

Report to: Environment Panel
Regulation Committee
Cabinet

Date: 25 March 2009
8 April 2009
30 April 2009

Subject: Pavement Cafe / Trade Display Policy

Report of: Executive Director Environmental Services

Contact officer: Kevin Hargreaves 01942 404311

Purpose / summary: To consider a proposal to introduce a policy relating to the issue of pavement café or trade display licences.

Alternative options considered and reason for selecting the one recommended: Not Applicable

Recommendation / decision: That Cabinet / Panel

- Notes the contents of the report
- Adopt the Cancellation Guidance as contained within the Appendix to this report

Key Decision: This report involves a key decision within ground(s) 3.

The decision made as a result of this report will be published within **48 hours** and cannot be actioned until **seven working days** have elapsed, i.e. before 25 February 2009

This item is included in the Forward Plan.

Risks / Implications:

Financial:

As contained within the report. There are three charging bands:

- Trade Displays - £100 per annum.
- Pavement Cafes less than 10m² - £250

Staffing: per annum
 Policy: • Pavement Cafes greater than 10m² - £400 per annum
 Equal Opportunities - Has a Diversity Impact Assessment been conducted? Within existing resources
 Local Transport Plan
 Wards affected: Yes
 All

Property Implications – Does the proposal involve a reduction, addition or change to the Council’s asset base or its occupation?

No

If yes, have the property implications been agreed with the Corporate Property Officer?

Does this proposal have significant implications for the Council and the local population? No

A diversity impact assessment is not necessary at this stage, however, equality and diversity implications have been considered when producing this report.

Does this proposal involve a new policy or procedure or significant changes to an existing policy or procedure? Yes

A diversity impact assessment has been undertaken and is attached as an appendix to this report.

Has the Service Director - Borough Solicitor confirmed that the recommendations within this report are lawful and comply with the Council’s Constitution? **Yes**

Has the Service Director - Corporate Services confirmed that any expenditure referred to within this report is consistent with the Council’s budget? **Yes**

Are any of the recommendations within this report contrary to the Policy Framework of the Council? **Yes**

* delete which applicable

For Cabinet reports only :

| | |
|-------------------------------------|--|
| Categorisation of the report: | |
| | |
| Discussion leading to a decision | |
| Monitoring | |
| Sharing for corporate understanding | |

| | |
|-------------|----------|
| | |
| Discussion | |
| Decision | x |
| Information | |

Tracking/Process:

| | | | |
|---------------|---------------------|---------------|----------|
| Regulation | Consultation | Ward Members | Partners |
| 8 April 2009 | | | |
| Panel | Overview & Scrutiny | Cabinet | Council |
| 25 March 2009 | | 30 April 2009 | |

There are no Background Papers to this Report within the meaning of Section 100D of the Local Government Act 1972.

Proper Officer Martin Kimber

Date 10 March 2009

1.0 Introduction

- 1.1 There has not, previously, been any significant demand to impose controls over pavement cafes or displays of goods in front of shops throughout the borough. Such obstructions have been resolved through periodic inspections of the highway and appropriate enforcement.
- 1.2 There has been a significant increase in the number of requests made to permit the use of the adopted footway for pavement cafes and to display goods for sale. Further requests for pavement cafes have resulted since the introduction of the Health Act 2006, which introduced a smoking ban in workplaces and other public places. Some businesses would now like to offer the facility of seats and tables in the open air for the customers of a particular venue. If there is such a move to provide external amenities, it is suggested that having a licensing regime in place to provide effective control over the location and size of the proposals. Such controls will lead to the prevention of unnecessary inconvenience to the public.
- 1.3 There have also been similar requests for the provision of highway space to display shop wares (fruit and veg, flowers etc)

2.0 Proposals

- 2.1 It is not always appropriate to allow Pavement Cafés or Trade Displays due to potential obstructions arising for other highway users. It is necessary, therefore, to regulate such use and this can be achieved through the Council issuing all approved premises with consent under Section 115 of the Highways Act 1980 to place tables, chairs and goods on the highway.
- 2.2 The Traffic Group will assess each application on its individual merits and liaise with other sectors of the Council as appropriate.
- 2.3 It is proposed to set the licence fee at £100 for Trade displays, £250 for Pavement Cafes less than 10m² and £400 for Pavement Cafes greater than 10m². These figures apply to both first application and renewal. This figure is based on the estimates of the administration and enforcement time involved. This fee will be subject to annual review.
- 2.4 The information pack containing guidance notes and application form is attached to the appendix of this report.

3.0 Recommendations

- 3.1 It is recommended that the Council:
 - Notes the contents of the report
 - Adopt the Cancellation Guidance as contained within the Appendix to this report

APPENDIX

**WIGAN COUNCIL
DEPARTMENT OF ENVIRONMENTAL SERVICES**

**TRADE DISPLAYS AND PAVEMENT CAFES AND TRADE DISPLAYS
POLICY AND GUIDANCE**

Introduction

Local Centres around Wigan Borough have much to offer shoppers and residents alike and we want to assist in creating and maintaining town centre vibrancy. However, this approach needs to be balanced against public highway safety for all including in particular members of the community with visual or movement impediments. The Council and its partners aim to encourage well designed and managed opportunities to licence sections of the public highway for pavement cafes and trade displays.

In order to ensure that these areas make a positive contribution to highway amenities and to the area in question, the Council has set out a list of requirements that must be met by any licence application. The Traffic Group within the Council's Environmental Services Department will administer and enforce the licence applications.

Each proposal will be considered on its merits. Licensed areas cannot be accommodated in certain streets, due to factors such as visual impact, width restrictions, obstructions or very heavy pedestrian flows.

The overall aim of this policy is to regulate and control businesses wishing to use part of the public highway in connection with their business by way of a licensing system. The policy will be executed in a fair and consistent manner. It is subject to an application process and licence fees being paid if approved. In applying the policy, the Council will act in accordance with the standards and guidance set out in this policy. In particular, the Council will:-

- consult parties subject to regulation and enforcement by the Council about the standards it sets in undertaking this role;
- work with individuals and businesses to assist them in complying with their legal duties and obligations;
- ensure its staff are appropriately trained and apply the policy and standards professionally and consistently;
- make information about the policy and the standards widely available to the public and businesses within the Borough;

- review the policy from time to time in consultation with parties subject to its application and,
- act in accordance with the Council's Enforcement Policy as necessary.

Licences will be considered for non-permanent furniture or structures to be placed on the public highway. Structures on the highway associated with a pavement café such as, decking, smoking shelters or awnings will not be permitted.

The applicant will be expected to demonstrate that their proposals will make a positive contribution to the street scene. Only well designed proposals, which respond to the site and its surroundings (buildings and public realm) and produce a high quality result, will be considered. Simple robust designs will be preferred and excessive or elaborate detail or signage should be avoided unless clearly justified by the particular context.

Reference shall be made to the Council's Equal Opportunities and Customer Care Policies in executing this policy. Regard shall be had to the Council's Enforcement Policy in dealing with any unauthorised displays on the public highway or breaches of licence conditions.

Scope of the Policy

It is considered that the following uses would fall within the range of this document :

Pavement Café

Fruit and vegetable Stall

Bakers and confectioners

Farm Produce (Dairy Produce)

Children's Rides (Roundabouts, Bouncy Castles)

Mobile Exhibitions

Flower Stalls

Size and Layout

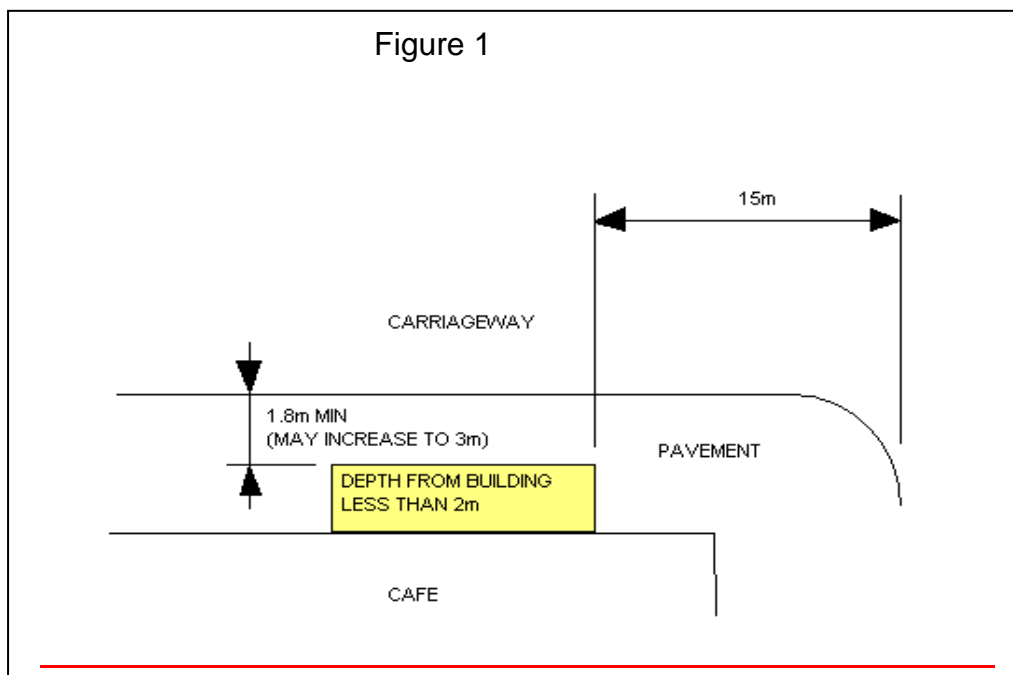
The extent of the area to be licensed will depend on the site characteristics, safety considerations and the criteria set by the council to maintain adequate highway space for both pedestrian and vehicle movement.

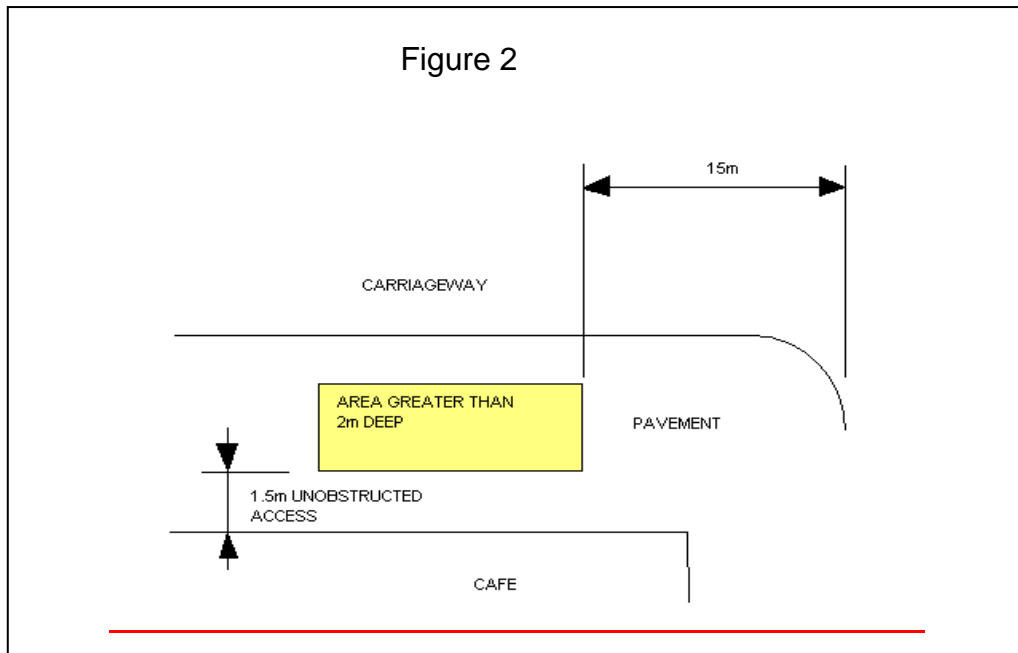
The licensed area should:

- avoid conflict with pedestrian movement;
- be confined to the frontage of its own premises.

In all cases, an absolute minimum width of 1.8m must be left between the licensed area and the kerb, and this figure may be increased to 3 metres in busier town centre.

Figure 1 indicates a licensed area projecting up to 2m from the building. In cases where the area exceeds 2m the layout should be as shown in Figure 2. Where the licensed area is adjacent to a road junction or vehicular access 15 metres should be left to allow for junction visibility as shown.





When in use the area must be required, to identify the licensed area and contain the goods (tables and chairs etc), in order to make it distinguishable to other pavement users, and to assist blind and visually impaired pedestrians. It is therefore essential that the barrier has a solid boundary (tapping rail) at around 100mm above ground level to be detected by a stick and for Pavement Cafes an additional barrier erected at a height of 800mm. The enclosure shall be removed outside the licensed period.

Additionally trade displays and pavement cafes should meet the following criteria:

- All displays must be stable and must not be more than 1 metre high.
- In all circumstances, the licensed area is the sole responsibility of the individual business and the Council will insist that third party public liability insurance is taken out with evidence being provided.
- Under no circumstances shall the proposal lead to excavations or damage of any kind to be made to the public highway.
- In no circumstances shall the proposal interfere with the visibility for traffic and pedestrians.
- Trade displays and pavement café furniture must be removed if the Council or other authorised organisation have to carry out repairs or works to the public highway (including equipment beneath the highway).

- The permitted hours will be between 8.00 am and 8.00 pm unless otherwise agreed in writing with the Council's Executive Director of Environmental Services.
- In all circumstances, tables, chairs and any other furniture in connection with a pavement café must be of good quality and design. Details should be submitted to Wigan Council with every application. All furniture must also be kept in good repair and condition.
- All barriers should be clearly visible and strike a contrast with the surrounding environment.
- All furniture or goods associated with any licensed area, should be securely fastened to ensure that they are not liable to be moved by external forces, such as the effects of the wind or from being lightly knocked.

Licence Fee Structure / Application Process

The licence application process involves both statutory and non-statutory procedures. There is a requirement to follow the guidance within these notes and on the application form, which need to be completed by all applicants.

- A pavement café licence can be applied for at any time.
- You are advised to read these notes carefully and ensure you fully understand the requirements before you proceed with an application.
- Fees for the Highways Amenity Licence are as follows:
 - Trade display £100 per annum
 - Pavement café (area less than 10 m²) £250 per annum
 - Pavement café (area greater than 10 m² *) £400 per annum

(* max area applies)

- On receipt of your application the proposal will be checked against the criteria. Further details may be obtained from you at this stage. If the proposal satisfies the criteria you will be required to display a notice, clearly visible on the outside of your premises outlining your proposals and inviting representations from interested parties, this notice will be supplied to you by Wigan Council. The notice must be in the presented format and displayed for

a minimum of 28 days from the date of the notice. The Council will also serve notice on adjacent property owners/occupiers. Any objections resulting from the notice will need to be resolved prior to the licence being issued. Other agencies such as the police will also be consulted if necessary and again 28 days will be given for comments.

- Progress reports on your application can be obtained from the Traffic Group.
- If your proposal fails to meet the principal criteria, you will be informed, and may be advised on any amendments which could enable it to meet the required criteria. If your application is subsequently refused you will not be refunded the application fee.
- Following approval of the application, the Council will delineate the area of highway (at the applicants expense) by the placement of a metal stud at the corners of the proposed licence area.

The following documents must be sent to the Traffic Group when applying for a licence.

Conditions of Licence

1. General

- 1.1 Term of Licence: The Highway Amenity Licence will be valid for a period of 12 months commencing on the date of issue unless surrendered earlier by the Operator or revoked in accordance with conditions 1.5 and/or 1.6 below. At the expiry of this period the Licence must be renewed if still required.
- 1.2 Setting up of licence area: Seven days notice in writing must be given prior to the commencement of any work on site. All work on the highway shall be carried out at the Operator's expense and thereafter maintained to the satisfaction of the Council's Executive Director of Environmental Services. All such work must comply with the Council's Code of Practice on Health and safety [and any statutory requirements in relation to Health and Safety at Work legislation and chapter 8 of the Traffic signs manual].
- 1.3 Setting up of licence area: The design of all chairs, tables, umbrellas, and other such structures or equipment placed in the licensed area shall be subject to the prior approval of the Council's Executive Director of Environmental Services.
- 1.4 Insurance: Public liability to cover £5,000,000 will be required for the licensed area. *The Operator shall indemnify the Council and shall take out and maintain throughout the licence period and produce to the Council's Executive Director of Environmental Services for inspection a policy of insurance indemnifying himself and the Council against any injury or damage to any person or property and against any claim, liability, expense or demand arising by reason or in consequence of the permission granted. The policy shall provide cover of not less than £5,000,000 in respect of any one accident or series of accidents arising from one incident during the period of insurance.*
- 1.5 Revocation of Licence: Subject to the provisions of condition 1.6 below the Council may revoke the permission by giving 30 days notice in writing to the Operator:
 - (i) where any condition attached to the permission is contravened by the Operator
 - (ii) where revocation is necessary to enable the Council to exercise any of its statutory functions
 - (iii) if there is a change in the ownership of the premises to which the permission relates and the Council's Executive Director of Environmental Services has not given approval in writing to the proposed transfer (a transfer of the permission will be considered provided that 30 days notice in writing of the intended transfer is given together with details of the proposed transferee).
- 1.6 Changes of Furniture/Layout: The Council may terminate the Licence forthwith by notice in writing if the Operator changes any part of the operations including change of or addition of furniture or other items or changes to the licensed area or operating times without first obtaining the approval of the Council .
- 1.7 Licence Hours: The Highways Amenity Licence will normally reflect any restriction in the premises licence. In certain areas fewer hours will be allowed due to specific local area requirements e.g. markets and fairs.
- 1.8 Highway Works: All furniture shall be removed from the licensed area if any statutory undertaker or licensed telecommunications operator requires access to plant on, over or beneath the licensed area and shall not be replaced until works on the apparatus are complete and any necessary re-instatement completed.

- 1.9 Highway Works: All furniture shall be removed from the licensed area if the Council as the Highway Authority requires access to the licensed area to carry out any works whatsoever and shall not be replaced until the works are completed. Wigan Council will not be liable for any resulting loss of business or other disruption to the operators business .
- 1.10 Cleansing works : All furniture shall be removed from the licensed area if the Council requires access to the licensed area to carry out any cleansing related works, and shall not be replaced until the works are completed. Wigan Council will not be liable for any loss of business or other disruption caused by third parties.
- 1.11 Expiry of Licence: Upon expiry or revocation of the permission the Operator shall remove any structures from the highway and re-instate the highway to its former state and condition and in default thereof, the Council will be empowered to carry out such work of reinstatement and recover its expenses in so doing from the Operator.
- 1.12 Other Permissions: The granting of a licence does not obviate the need to gain any other relevant permissions, e.g. it does not permit the sale of alcohol within the pavement café area for which separate licensing requirements apply.
- 1.13 Duties: Nothing in this licence shall fetter any of the statutory rights or duties for the time being vested in the Council as the local Highway Authority nor shall this licence absolve the Operator from his/her legal responsibilities under the Highways Act 1980 or any other legislation.

2. HIGHWAY/PEDESTRIAN ACCESS

- 2.1 Pedestrian Requirements: At all times there shall be at least 1.8 metres clear distance to allow pedestrians to pass safely. In certain busy streets a clear depth greater than 1.8 metres may be required between licensed area and kerb.
- 2.2 Access to Premises: Where the use directly fronts the premises there must be an unobstructed corridor to the shop entrance of 1.5 metres.
- 2.3 Road Safety: Normal road safety considerations will apply; and in certain circumstances the Council's Executive Director of Environmental Services may override the provisions of paragraph 2.1. Access for emergency vehicles must be protected at all times.
- 2.4 Demarcation of Licensed Area: Where tables and chairs are proposed, a well designed and constructed physical barrier of approximately 0.8 metres (800mm) in height is required to designate the area and to guide persons with sight disability around the use. For amenities other than pavement cafes a tapping rail 100mm above ground is required. Such barriers must not be permanently fixed to the ground and must be of a style, design and type to be agreed by the *Executive* Director of Environmental Services. The licence area will be demarcated at the far corners with metal studs.

3. PUBLIC HEALTH AND AMENITY

- 3.1 Public Health: The licensed area together with associated outdoor and pavement areas including an area of 1 metre around the licence area must be regularly cleansed as specified and floor debris and other waste immediately removed.
- 3.2 Litter: There must be adequate provision made for the collection and containment of litter and, where directed, the Operator must provide suitable litter-bins.

- 3.3 Health & Safety: Licensed areas must not obstruct any existing doorway or fire exit whether belonging to the premises or not.
- 3.4 Health & Safety: Furniture / goods stored within the premises should not at any time block a fire exit.
- 3.5 Music: Noise disturbance, smells or litter which cause a nuisance to other premises are not acceptable and music (amplified or otherwise) will not be permitted within the licence area.
- 3.6 Alcohol: The terms of any premises licence issued under the Licensing Act 2003 setting out any restrictions in respect of any outside areas must be complied with at all times.
- 3.7 Amenity: All structures and equipment used by the Operator in the licensed area must be kept in good repair and condition.

4. MANAGEMENT

- 4.1 Removal and Cleaning of Structures: All equipment and structures placed on a public highway must be removed from the highway upon the cessation of the days trading and the area cleansed to the satisfaction of the *Executive* Director of Environmental Services and in default the Council may itself remove the equipment and structures and recover its expenses in so doing from the Operator.

NOTE The Operators attention is drawn to the Highways Act 1980 section 115K (failure to comply with terms of permission). Failure to comply with licence conditions may be taken into account by the Council when it considers whether to grant any subsequent permission to the Licensee.

Please contact the Traffic Group for specific advice on:

Highway Amenity Licences

Wigan Council
Department of Environmental Services
Traffic Group
Civic Buildings
New Market Street
Wigan
WN1 1RP
01942 404314

APPLICATION FOR PERMISSION TO PROVIDE AN AMENITY ON A PUBLIC HIGHWAY

(Highways Act 1980 Section 115 A-K)

1) Please indicate if this is a: New licence Renewal

2) Applicant's Name/Name of Licensee(s):

Address of Premises:

.....

Telephone No: Fax No

3. Address for Correspondence (if different from above)

.....

.....

Tel No..... Fax No

4. Agent's Name/Address (if Applicable):

.....

.....

Telephone No:

5. Description of the area of highway that is the subject of this application

.....

.....

.....

6. Address(s) and owner(s) and nature of business conducted at the premises adjacent to the above:

.....

.....

7. Details of the numbers of chairs / tables / goods and an explanation of where they will be stored when not in use

.....

.....

8. Is it intended to seek a licence to serve alcohol within the pavement café area?

Yes / No / NA

9. Intended period of operation:

Start Date: **End Date:**

Days of Week:

Times of Day: From: **To:**

Signature of Applicant:

Date:.....

Please ensure you supply all appropriate supporting documentation with your licence application as set out in the checklist.

Please return the completed form, and accompanying documents, together with the application fee to:

Wigan Council
Department of Environmental Services
Traffic Group
Civic Buildings
New Market Street
Wigan
WN1 1RP

Cheques should be crossed and made payable to 'Wigan Council'

Diversity Impact Assessment form

Section: Traffic Group

Policy/Service Area: Pavement Café / Trade Displays

Person Completing Form: K Hargreaves

Date: 16/03/09

Do any of the below groups suffer specific disadvantage (please indicate)

| | Yes | No | | Yes | No |
|-----------|-----|----|--------------------|-----|----|
| Race | | ✓ | Disability | | ✓ |
| Ethnicity | | ✓ | Gender | | ✓ |
| Age | | ✓ | Religion | | ✓ |
| Class | | ✓ | Sexual Orientation | | ✓ |

Is there evidence of disadvantage or associated problems?

None

How was the information collected and/or who have you consulted with?

Consultation with various sections of the council including Planning, Environmental Health, Legal, Economic Regeneration and Townships. There was also separate consultation with Wigan Access Committee.

Action Plan – *What specific actions are planned to tackle any disadvantage identified?*

Amended policy following comments from Access Committee.

Is the policy in line with current equality legislation and relevant codes of practice?

Yes

| | |
|----------------|--------------------------|
| Timescale | Immediate implementation |
| Responsibility | Traffic Group |
| Comments | |

Are the actions specified included in any other documents/plans?

| | |
|---------------------------|------|
| Departmental Service Plan | None |
| Section/Team Plan | None |
| Other (Specify) | |

| |
|-------------------------|
| Date for further review |
| Annual Review |

