing policy should the relevant District or Unitary Councils have established such a policy themselves. In such circumstances, consultation with the relevant District or Unitary Councils will be necessary but this should not deter Local Councils from embracing a market licensing policy.

(1) Leeds City Council v Watkins (2003)



# CONFLICTING MARKET POWERS

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**Many Local Councils operate in areas where a District or Unitary Council is also operating a market. In this respect it is important to assess who has the greater claim to running a market.**

The various market powers are set out in Section 3 of this publication, are relevant to all local authorities entitled to operate markets, and an assessment of these powers is important in determining the approach that should be followed by Local Councils.

It was thought for some time that the powers granted under Royal Charter and Letters Patent were the most important and enjoyed greater status but in 1982 the High Court decided that markets operating under statutory powers enjoyed largely the same markets rights protection (1).

Where a Local Council seeks to set up a market in an area where a District or Unitary Council have the benefit of a Royal Charter or Letters Patent it is likely that the approval of the District or Unitary Council will be required. However, given the comments made in Section 4 regarding a markets licensing system then the Local Council would be entitled to make application via this system in respect of its own market proposal. It would be necessary for the District or Unitary Council to go through a formal application process and make a judgement on the application against criteria it has established. It would not be sufficient for the District or Unitary Council simply to say that because we have the benefit of a Royal Charter the Local Council is not entitled to establish

a market. This is a very important change to the legal framework.

In a situation where the District or Unitary Council operate their markets under other powers, particularly Part III of the Food Act 1984, it is likely that a Local Council enjoys equal status to the District or Unitary Council and therefore would be in a position to establish a market without the formal approval of the District or Unitary Council. However, rather than creating conflict, NABMA would hope that District, Unitary and Local Councils will work together for the betterment of the market offer in their area.

This has been evidenced for many years in Stratford upon Avon where the District Council and the Town Council have formed a partnership to deliver a markets service through a private operator. Both the District Council and the Town Council contribute to the contract and the current market offer is recognised as being one of the best in the country.

Another Local Council that is working well with its District counterpart is Forest Row who are working with Wealden District Council to deliver markets across the District Council's area. The District Council actively supports Forest Row and other Local Councils and have a designated member of staff who arranges regular meetings of all market managers enabling ideas to be exchanged and providing updates on issues affecting markets.

(1) Wakefield City Council v Box (1982)

# MARKETS MANAGEMENT

**There are an increasing number of Local Councils taking an interest in markets. This is illustrated by the large number of Local Councils that have joined NABMA in recent years.**

Management of markets can be undertaken in different ways:

- a) local authority management – many Local Councils operate their own markets.
- b) private/trader management – where the necessary expertise or resources are not available then management can be handed over to a private market operator or a trader co-operative.
- c) community management – the Local Council could be responsible for the creation of a market and then hand the day-to-day responsibility to a local community group.
- d) establishing a separate markets identity – the market could be managed by a separate entity such as a CIC.
- e) partnership – working with one or other councils or other groups can be a good way of bringing together different resources.

It is important to consider which of the various options is most suited to the local situation and where the Local Council decides to follow some form of delegated management then it is very important that the arrangements are covered by a formal agreement.

NABMA can assist with tendering arrangements and also template draft documentation relating to contract and partnership arrangements.

Some Local Councils have found themselves in a situation of having to tender for the running of a market which has previously been operated by a District or Unitary Council. In such a situation before entering into a tendering process the Local Council is urged to seek discussions with the relevant council and point out the fact that the Local Council also enjoys legal powers to operate a market. This places the Local Council in a very different position to any other potential tenderer.

Obviously if the District or Unitary Council is allowing their land to be used or providing assets for the running of the market this might merit tendering arrangements or a negotiated agreement but if all that is being offered is the right to run a market then a Local Council should point out that it does not need to be delegated such power.

Reference has been made earlier to the importance of good partnership working arrangements but there have been occasions when Local Councils have challenged their local District/Unitary Council regarding the right to operate the local market. This happened in 2014 when Bishop's Stortford Town Council lodged a Community Right to Challenge with East Herts District Council for the right to operate the market in the town. The Town Council was successful in its challenge but since that date it has worked successfully with the District Council resulting in the Town Council acquiring the market rights from the District Council in 2019.

## WHAT YOU NEED TO OPERATE A MARKET

Reference has already been made to the importance of market powers. Identifying the source of your market powers is a vital first step in establishing a market. However, simply having the power to operate a market is not a sufficient basis for establishing or running a market.

Another important consideration is the approval of the landowner where the market is to be held. Sometimes this will be the Local Council itself which will make the issue much easier to deal with. However, where ownership is vested in some other organisation or person it will be necessary to enter into an agreement to hold a market. Such an agreement may have conditions regarding how the market operates.

If the market is to be operated on a street or highway it is likely to need the approval of the highway authority and a Traffic Regulation Order may also be required.

On occasions markets held on the street or highway are not operated under market powers but are operated by street trading powers. Such powers are currently held by District and Unitary Councils and if a Local Council is taking on responsibility for a market operated under street trading powers it will be necessary for the relevant District or Unitary Council to delegate responsibility for street trading as part of the contract arrangements.

One other important consideration is the need for planning permission. If the market is temporary then it is unlikely that planning permission will be required. Currently temporary markets can be held for up to twenty-eight days in a calendar year but if the market is going to be held on a regular weekly basis then planning permission will be required.

Consideration should also be given to any markets licensing system that operates in the area of the Local Council. Reference to such arrangements is made in Section 4.

## MARKETS MANUAL

There are a whole host of policies and procedures that need to be put in place to operate your market. Among the most important are the following:

- a) application process
- b) trader licence setting out the terms of trading
- c) trader regulations
- d) stall allocation policy
- e) health and safety arrangements
- f) disciplinary procedures
- g) consultation arrangements
- h) waste disposal
- i) balance of trade policy

It is important that all these policies and procedures are regularly reviewed and kept up to date and traders are aware of their rights and responsibilities.

NABMA can assist Local Councils with the compilation of a Markets Manual as the members section of the NABMA website contains a comprehensive list of market policies and procedures. The documents available to members can be adapted to fit the circumstances of individual Local Councils.



# MARKET CASE STUDIES

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**While the information provided in this publication hopefully provides lots of helpful information about the essential tools of running a market there is nothing better than providing “living” examples of how Local Councils operate their markets.**

Reference has already been made to a number of Local Councils and the way that they currently operate but in the final part of this publication we highlight the work of a District Council supporting its local Local Councils, a Local Council that places markets at the centre of its regeneration and a Local Council that has greatly expanded its markets offer but we start with two Local Councils and the way they have supported local communities in the continuing covid restrictions.



## **CASE STUDY 1:**

### **SHREWSBURY**

Shrewsbury Market is a vital part of the local community and during the pandemic it has been vital in providing essential supplies to thousands of people. Not only is the Market the largest supplier of food in the town centre, open to people to shop in person, our essential traders have been working tirelessly delivering in excess of 1,000 food deliveries a week across the county. Many of these customers are vulnerable and isolating households. Many new customers have come to use Shrewsbury Market because they have been struggling to book deliveries elsewhere

“The Market is considered by so many of our customers to be a lifeline. We have been inundated with messages from people about how thankful they are that the Market has remained open during the pandemic. Traders have stepped up to serve their communities by launching home delivery services or massively expanding existing ones”.

Shrewsbury Market and many other Markets are essential to supporting a whole supply chain of small independent and often local suppliers. Markets have served their local communities since time immemorial.

## CASE STUDY 2:

### WISBECH

With a historical decline in footfall at Wisbech Market Place, the Town Council has looked to extend its market offer with new events and increased activity by re-establishing itself as a safe, clean, bustling area with seating, toilet facilities, a diverse range of goods and food for sale and easy access to car parking and bus/coach stations. A 'go to' destination rather than a stop-off for fruit and veg.

"To open this summer's series of community events is 'Food at the Market Place'. Masterchef quarter-finalist chef, Nancy Rothery, will lead in a series of monthly International Food Events, inspired by the multi-cultural population of Wisbech and surrounding locations. Languages spoken in Wisbech include Bulgarian, English, Latvian, Lithuanian, Polish, Portuguese, Punjabi, Romanian, Russian, Slovakian and Spanish, ensuring a vast array of cuisine choice. Cooking demonstrations with some history of the dish, will be followed by recipe cards the ingredients from which can be purchased from market traders and surrounding shops.

So, after the food comes the waist-line! Fitness on the Market Place will be just perfect. With local fitness guru Rachael, half an hour to stretch to easy-going rhythms will be it, but for others, the event will end with an hour of a highly energetic driving pace of aerobic dance. Free bottled water available and vouchers for taster days at a nearby gym".

Town Clerk, Terry Jordan, commented: "Events have always played an important role in bringing the community together, strengthening the community.





### *CASE STUDY 3:*

#### **OSWESTRY**

Our markets make a tremendous difference to the town and we can highlight the stark difference between market and non-market days. Market days bring vibrancy, noise and bustle and a great sense of community and engagement.

Markets are part of the town's heritage and an important part of the town's branding. We genuinely feel that there is a real sense of pride in our markets.

The Town Council is working with the Unitary Council (Shropshire) and the Business Improvement District (BID) through the Future Oswestry partnership. This is a strategic focused group and is delivering several projects, such as the High Street Heritage Action Zone programme.

The partnership is mindful that there will be a reliance, in the future, on external investment to deliver capital projects therefore we are developing a Masterplan for Oswestry. This is a collective vision for the town reached through engagement with the public and stakeholders and will also provide an investable Masterplan for the town centre. The work we have done so far has identified markets as one of Oswestry's best assets.

It is obvious that Shropshire Council understands the value that markets bring to the town. This recognition in strategic documentation is crucial and will help to realise capital investment and enable our future to be built on our heritage.

## CASE STUDY 4:

### **NEWARK ROYAL MARKET - Newark Town Council**

#### *Background*

Newark Royal Market (NRM) had previously been operated by Newark and Sherwood District Council since reorganisation of local government in 1974. (Prior to that it was the Newark Borough management all the way back to the 13th Century).

The market operates on 5 days per week plus monthly specialist markets on a Sunday.

Since 2009 the market had largely been in decline following the development of the 5th Supermarket in and around the Newark Town Centre, with a drop in occupancy from 140 stalls to 80 with incomes down from a high of £380,000 pa to some £240,000.

#### *Devolution to Newark Town Council - 2017*

Between 2010 and 2015, the District Council had to find significant savings and were also keen to explore partnership working and use of the Localism agenda. Thus in 2017, the Market along with Open Spaces management was devolved down to Newark Town Council with a finance package that mitigated the additional costs of the Town Council with a tapering mechanism for a number of years.

The Market Charter rights are still held by the District Council but within the devolution agreement, they are responsible for protecting the market rights of the Town Council market against adverse impact from any rival market within the six and two third miles. Since 2017, the market performance has held and indeed on some days has increased its incomes.

In addition to markets, the Town Council is responsible for the town cemetery, the town open spaces and parks, some town centre infrastructure, civic and town events.

Given the demise of the high street over the past 7 years, if Newark Market was to end, it is likely that would be the final death knell for Newark Town Centre. It remains Newark's jewel in the crown with possibly the most attractive Georgian Market Place in the UK.

#### *Advantages and Disadvantages of a devolved market now operated by a smaller Town Council*

##### *Advantages:*

1. Whereas with the District Council had to be mindful of its spend and emphasis across its whole district area, the Town Council can focus its energy and resources just on Newark and indeed on one market - Newark.
2. The Town Council members are closer to the market operation, are proud and protective of it and support and champion it on a regular basis.
3. Decision making is much (much!) quicker. Bureaucracy is minimal with only regular performance and development reports to the Councils Finance and General Purposes Committee.
4. Significant budgets for promotion and development are made available and management of social media is with the Market Team and not a centralised communications unit.
5. Considerations of the market are made when organising other Town Centre events.

6. The Market Manager has been given more authority and autonomy.
7. There is no organisational departmental charge and we are free to use commercial supplies of services or bring them in house, usually at a cheaper rate. This have included cleaning and waste management.
8. There is a greater financial freedom and corporately applied services inflation rates are not automatically made to market fees.
9. There is an increased PRIDE in the market; within the service, within the Council and within the town itself.

*Personal view:*

*“I have had a 46-year career in local government in various guises from Clerical Assistant to Strategic Executive Manager, from managing a Community Safety service to strategic flood risk management. The management and development of a viable Market Operation (like many council services), requires an entrepreneurial spirit and capability which at times in local government, can be snuffed out and even discouraged. The larger the organisation the greater the risk of this. Whilst checks and balances are required, it is often I feel a corporate fear of loss of control.*

*In my few years within a Town Council, I have found that the service is nearer its customer, Members are nearer the service, take a greater interest in the service and (if the market deserves it), will greatly support and champion it. The market seems a happier being, it has found its true and original home with the Town Council.”*

**Ian Harrison**  
**Newark Town Council**





## CASE STUDY 5:

### SKIPTON

Skipton Market operates on four days each week. The Market operates in a unique way with traders not only requiring an agreement with the Council but also with the individual owners of the land on which the Market is sited. This can make for a complicated process in securing the right to trade.

In recent years Monday has become a quieter Market day so the Town Council provides an incentive whereby regular attendance on a Monday triggers a full refund of the Monday fee. Traders joining the Market also get first refusal for attendance at themed events and, in particular, the annual Skipton Christmas Market which attracts a high level of visitors.

In 2015 Skipton Town Council took control, for the first time, of a large prime area of the High Street and took the opportunity to introduce a new style of stall aimed at smaller businesses. At the same time new products were introduced onto the Market such as artisan foods from local producers and locally produced craft items.

The Town Council strongly believes that the Market should support local community groups and therefore lots of opportunities are provided for groups to have stalls particularly on special event days such as the Christmas Market.

The Town Council has only fully taken over the running of the Market from the District Council relatively recently but the Council has developed a clear plan of how it sees the future of the Market and longstanding problems are being successfully addressed.

Key to the success of the Market is the extensive use of social media and this plays a key role in promoting the wide range of special events that the Town Council organises throughout the year.



# NABMA

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## NABMA THANKS

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