



LICENSING COMMITTEE

Monday, 14th July, 2014

7.30 pm

Town Hall, Watford

Publication date: 4 July 2014

CONTACT

If you require further information or you would like a copy of this agenda in another format, e.g. large print, please contact Jodie Kloss in Democracy and Governance on 01923 278376 or by email to legalanddemocratic@watford.gov.uk .

Welcome to this meeting. We hope you find these notes useful.

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COMMITTEE MEMBERSHIP

Councillor J Brown (Chair)

Councillor P Jeffree (Vice-Chair)

Councillors I Brown, J Connal, K Crout, G Derbyshire, K Hastrick, M Hofman, A Khan, H Lynch, B Mauthoor, M Mills, G Saffery, D Scudder and S Williams

AGENDA

PART A - OPEN TO THE PUBLIC

1. APOLOGIES FOR ABSENCE/ COMMITTEE MEMBERSHIP

2. DISCLOSURE OF INTERESTS (IF ANY)

3. MINUTES

To submit for signature the minutes of the meeting held on 18 March 2014.

4. DRIVER AND VEHICLE IMPLEMENTATION PLAN (Pages 1 - 8)

Report of Head of Community and Customer Services

5. ENVIRONMENTAL HEALTH AND LICENSING ENFORCEMENT POLICY (Pages 9 - 26)

Report of Head of Community and Customer Services

6. FEES FOR PAVEMENT LICENCES IN THE PARADE (Pages 27 - 30)

Report of Head of Community and Customer Services

7. INTERIM TOWN CENTRE STREET TRADING POLICY (Pages 31 - 38)

Report of Head of Community and Customer Services

8. CHARITY COLLECTIONS IN THE TOWN CENTRE (Pages 39 - 42)

Report of Head of Community and Customer Services

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PART A

Report to: Licensing Committee
Date of meeting: 14 July 2014
Report of: Head of Community and Customer Services
Title: Driver and Vehicle Implementation Plan

1.0 SUMMARY

- 1.1 The Licensing Committee was advised at its last meeting on 18 March 2014 about consultations being undertaken by officers with hackney carriage and private hire drivers licensed by the council. This included some changes to policies, practices and procedures affecting licence-holders.
- 1.2 The Committee agreed that, in the absence of any substantial changes to the proposed policies, officers could implement the policies in consultation with the Chair. No substantial changes have been proposed and this report is to update Members on progress.

2.0 RECOMMENDATIONS

- 2.1 That Members note the report.

Contact Officer:

For further information on this report please contact: Jeffrey Leib (Licensing Manager) on telephone extension: 8476 or email jeffrey.leib@watford.gov.uk.

Report approved by: Alan Gough, Head of Community and Customer Services

3.0 DETAILED PROPOSAL

- 3.1 The Licensing Committee will be aware that it considered potential changes to three policies affecting hackney carriages and private hire vehicles at its last meeting on 18 March 2014. The Committee also was informed of several other proposed changes to regulation of the trade that do not require Committee approval. Officers have since conducted a consultation exercise about those proposals.

- 3.2 The Committee agreed that, unless substantial changes were proposed through the consultation, the policies could be implemented by officers in consultation with the Chair.
- 3.3 Officers held an open meeting to explain the proposals, which around 60 drivers attended. This was followed by a written consultation, to which 131 drivers responded.
- 3.4 The majority of drivers were in favour of each of the proposed changes, which are set out below:

(1) *Changes to enforcement policy*

The proposal to replace the existing penalty point scheme with a new model was supported by 108 drivers, with sixteen not fully supporting the proposals. A separate report is before the Committee setting out those changes.

(2) *Town centre taxi ranks*

Drivers were asked about their views on proposed changes to taxi ranks in the town centre. Their views are below but any changes have to be subject to a formal public consultation, as with any other changes to Traffic Regulation Orders, with all stakeholders, and a separate project plan is being developed to take these proposals forward.

	Support	Don't support
<i>Introduce a short-term pick-up point within the town centre</i>	83	49
<i>Install taxi ranks on current waiting restrictions in High Street and remove taxi rank from New Street</i>	118	13
<i>Investigate restricting Albert Road South to taxis only at night</i>	117	12

(3) *Trial of magnetic door signs*

Eighty-six drivers agreed that magnetic door signs on hackney carriages should be tried for a year, and 36 disagreed. Officers are ordering a supply of magnetic door signs for drivers to purchase at cost, although they may still use permanent door signs should they wish. The impacts of the use of such signs will be assessed in 12 months.

(4) *Hackney carriage vehicle age limit*

Drivers were asked their views about relaxing the maximum age that vehicles could be first licensed as hackney carriages from four to seven years. A clear majority of 121 drivers favoured the approach over 9 who did not. The change to the policy is therefore being implemented by officers.

(5) *Driving Standards Agency (DSA) test*

Drivers were asked whether they should have to re-take the DSA hackney carriage/private hire assessment, or undertake some other driving assessment, if their Driving and Vehicle Licensing Agency (DVLA) licence is endorsed for driving offences. A majority (111 drivers) were again in favour of ending all of the tests, with twenty-two in favour of an assessment by the Institute of Advanced Motorists and four in favour of other alternatives. The policy requiring drivers to re-take the DSA test has accordingly been revoked.

(6) *Review of vehicle licence conditions*

Seventy-two drivers considered that a review of vehicle licence conditions was needed, and fifty-three were not in support. Thirteen drivers have volunteered to sit on a working party to review those, which officers are now forming.

(7) *Hackney carriage fare tariff*

An overwhelming majority of 121 drivers supported an annual review of the hackney carriage tariff, and two were against. Ninety-two drivers agreed with the suggestion that a working party is developed to agree the methodology for future reviews and officers are convening this with eight volunteers.

(8) *Communicating with drivers*

Drivers were largely in favour of three means of communicating changes to them in future:

- by text message (116 in favour and twelve against)
- by a quarterly drop-in session where they can meet Members of the Committee and officers (97 in favour and twenty-nine against) and
- by an annual meeting with the Chair (104 in favour and twenty-three against)

(9) *Vehicle accident policy*

A majority of drivers (eighty-one and forty-three against) were in favour of allowing vehicles damaged in accidents to be still used as licensed vehicles pending repairs, providing the vehicle was still safe. This means that occasionally some vehicles which would have otherwise failed the annual vehicle inspection will still carry passengers whilst the repairs are being arranged.

3.5 Officers have produced an action plan to implement these changes, which is attached at appendix 1 for information.

4.0 **IMPLICATIONS**

4.1 **Financial**

4.1.1 The Shared Director of Finance comments that there are no budget implications arising from the policy changes in this report.

4.1.2 Any budget implications from subsequent changes to the taxi ranks will be reported separately.

4.2 **Legal Issues** (Monitoring Officer)

4.2.1 The Head of Democracy and Governance comments that there are no direct legal issues flowing from the changes to these policies providing the Committee is satisfied that there has been adequate consultation and the policies are not unreasonable, discriminatory or disproportionate.

4.3 **Potential Risks**
by the impact.

Potential Risk	Likelihood	Impact	Overall score
Litigation following the committee not implementing a validly consulted-upon proposals	3	3	9

Appendices

Driver and Vehicle Implementation Plan

Background Papers

Driver's consultation questionnaire February 2014

Driver's survey returns March 2014

File Reference

None

DRIVER SURVEY IMPLEMENTATION PLAN

TOPIC	ACTION REQUIRED	BY WHOM	BY WHEN
<i>Enforcement policy</i>	(1) Agree scheme of delegation with JB (2) Update EHL enforcement policy (3) Draft accompanying report (4) Take report to Licensing Committee (5) Arrange training for Councillors if necessary (6) Communicate results to drivers	(1) JL	(1) – (4) 30 June 2014
<i>Ranks</i>	(1) Agree terms of work with Doug Brodie (2) Timetabled work programme to be produced by Doug Brodie	(1) JL/JH	(1) 20/06/14 (2) 27/06/14
<i>Trial of magnetic signs</i>	(1) Order small supply of magnetic signs (2) Advise drivers in newsletters (3) Monitor impact/effect for 12 months	(1) PC	(1) 01/07/14
<i>Increase maximum age of newly licensed HCVs to 7 years</i>	(1) Discuss whether needs to go to Committee with JB and draft report if appropriate (2) Update website pages if adopted (3) Communicate to drivers via newsletter	(1) JL (2) PC (3) JL	(1) 30/06/14 (2) When decision is made (3) ASAP once decision is made
<i>Abolish DSA test</i>	(1) Discuss whether needs to go to Committee with JB and draft report if	(1) JL	(1) 30/06/14

	<p>appropriate</p> <p>(3) Consider transitional arrangements for anyone required to do DSA before holidays but unable to attend before its abolished</p> <p>(2) Update website pages if adopted</p> <p>(3) Communicate to drivers via newsletter</p>	<p>(2) PC</p> <p>(3) JL</p>	<p>(2) When decision is made</p> <p>(3) ASAP once decision is made</p>
<i>Establish working party to review test conditions</i>	<p>(1) Identify objectives of working party</p> <p>(2) Arrange for working party to meet</p> <p>(3) Review conditions – consider consultation if significant changes proposed</p> <p>(4) Conduct consultation exercise if needed</p> <p>(5) Draft and submit report to Licensing Committee</p>	<p>(1) JL/AY</p> <p>(2) JL/AY</p> <p>(3) JL/AY</p>	<p>(1) 30/07/14</p> <p>(2) 30/08/14</p> <p>(3) 15/08/14</p>
<i>Tariff working party</i>	<p>(1) Identify objectives of working party</p> <p>(2) Arrange for working party to meet</p> <p>(3) Review tariff and methodology</p> <p>(4) Arrange public notice</p> <p>(5) Draft and submit report to AG as HoS to determine</p> <p>(6) Programme in following year's programme</p>	<p>(1) AG/JH/JL/JM</p>	<p>(1) 30/06/14</p>
<i>Communications</i>	<p>(1) Arrange annual meeting date with JB</p> <p>(2) Arrange quarterly drop-in dates for drivers</p> <p>(3) Use text to advise drivers of local changes</p>	<p>(1) PC</p> <p>(2) PC</p> <p>(3) PC</p>	<p>ASAP</p>
<i>Accident policy</i>	<p>(1) Assess "no" comments for obvious reasons not to change policy</p> <p>(2) Consider options if valid reasons not to change policy</p> <p>(3) Update policy and add to website if no valid reasons to change</p>	<p>(1) JM</p> <p>(2) JM/JL</p> <p>(3) JM/PC</p>	<p>ASAP</p>

LICENSING COMMITTEE

Monday 14 July 2014

ADDENDUM TO DRIVER AND VEHICLE IMPLEMENTATION PLAN

With the introduction of magnetic door signs on hackney carriages officers recommend that the amended condition set out below is placed on hackney carriage vehicle licences to ensure that they are displayed at the appropriate times, and that allowances are made for when they are lost, stolen or damaged:

“No advertisement sign of any nature shall be displayed on the vehicle other than an advertisement of a type to be authorised by the Council. *[Existing wording]*”

Door signs of a type and style approved by the Council’s officers, such sign to contain the Watford Borough Council logo, and the words “Licensed Taxi” [in black writing on a white background - to be omitted], shall be displayed on the front doors of the vehicle. *[Existing wording]*

The licence holder must not, without reasonable excuse, fail to display such door signs at all times that the vehicle is hired, plying for hire (including waiting on a rank), on the way to collect a passenger or otherwise used as a hackney carriage”.
[Additional wording]

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PART A

Report to: Licensing Committee
Date of meeting: 14 July 2014
Report of: Head of Community and Customer Services
Title: Environmental Health and Licensing Enforcement Policy

1.0 SUMMARY

1.1 Environmental Health and Licensing is responsible for enforcing legislation relating to areas such as anti-social behaviour, environmental protection, housing, food safety, licensing and health and safety at work. The Council approves, and from time to time reviews, policies on how the legislation is to be enforced. This report sets out a revised enforcement policy for Members' consideration.

2.0 RECOMMENDATIONS

2.1 That the draft revised Environmental Health and Licensing enforcement policy set out at appendix 1 be adopted from 14 August 2014.

Contact Officer:

For further information on this report please contact: Jeffrey Leib (Licensing Manager) on telephone extension: 8429 email: jeffrey.leib@watford.gov.uk.

Report approved by: Alan Gough, Head of Community and Customer Services

3.0 DETAILED PROPOSAL

3.1 The Council is the primary enforcement body for a range of legislation which applies to:

- anti-social behaviour
- environmental protection and pollution
- statutory nuisances such as noise, odour, vibration and light
- infectious diseases
- filthy and verminous premises

- littering, fly-tipping and other environmental crimes
- health and safety at work
- gambling
- alcohol, entertainment and late-night refreshment
- taxis and private hire vehicles
- street trading
- houses in multiple occupation
- charity collections
- food hygiene
- housing standards
- dog fouling
- drainage
- animal welfare
- pest control
- abandoned vehicles
- smoke-free legislation.

- 3.2 When exercising those functions it may exercise many different powers including inspections and closures of commercial and private premises; issuing legally binding notices; interviewing people under caution; issuing fixed penalty notices; withdrawing, amending or refusing permissions; issuing formal cautions; taking civil legal action or instituting criminal proceedings (prosecutions).
- 3.3 This council, and nearly all other councils, delegate these powers to officers with the exception of review powers under the Licensing and Gambling Acts. The policy sets out the limits and expectations of how the various powers are to be exercised by officers on the council's behalf.
- 3.4 In all enforcement work, the council has responsibilities under the Regulators' Code which has been approved by Parliament under section 23 of the Legislative and Regulatory Reform Act 2006. This means having regard to the Code when determining any general policy or principles about the exercise of specified regulatory functions. Paragraph 6.2(d) of the Code says regulators should publish an enforcement policy.
- 3.5 Publication of the policy makes clear to officers, those subject to enforcement action and the wider public the operational parameters within which their legal powers ought to be exercised. It also acts as a safeguard against abuse or over-zealous use of those powers.
- 3.6 Existing and other policies
The draft policy at appendix 1 is an over-arching policy for Environmental Health and Licensing. No significant changes are being proposed to this edition from the one adopted in 2011 other than those changes set out in paragraph 3.8 of this report. Further policies and plans are produced that also set out how we will approach regulation of food safety and for health and safety at work, to meet the requirements of the Food Standards Agency and of the Health and Safety Executive. The draft policy also reinforces the council's approach to enforcement under the Licensing and Gambling Acts, which is spelt out in those respective statutory policies.
- 3.7 Section 8 of the draft policy sets out in more detail the relationship with other policies.

3.8 Amendments to policy

Other than inconsequential amendments (for example the change of title to the Head of Community and Customer Services), the other proposed changes to the policy are:

- (1) updating references to the council's current corporate priorities in paragraph 1.3;
- (2) updating the reference in paragraph 1.4 to the Regulators' Code which replaced the Regulators' Compliance Code from 6 April 2014;
- (3) deleting the reference to the voluntary Enforcement Concordat which has been replaced by the Regulators' Code;
- (4) confirming in paragraph 4.4.1 that evidence obtained in the course of an investigation will not be kept for longer than allowed under codes of practise;
- (5) including an assessment of the proportionality and likely costs of bringing a prosecution at paragraph 6.5.2, in accordance with the Code for Crown Prosecutors;
- (6) setting out at paragraphs 6.5.7 and 6.5.8 the circumstances where a decision not to prosecute may be over-turned if new evidence comes to light, following changes to the Code for Crown Prosecutors;
- (7) introducing a new policy at paragraphs 6.10.2 – 6.10.8 for dealing with offences and contraventions by hackney carriage and private hire drivers licensed by the council.

3.9 Policy for hackney carriage and private hire drivers

The new policy for hackney carriage and private hire drivers has the following key elements:

- (1) abolition of the current penalty point scheme, which was first introduced in 2007. The scheme is no longer seen to be effective. Only two drivers have had their licences revoked on the basis of accumulating sufficient points to pass the relevant threshold for revocation. The perception amongst a large proportion of the trade and amongst some members of the public is that the penalty points are not a sufficient deterrent against contravening some licensing requirements such as over-charging or refusing to convey passengers within the Borough boundary. Consultation indicated that sanctions such as suspensions and formal review of drivers' licences at an earlier stage may both assist licensees in compliance but will also prevent ongoing or recurrent offences.
- (2) to allow licences to be suspended for a maximum of two days where there are proven serious offences by drivers concerning dishonesty, breach of trust, violence, aggression, putting a member of the public in danger, or putting a member of the public in an unsafe position. This follows a High Court decision that licences could be suspended as a punishment in its own right rather than being – as previously thought – as an interim step allowing investigations into

licence contraventions to take place. Officers are recommending a sensible maximum of two days suspension be imposed as a proportionate response to most licence contraventions. There is a right of appeal to the magistrates' court within 21 days against the decision to suspend a licence.

- (3) drivers who receive a number of written warnings or who have a history of similar offences will be invited to a Case Review with the Section Head for Environmental Health and Licensing.
- (4) Drivers who have a case review, re-offend after a period of suspension, have been successfully prosecuted, or commit a very serious first offence, may have their licences revoked by the Head of Community and Customer Services after consultation with the Chair of the Licensing Committee.

3.10 The proposed new approach and policy has been drawn up after consultation with licensed drivers between December 2013 and April 2014, to which over 130 drivers responded.

4.0 **IMPLICATIONS**

4.1 **Financial**

4.1.1 The Shared Director of Finance comments that there are no identifiable financial implications associated with the policy, at this stage. Predictions of the number of appeals against suspended licences, and the cost of defending them in court, cannot be made. The Head of Service will monitor the volumes and report any significant budget changes to the Budget Panel.

4.2 **Legal Issues** (Monitoring Officer)

4.2.1 The Head of Democracy and Governance comments that the enforcement policy is one required by legislation as identified in the report. The draft policy and the report indicate that all relevant legal standards are being met. It is important to have an up-to-date and robust enforcement policy, as defence counsel are more likely to question in court a council's authority and rationale in bringing a prosecution. In the case of *R v Glen Adaway* (2004), the court held that consideration had to be given to the council's policy guidelines on prosecuting offences before criminal proceedings could be instituted. In *London Borough of Wandsworth v Rashid* (2009) the court found that it was for the local authority to decide when to prosecute even when other options were open to it, and the court should only stop a prosecution where there an abuse of that process. It is therefore important to have a policy to ensure those issues are addressed.

4.2.2 The power to suspend licences is a new use of an existing power and officers have recommended controls to ensure it is used proportionally – that is, in defined circumstances and for a limited period of time. Drivers additionally have a right of appeal against a decision to suspend their licences to the magistrates' court.

4.4 Potential Risks

Potential Risk	Likelihood	Impact	Overall score
Legal challenge to policy during a prosecution	2	3	6
Reputation	2	3	6

Appendices

Appendix 1 – draft Environmental Health and Licensing Enforcement Policy 2014 – 2019

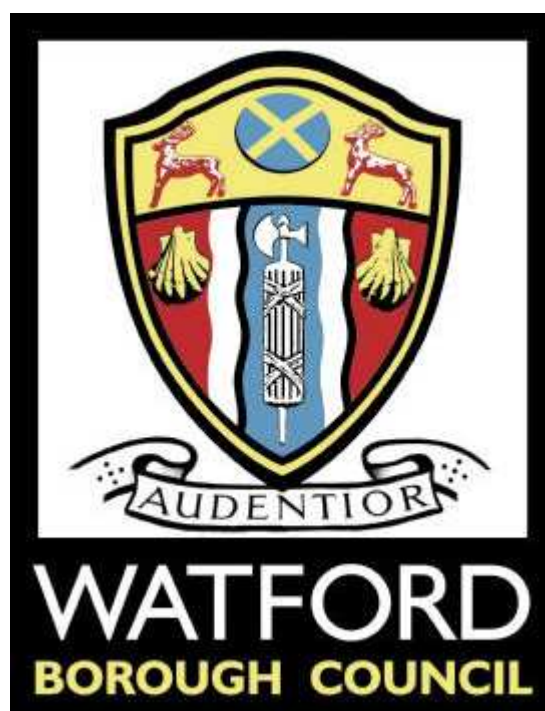
Background Papers

Licensed driver consultation survey forms (April 2014)

File Reference

- Environmental Health and Licensing enforcement policies

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COMMUNITY AND CUSTOMER SERVICES
Environmental Health and Licensing Service

ENFORCEMENT POLICY 2014 – 2019

Comments are invited on this policy to:

Head of Community and Customer Services
Watford Borough Council
Town Hall
Watford
Herts
WD17 3EX
Env.health@watford.gov.uk

1. Introduction

1.1 This document sets out what members of the public and businesses can expect from enforcement officers in the Environmental Health and Licensing team of Community and Customer Services at Watford Borough Council.

1.2 It sets out our approach on how we regulate and enforce a range of legislation in the public interest:

- abandoned vehicles
- alcohol, entertainment and late-night refreshment
- animal welfare
- anti-social behaviour
- charity collections
- dog fouling
- drainage
- environmental protection and pollution
- filthy and verminous premises
- food hygiene
- gambling
- health and safety at work
- houses in multiple occupation
- housing standards
- infectious diseases
- littering, fly-tipping and other environmental crimes
- pest control
- smoke-free legislation
- statutory nuisances such as noise, odours, vibration and light
- street trading
- taxis and private hire vehicles

1.3 We enforce a range of legislation in the public interest and to support the Council's corporate aims between 2014 and 2018 of creating a town to be proud of, where people will always choose to live, work and visit by

- making Watford a better place to live in
- to provide the strategic lead for Watford's sustainable economic growth
- promoting an active, cohesive and well-informed town
- operating the council effectively and efficiently

1.4 In developing this policy we have had regard to:

- the Human Rights Act 1988
- the statutory Regulators' Code issued under the Regulatory and Effective Sanctions Act 2008 and
- the Code for Crown Prosecutors (see section 6)
- the Equalities Act 2010

1.5 All enforcement decisions will be fair, independent and objective. They will not be influenced by age, ethnicity, national origin, gender, religious or political belief, disabilities or sexual orientation. Due regard will be taken when dealing with juveniles or other vulnerable people. Decisions will not be affected by improper or undue pressure from any source, including councillors.

- 1.6 We are committed to accountable and proportionate practices with clear policies supported by effective procedures. We will ensure enforcement officers are competent, apply enforcement measures consistently and proportionately through training, suitable qualifications, and experience. Officers will consolidate their knowledge and experience through continuing professional education

2 Approval, review and exercise of powers

- 2.1 We consulted businesses and residents on this policy between 27 June 2011 and 8 August 2011. It was adopted by the Licensing Committee on 15 June 2011,. It was reviewed by the Licensing Committee in July 2014 and the revisions contained in this version come into effect from 14 August 2014.
- 2.2 All enforcement powers are delegated to the Head of Community and Customer Services. The Environmental Health and Licensing Section Head and team managers may authorise the issue of a simple caution. They, in consultation with the Legal Services Head Section, may authorise a prosecution. In cases of doubt as to a particular course of action the Head of Community and Customer Services shall make the final decision.
- 2.3 We will review our policies and procedures on a regular basis and in the light of changes in legislation, case-law or best practice.

3 Policy objectives

- 3.1 Our policies are intended to:
- protect individuals, the community and the environment from harm
 - change the behaviour of perpetrators
 - eliminate any financial gain or benefit from non-compliance
 - protect those affected by non-compliance
 - be responsive and consider what is appropriate in the particular circumstances
 - be proportionate to the nature of the offence and the harm caused
 - deter future non-compliance.

4 Key principles

- 4.1 Wherever possible our officers will adopt a policy of informal resolution. This will involve clearly identifying the nature of any actual or potential legislative breach and giving the perpetrator the opportunity to remedy it. We recognise that this is not always possible in some one-off circumstances in which it may be difficult to identify repeated breaches. These may include for example (but not be limited to) offences such as dog-fouling, littering, or plying for hire where it is necessary, reasonable and proportionate.
- 4.2 Although each case shall be considered on its own facts and on its own merits, there are general principles set out in section 7 that apply to the way in which we approach every case.

4.4 Standards

We will always make clear when there is a legal requirement to be followed, and under

which legislation it is required. We will always make clear the difference between legal requirements and recommended best practice.

- 4.4.1 All investigations will follow best professional practice and legal requirements. As part of the investigation process, perpetrators will wherever possible be formally interviewed under the Police and Criminal Evidence Act 1984, be given the opportunity to establish a statutory defence, and have the opportunity to give an explanation or make any additional comments about the allegations. Evidence will be gathered and used in accordance with the Criminal Procedure and Investigations Act 1996 and not kept for longer than required under the Act's code of practise.

4.5 ***Openness***

We recognise the need to maintain public confidence in our ability to protect and to regulate. This is achieved by promoting consistency, proportionality and accountability. We will also aim to work in order of priority and direct our work accordingly, using national risk assessment schemes, local intelligence and the priorities of the Council and its partners. We will clearly explain to those affected by breaches of legislation the action we take or why we are unable to take action. We will also make clear the difference between statutory requirements or advice, or guidance about what is desirable or good practice but not compulsory

- 4.5.1 Where enforcement action is required, it will be clearly explained as far as reasonably practicable in writing and verbally why the action is necessary and when it must be carried out by. We will discuss what is needed before taking formal action, apart from when urgent action is required to protect public health, public safety or the environment, or evidence to support enforcement action would be otherwise lost.
- 4.5.2 We will publicise the results of prosecutions and simple cautions when it helpful to do so, although we will not publicise an individual's personal details when a simple caution has been accepted. If we receive information that may lead to formal enforcement action we will notify the source of that complaint as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk.
- 4.5.3 All parties concerned will be kept informed of progress during our investigations and any enforcement action. Confidentiality will be maintained and personal information only released in accordance with legal requirements or in accordance with the Data Protection Act 1998.

4.6 ***Helpfulness***

We believe that prevention is better than cure. We will offer information and advice to those whom we regulate and seek to secure co-operation without bureaucracy and excessive cost. We will encourage individuals and businesses to put community, public health, public safety and the environment first. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

- 4.6.1 When a breach has been identified that does not present an immediate risk to health, safety or the environment, we may arrange follow-up visits to allow the perpetrator time to comply with their legal obligations. Where immediate action is not needed, we will consider agreeing a time-scale within which compliance, or steps towards compliance, should be met.

4.7 **Complaints**

Written explanation of any rights of appeal against formal enforcement will be given at the time action is taken, where we are required to do so. We cannot advise on the merits or details of any appeal. Please see section 9 below about how to complain about the service we provide.

4.8 **Proportionality**

We will balance enforcement action against risks and costs. Actions to achieve compliance will be proportionate to any risks to public health and safety, and the seriousness of any breach. Therefore, an informal warning is unlikely to be a suitable disposal for a significant infringement leading to serious injury just as a prosecution is generally unsuitable for a minor administrative or technical oversight. Proportionate action also involves judging the extent to which perpetrators have gone to in order to comply with the law.

4.9 **Consistency**

Our officers will endeavour to take a similar approach in similar circumstances to achieve similar ends; consistency does not mean taking exactly the same approach concerning each breach. We will endeavour to be consistent in the advice we give, whether over time to the same business, or to different businesses.

4.9.1 We will participate in county-wide and regional enforcement arrangements to share consistency amongst other regulators and enforcers. Where an investigation reveals facts of an offence enforced by other agencies, we will cooperate and coordinate with any relevant body to maximise the effectiveness of any enforcement.

4.9.2 We participate in the Primary Authority scheme as part of the Regulatory Enforcement and Sanctions Act 2008, and follow any inspection plans issued by Primary Authorities as part of those arrangements. We will give notice of proposed enforcement action to relevant Primary Authorities before action is taken against organisations registered under the scheme, apart from specific urgent cases where this is not required.

5 **Compliance techniques**

We use a range of techniques to secure compliance with legal obligations, including:

- informal advisory visits and meetings
- mediation
- education, awareness-raising and advice
- formal training
- risk-based inspections
- proactive and reactive visits
- direct observation
- test baiting of vermin
- test purchasing
- sampling
- auditing

6 Bringing enforcement action

We will take account of different factors when considering the appropriate enforcement response, including:

- any actual or potential harm or loss to an individual
- the risk that non-compliance poses to public health, public safety or the environment
- the perpetrator's attitude to compliance, such as failing to follow previous advice or comply with statutory notices
- evidence of pre-meditation
- obstruction of officers
- national and local priorities for enforcement, including where the offence is widespread throughout the Borough but is not itself serious
- statutory guidance and codes of practise
- legal advice
- any commercial benefit accrued because of the non-compliance.

6.1 The following actions are available to us in the event of any contravention:

6.2 *No further action, taking informal action or giving advice*

This may apply where an investigation reveals no offence has occurred or where the offending party makes a ready admission of the breach, takes immediate steps to remedy it presenting no risks to public safety, public health or the environment. No further action will be appropriate where the evidence is inadequate or where formal enforcement is inappropriate because the contravener is elderly, frail, has poor mental or serious ill health, and to pursue the case would be detrimental to their wellbeing. All persons involved will be advised as to why no further action is being taken

6.2.1 We may give verbal or written advice where we have a high degree of confidence the breach will be properly remedied or not repeated. We will clearly identify any contraventions of the law and give advice on how to correct them, including a reasonable deadline (agreed where possible) for when this should be completed. This will take into account the seriousness of the contravention and the implications for non-compliance.

6.3 *Issuing warnings*

We may give verbal or written warnings. The fact that a verbal warning has been given may be recorded in a case file for future reference. Written warnings are normally final, and failure to comply or repeated breaches of the same or a similar contravention are likely to result in an escalation to the next stage of enforcement action.

6.4 *Offering a simple caution*

Cautions will be considered in line with the Home Office guidance in circular 16/2008 with the perpetrators' consent and where a prosecution would otherwise be justified. Although an admission of guilt, a caution is not a sentence or a criminal conviction.

6.4.1 Before offering a simple caution, we must be satisfied that:

- there is sufficient evidence to prove the case before a court
- there has been a free and voluntary admission of guilt

- it must be in the public interest to use a simple caution to dispose of the offence
- the perpetrator must be over the age of 18.

6.4.5 We will also take into account whether the perpetrator has received a simple caution within the previous two years. We will also take account of previous simple cautions received within the previous two years when considering any other enforcement action in the following two years, during which period it may also be cited in court during any prosecution.

6.4.6 The refusal of a perpetrator to be cautioned, despite admitting their guilt, does not preclude a summons being issued for prosecution although a prosecution cannot be brought once a simple caution has been accepted for that offence. A failure to accept a caution may be material consideration when deciding whether to institute a prosecution.

6.5 *Bringing a prosecution*

Where circumstances warrant it, we will prosecute without any prior warning. Prosecutions will be considered where:

- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with legal duties
- there is a risk to community health and safety or of environmental damage as a consequence of the breach
- the breach was as a result of a deliberate, reckless or negligent act
- the perpetrator's approach through repeated breaches, persistent poor standards or ignoring formal advice and warnings warrants it

6.5.1 Prosecutions will always be considered where:

- there has been a blatant disregard for the law
- there is a refusal to achieve minimum legal requirements
- the offence involves a risk to public health, safety or wellbeing, harm to the environment or where an unacceptable business advantage is gained
- the perpetrator has failed to correct potential risks after being given a reasonable opportunity to do so.
- the offence involves failure to comply with a statutory notice
- evidence suggests the offence was premeditated
- there is a history of similar offences
- an officer was intentionally obstructed or deceived in the course of their duties
- any of the factors set out in paragraph 6 apply.

6.5.2 The decision to prosecute will take account of the evidential and public interest tests in the Code for Crown Prosecutors issued under the Prosecution of Offences Act 1985 by the Director of Public Prosecutions. These include:

- the seriousness of the offence. A prosecution is more likely to be required where an offence is more serious
- the level of culpability by the perpetrator, such as their level of involvement; whether the offence was premeditated or planned; or if they have previous convictions or cautions;
- the age and state of mental or physical health of the perpetrator
- the likelihood of the offence being continued, repeated or escalated;

- any remedial action taken by the alleged perpetrator, (although an offer to pay compensation to a victim or take similar action will never by itself preclude a prosecution)
- whether a prosecution is a proportionate response to the likely outcome, including the likely costs of pursuing a prosecution.

6.5.3 We will not prosecute unless we are satisfied there is credible, admissible and reliable evidence that the offence has been committed by the perpetrator and there is a realistic prospect of conviction.

6.5.4 Prosecutions will only be commenced if it is in the public interest to do so. Factors which may be taken into account in deciding whether a prosecution is in the public interest are those in paragraph set out in paragraph 6.5.2.

6.5.5 The courts often have a large discretion in the penalties they can impose, and many offences benefit from a statutory defence. We will not be generally deterred from bringing a prosecution when it is right to do so solely because the courts are likely to issue a nominal penalty following a conviction, or solely because the perpetrator appears to have established a statutory defence as it is for the perpetrator to demonstrate to the court why they should benefit from that defence.

6.5.6 We will always seek to recover our costs in investigating and prosecuting offences.

6.5.7 People should be able to rely on decisions taken by us. Normally, if we tell a defendant that there will not be a prosecution, or that the prosecution has been stopped, the case will not start again. Occasionally there are reasons why we will overturn a decision not to prosecute or to deal with the case by way of an out-of-court disposal or when it will restart the prosecution, particularly if the case is serious.

6.5.8 These reasons include:

- cases where a new look at the original decision shows that it was wrong and, in order to maintain confidence in the criminal justice system, a prosecution should be brought despite the earlier decision;
- cases which are stopped so that more evidence (which is likely to become available in the fairly near future) can be collected and prepared. In these cases, we will tell the defendant that the prosecution may well start again;
- cases which are stopped because of a lack of evidence but where more significant evidence is discovered later.

6.6 *Civil law remedies*

Where perpetrators have been found guilty on more than two occasions, or where it is considered to be more appropriate to restrain further breaches of the law, we will consider applying for an injunction.

6.6.1 We will also use our powers where appropriate to apply for orders under the Anti-Social Behaviour Act 2013 and similar legislation with our statutory partners in order to protect the community.

6.2 The following actions are only available to us in relation to certain specific contraventions:

6.7 Seizure of goods or equipment

Goods, equipment and documents may be seized under certain legislation relating to unsafe food, or sound equipment being used for statutory noise nuisance. We may also use powers under the Police and Criminal Evidence Act 1984 relating to the voluntary surrender of items in the course of an investigation.

6.8 Issuing statutory notices

We may serve notices under various legislation requiring specific actions to be taken or certain activities to cease. Notices may require activities to cease immediately where there is an imminent or immediate threat to health, safety, environmental damage or nuisance. In other circumstances notices will be issued with a reasonable time for compliance, agreed wherever possible with the recipient of the notice, taking into account the seriousness of the contravention, setting out the remedial actions need to comply with the notice, the implications of non-compliance and the appeal period for that notice. Notices will generally be issued if previous warnings or advice has been ignored.

6.8.1 All notices will be expressed in plain language, make clear the consequences of failing to comply, and include details of any applicable appeals procedure. All notices will be signed and served by appropriately authorised officers.

6.8.2 Failure to comply with certain notices will enable the Council to do the work instead, commonly referred to as “works in default”. We may issue these notices when all other attempts to secure compliance have been exhausted, and will give warning of our intention to issue a notice except where this is impractical in order to protect public health and safety or the environment. We will then charge the recipient of the notice for any costs incurred in carrying out the work, and this may lead to a charge being applied against the future sale of the property. The Council may still prosecute for not complying with the original statutory notice as well as carrying out the works.

6.9 Issuing a fixed penalty notice (FPN)

Fixed penalty notices are available as an alternative to prosecution for some low-level environmental offences. A recipient of an FPN does not accept criminal liability by paying the associated fine, which brings an end to the matter. Where the law allows FPNs to be issued, we may choose to administer those on a first occasion without issuing a warning. However, a failure to pay an FPN will result in an escalation of enforcement action including prosecution for the original offence to preserve the integrity of the regulatory regime.

6.9.1 Failure to pay a FPN will be a material consideration in considering whether to institute a criminal prosecution.

6.10 Licensing decisions

Many of the licences and permissions we issue contain powers to revoke, refuse, vary or review them in the event of non-compliance with obligations in those authorisations, or following a conviction for certain offences.

6.10.1 As a general rule, we will take licensing decisions when all other enforcement powers short of cautions or prosecutions have been exhausted. This can include suspending licences in the event of a breach, or refusing a licence when activities have been carried on without the requisite licence being in place. Whether we take a licensing decision before, after or as an alternative to a prosecution or caution will depend on the legal powers available to us. How we exercise our professional discretion in such cases will generally be guided by:

- whether the perpetrator's actions are so serious they ought to face trial in court
- the impact that a licensing decision will have in correcting any breach
- the impact that a licensing decision may have on the perpetrators' ability to continue operating their licensable activity
- in some cases, licensing decisions and prosecutions serve different purposes – licensing decisions about hackney carriage drivers for example concern their fitness and propriety to hold a licence, whilst a prosecution serves the objectives outlined in section 6.5 above. Similarly, reviews under the Licensing Act 2003 and Gambling Act 2005 are designed to be more corrective than punitive in nature, which should be a matter reserved for the courts.

6.10.2 We have a specific policy in relation to hackney carriage and private hire vehicle drivers:

- our investigation into complaints will look for evidence to either prove or disprove alleged offences – this will always include a discussion with the driver
- we will not take account of a driver's previous history during the investigation process
- If there is no evidence, or insufficient evidence, to prove the complaint no further action shall be taken
- we will notify drivers of all complaints received against them whether proven or not so that they can be discussed
- if an offence is proven, the offence shall be considered and action taken in accordance with the principles in this enforcement policy
- all proven complaints will be considered in future enforcement or licensing decisions

6.10.3 For all proven offences drivers will at least be informed of the offence and we will explain how to prevent further offences. Generally, where a proven offence is as a result of a complaint drivers can expect to receive at least a formal written warning.

6.10.4 Proven serious offences by drivers concerning

- dishonesty
- breach of trust
- violence
- aggression
- putting a member of the public in danger, or
- putting a member of the public in an unsafe position

may result in the suspension of the driver's licence for a maximum of two days, or in prosecution. The driver's previous history will be taken into account when making this decision along with other factors such as the attitude of the driver, the impact of the offence etc.

6.10.5 Except in exceptional circumstances on the grounds of public safety, no suspension of a drivers licence will take effect until at least 21 days after the suspension notice has been served. During this time, the driver has the right to appeal against the suspension notice by applying to the magistrates' court.

- 6.10.6 Drivers who receive repeated written warnings or show a history of similar offences will be invited to attend a Case Review. This is a meeting with the Section Head for Environmental Health and Licensing to discuss their conduct.
- 6.10.7 Any driver who re-offends after suspension or a successful prosecution, or commits a very serious first offence, will be referred to the Head of Community and Customer Services. A Case Review can also recommend that a driver be considered by the Head of Community and Customer Services (after consultation with the Chair of the Licensing Committee) who will consider if the driver is still fit and proper to hold a licence, and if their licence should be revoked or (as the case may be) not renewed.
- 6.10.8 Appeals against revocation or the refusal to renew a licence are made to the magistrates' court within 21 days of being notified of our decision.

6.11 **Confiscation of Assets**

We believe that people should not profit from their criminal behaviour. When people have been convicted of offences and it can be shown that they have made money from their criminal lifestyle, we may seek Confiscation Orders under the Proceeds of Crime Act 2002.

7 **Other policies**

We are required to have enforcement policies setting out how we enforce food safety legislation, and the Health and Safety at Work etc Act 1974. Our statutory policy under the Licensing Act 2003 lays out our approach to enforcement action when licences under that legislation are reviewed. Our statutory policy under the Gambling Act 2005 sets out our approach to compliance and enforcement within gambling premises.

7.1 We have published minimum standards for tackling anti-social behaviour in conjunction with our partners.

7.2 We have signed the Hertfordshire Licensing Enforcement Protocol with other statutory authorities concerning the Licensing Act 2003, and a Partnership Agreement with Hertfordshire Fire & Rescue Service. Copies of these documents are available on request.

7.3 This policy should be read in conjunction with those documents, and will take precedence in the event of any conflict.

8 **Other enforcement partners**

Some investigations will reveal offences that are solely or jointly enforced by other agencies. These can include other local authorities, the police, fire service, trading standards, Gambling Commission, HM Revenues & Customs, UK Border Agency, Health & Safety Executive or the Environment Agency.

8.1 Where two offences arise out of the same set of facts but are enforced by two agencies, we will agree on a case-by-case basis the most appropriate enforcement action as each agency may decide a different disposal is justified.

8.2 We will share information with our enforcement agencies where legislation permits, in accordance with agreed protocols and in accordance with the Data Protection Act 1988.

9 **Customer standards and Complaints (inc ombudsman)**

For details of our customer standards about how you can expect us to treat you, please visit <http://www.watford.gov.uk/ccm/content/strategic-services/customer-standards---putting-our-customers-first.en> or ask one of our officers for a copy.

PART A

Report to: Licensing Committee
Date of meeting: 14 July 2014
Report of: Head of Community and Customer Services
Title: Fees for pavement licences in The Parade

1.0 SUMMARY

1.1 The Council issues licences to business to place tables and chairs on the public highway outside their premises as street cafes. Businesses pay an initial application fee and an annual fee afterwards for the licence.

1.2 In order to reinstate the existing tables and chairs back onto The Parade following the improvement works in The Parade, and to encourage new applications for tables and chairs on the highway, coupled with the Council's aim to enhance the town's economic prosperity and potential, the Licensing Committee is asked to consider a limited waiver of fees for pavement licence holders for the financial year 2014/2015 only.

2.0 RECOMMENDATIONS

2.1 That businesses in The Parade that have applied for the grant or renewal of pavement licences between 1 March 2014 and 1 March 2015 be able to do so free of charge.

Contact Officer:

For further information on this report please contact: Jeffrey Leib (Licensing Manager) on telephone extension 8429 or email jeffrey.leib@watford.gov.uk.

Report approved by: Alan Gough, Head of Community and Customer Services

3.0 DETAILED PROPOSAL

3.1 The Council grants annual licences under the Highways Act 1980 to businesses that wish to set out tables and chairs on the public highway to operate as pavement cafes. An application fee of £367 is payable and an annual renewal fee of £315. Minor changes to licences are permitted without charge.

3.2 There are currently thirty licences, all of which are in the town centre and fifteen of

which are located in The Parade. Enquiries from businesses indicate that there may be a very few more applications being submitted in the near future.

- 3.3 Most of the licence-holders in The Parade have not always been able to use their licenses as granted whilst the improvement works have taken place over the last year, and in recognition of this they were granted an additional two months' extension to their licences.
- 3.4 With the improvement works now completed, officers have reviewed the more generous space that is now available for tables and chairs to be sited. For some businesses this will represent a new opportunity to boost their businesses by providing a pavement café for the first time, and for nearly all existing premises the opportunity to expand their existing provision should they wish.
- 3.5 The location of tables and chairs also has to take into account the stalls for the new Watford market and Watford's Big Events. Although officers have mapped out initial space requirements, it is anticipated that the layout of some pavement cafes may have to be altered from time to time throughout the year to meet the operational and safety requirements of the Big Events. Officers are therefore amending the licences in conjunction with the businesses to indicate space that may be used when events are taking place, and on normal business trading days. Not every pavement café will necessarily be affected by every Big Event, for example the outdoor cinema screening in August for example may not interfere with any pavement café.
- 3.6 In recognition of the Parade improvement works, the need for businesses' co-operation and flexibility to accommodate the Big Events programme, and to encourage businesses to take advantage of the new opportunities in The Parade, the internal Town Centre Co-Ordinating Group has suggested the licence fee be waived for 2014/2015. This waiver is consistent with other facilities offered to businesses in The Parade such as business rate relief during the improvement project.
- 3.7 The loss to the Council from waiving the fees (which represents the costs of administering and enforcement by the licensing team) is approximately £4,725 for renewals and approximately £1,468 if four new ones are granted. The Head of Customer and Community Services can request virements between budgets to compensate. However, Member approval is required to waive the fees. as they were set by Cabinet as part of the last budget cycle of annual fees and charges.
- 3.8 Although the Cabinet set the fees, the Head of Democracy and Governance has confirmed that this is properly a role for the Licensing Committee under the Local Authorities (Functions and Responsibilities) Regulations 2000.
- 3.9 For the sake of clarity, it is not proposed to waive the fees for businesses other than those in The Parade, nor for more than one application per business.
- 3.10 Some businesses may decide not to apply for licences this year if the fee is not waived. Other businesses may apply but perhaps may not be so co-operative in amending the physical layout of their pavement cafes to accommodate the events programme and/or market.

4.0 **IMPLICATIONS**

4.1 **Financial**

4.1.1 The Shared Director of Finance comments the loss of pavement licence income totalling approximately £6,200 **for one calendar year only** can be contained within existing budgetary provision across the Licensing service. The 2014/15 budget for all customer and client receipts within Licensing is £246,570, and the 2013/14 actuals totalled £277,405.

4.2 **Legal Issues** (Monitoring Officer)

4.2.1 The Head of Democracy and Governance comments that there are no legal implications arising from this report. The Highways Act 1980, under which pavement licences are granted, allows the council to charge for its reasonable expenses in connection with granting the permission.

4.3 **Equalities**

4.3.1 There are no equalities issues as this is not a new policy. There is a separate policy for determining the grant and renewal of the licences themselves.

4.4 **Potential Risks**

4.4.1 No potential risks have been identified.

Appendices

None

Background Papers

No papers were used in the preparation of this report.

File Reference

Pavement licences

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PART A

Report to: Licensing Committee
Date of meeting: 14 July 2014
Report of: Head of Community and Customer Services
Title: Interim town centre street trading policy

1.0 SUMMARY

- 1.1 The Council has the power to regulate both ad hoc and formal street trading within the Borough should it choose, and has an existing regime that does so. The improvements to the town centre coupled with regenerating The Parade through a cultural programme have created the opportunity to review the policy for that part of the town centre.
- 1.2 Officers recommend a small, limited trial of street trading in The Parade to initially complement the Big Events programme. This does not replace the existing policy for the rest of the Borough.

2.0 RECOMMENDATIONS

- 2.1 The Committee adopts the interim town centre street trading policy at appendix 1
- 2.2 The Head of Community and Customer Services be given delegated authority to make any minor amendments to this policy including, where needed, in consultation with the chair of the Licensing Committee.

Contact Officer:

For further information on this report please contact: Jeffrey Leib (Licensing Manager) on telephone extension 8429 or email: jeffrey.leib@watford.gov.uk.

Report approved by: Alan Gough, Head of Community and Customer Services

3.0 DETAILED PROPOSAL

- 3.1 The Council has powers under the schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 to control street trading within the Borough. Streets may, with the agreement of the highways authority, be:

- (1) prohibited streets, where no street trading activities may take place
- (2) licence streets, for formalised street markets
- (3) consent streets, for irregular and ad-hoc trading
- (4) undesignated, where trading may take place without restriction.

3.2 Street trading means offering for sale or selling any goods (including living things) but not the offer or sale of services. Therefore offering or selling balloons, jewellery or DVDs would be within this definition, but not offering or selling television subscription or car breakdown membership subscriptions.

3.3 There are a number of exemptions to the street trading controls. These include:

- (1) sales of newspapers and periodicals
- (2) sales by holders of pedlar's certificates
- (3) sales for charitable purposes where a street collection permit has been issued
- (4) sales at pavement cafes licensed under the Highways Act 1980 and
- (5) sales by roundsman
- (6) trading as part of a charter market.

3.4 Generally speaking the council's current policy is that all streets outside of the town centre are designated as 'consent' streets where prior permission is needed to trade from within 10 metres of the roadway. Major roads within the Borough such as the A405, A41, A411 and part of the A412 are generally designated as prohibited streets.

3.5 Within the town centre, the High Street and roads leading from the High Street are designated as prohibited streets as are Albert Road South. St Mary's Square and The Parade are designated as consent streets. In the case of The Parade, this has been restricted since 1984 to non-commercial trading. In the case of St Mary's Square any commercial trading was limited to street markets organised by the council but only for a one-year trial in 2006 – 2007.

3.6 There are two town centre locations that are an exemption to the overall policy, and it is not intended that these will be affected by the implications of this report:

- (1) the fruit and vegetable stall outside 103 The Parade (Watford Town Kebabs). This site was historically used before the town centre street trading controls were introduced and also benefits from planning permission to trade from the land which forms a privately-owned forecourt; and
- (2) the fruit and vegetable stall at the entrance to Charter Place. There has historically been street trading in Charter Place, and a special exemption was granted by the Licensing Committee in 2005 to allow trading from this location.

- 3.7 Members will be aware that the charter market is relocating in September from Charter Place to behind 23 – 33 The Parade (currently occupied by B & M Stores), with market stalls trading on The Parade between Bentine Lane and Clarendon Road on five days of the week.
- 3.8 Members will also be aware of the Big Event programme to regenerate The Parade area through a programme of cultural activities over the next three years. Whilst the programme is designed to also benefit the businesses along The Parade it can also provide an opportunity for the council to support a few micro-businesses and small to medium enterprises who can add quality and value to the events. It is important that the right mix of traders is introduced, given the relocation of the charter market and the number of other businesses along The Parade who will have something to offer to the Big Events audience.
- 3.9 This report seeks approval from the Committee for this interim policy to operate until September 2015 at the latest so that the effects of street trading in The Parade can be evaluated before a more permanent policy is introduced as part of a wider town centre strategy. A draft policy is set out at appendix I for Members to consider. The Provision of Services Regulations 1990 (SI 1990 No 2999) has been taken into account in drafting the policy to ensure it is not discriminatory, and that it is proportionate, clear and unambiguous, objective, publicly available, transparent and accessible.
- 3.10 The policy has been drafted by officers across the Council and including the Town Centre Manager. It will be discussed by the Town Centre Partnership on 14 July 2014, and their views will be reported verbally to the Committee at its meeting.
- 3.11 Given the experimental nature of the policy, officers also recommend that the Head of Community and Customer Services be given delegated authority to make any minor modifications to the policy where, if necessary, in consultation with the chair of the Committee.

4.0 **IMPLICATIONS**

4.1 **Financial**

- 4.1.1 The Shared Director of Finance comments that there are no financial implications arising from this report.

4.2 **Legal Issues** (Monitoring Officer)

- 4.2.1 The Head of Democracy and Governance comments that there are no legal implications arising from this report.

4.4 **Potential Risks**

Potential Risk	Likelihood	Impact	Overall score
Not implementing the policy	1	1	2

Appendices

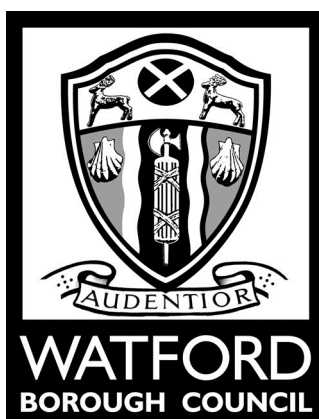
Appendix 1 – Draft interim street trading policy

Background Papers

No papers were used in the preparation of this report.

File Reference

None



LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 Schedule 4

INTERIM TOWN CENTRE STREET TRADING POLICY

1. Duration and scope

- (1) This policy applies to The Parade, Watford between its junctions with Rickmansworth Road and Bentine Lane.
- (2) It applies from 15 July 2014 to 30 September 2015, unless the Council's Licensing Committee resolves to revoke, vary or extend it before that time.
- (3) No more than four street trading consents will be granted at any one time to coincide with events and activities associated with the Big Events programme (or similar programmes if this policy is extended).
- (4) Consents will not be issued for more than one day at a time. They may be time-limited to coincide with the operating times of the events or activities in The Parade.

2. Locations

- (1) Applicants should liaise with event organisers to agree a provisionally suitable location. A maximum of four locations that are suitable for street trading will be approved on an event-by-event basis by Licensing Officers in consultation with event organisers, the Council's Event Planning Group and where necessary the Watford and Three Rivers Safety Advisory Group.

3. Application process

- (1) Applications must be submitted no later than 10 working days before the date of the event.
- (2) Applications will be considered in the strict date order in which they are received. If more than one application is received on the same day the one which most closely meets the criteria in this policy will be considered first.

- (3) Applications must be accompanied by:
 - (a) passport-size photographs of the applicant(s);
 - (b) copies of food registration and food hygiene training where appropriate;
 - (c) copies of public liability insurance showing at least £1 million cover;
 - (d) three colour photographs showing different elevations of the stall, barrow or vehicle;
 - (e) the fee of £21 for each day to be traded.
- (4) Applications will be determined by the licensing team in consultation with the Town Centre Manager and the event organiser to ensure the proposed goods to be sold complements the event in question.
- (5) A successful applicant may re-apply for a consent, subject to the first come-first served criteria above.
- (6) Unsuccessful applicants will be given reasons as to why their application has not been accepted and may submit applications for future dates.

4. Selection criteria

- (1) The Council wishes to enhance the quality of goods and stalls that are available in The Parade. Accordingly goods that are offered for sale must complement the existing offer, and not simply appear to be of a better quality than something already on offer for sale within The Parade or Watford's charter market. Consents will be issued to allow goods to be sold exclusively from one stall at a time, and not for stalls to compete against each other.
- (2) Preference will be given to applicants:
 - (a) that have a food hygiene rating of four stars or above
 - (b) that promote healthy eating
 - (c) that will have a low environmental impact, eg low-running generators, little or no waste generation, use of recyclable packages/cartons, low-emission engines and efficient waste management policies
 - (d) stalls that are of good quality, eg well-maintained, no obvious damage or repairs, clean and presentable and in keeping with the amenity of The Parade.
- (3) Preference will be given to goods which complement the event or activity that will be taking place in The Parade for the duration of the street trading consent and to:
 - (a) arts/crafts
 - (b) seasonal items
 - (c) jewellery
 - (d) candles
 - (e) paintings (include portraits/face painting)
 - (f) balloons
 - (g) confectionary/Nuts/Doughnuts
 - (h) ice cream
 - (j) hot potato vendors
 - (k) crepes/waffles

NB: This list is not exhaustive and may be modified from time to time by officers

- (4) Consents will not be granted for:
- (a) age-restricted products including alcohol
 - (b) gas and electrical appliances
 - (c) general household goods
 - (d) pets and livestock
 - (e) explosive and flammable products
 - (f) goods that do not carry where appropriate the relevant CE safety marking
 - (g) motor vehicles
 - (i) other goods deemed as unsuitable by Council officers.
- (5) The Provision of Service Regulations 2009 (SI 2009 No 2999) has been taken into account in drafting this policy to ensure the requirements are not discriminatory and that it is proportionate, clear and unambiguous, objective, publicly available, transparent and accessible.
- (6) Consents cannot be issued to a person under the age of 17 years. An application may be refused if the applicant is unsuitable to hold the consent by reason of providing unsatisfactory references if requested, having been convicted of a criminal offence or for any other reason.

5. Licence conditions

Consents will be issued subject to the following reasonable and proportionate conditions:

1. This consent allows the consent-holder to trade at the location shown overleaf, providing that authorised officers of the Council may require the location to be changed for operational reasons relating to events or activities in The Parade.
2. The consent-holder is not permitted to place any stall, barrow or vehicle at the location more than 60 minutes before the time specified overleaf, nor remain on site for more than 60 minutes after the time stated overleaf, unless agreed otherwise with authorised officers of the Council.
3. The consent-holder may employ agents if required, providing the consent-holder exercises proper control over the stall or vehicle at all times and the names of those agents are notified to the Council in writing.
4. The consent-holder must ensure that they, any staff and agents, are familiar with:
 - (a) the event plan for the event coinciding with the duration of this street trading consent ;
 - (b) the identify of the relevant event manager, event safety officer and/or person in charge;
 - (c) the emergency arrangements for the event in question, including means of communication and action to be taken should the event need to be cancelled.
5. The consent-holder must ensure that this consent is displayed on the stall, barrow or vehicle at all times.

6. The consent holder(s) shall not cause any nuisance or annoyance to any other user of the highway or the occupier(s) of nearby premises.
7. No recorded or amplified music or radio shall be played by the consent holder(s) or any agent at the stall.
8. The consent-holder or his agent must ensure that they implement a Litter Management Strategy.
9. (1) No water, rubbish or waste material shall be discharged or deposited on the highway or any adjacent property into any surface water inspection chamber or gully;
(2) At the end of the period for trading the consent-holder must ensure a radius of 50 metres from the stall, barrow or vehicle is swept clear of litter;
(3) No waste must be disposed of in litter bins placed in The Parade and must be treated as trade waste by the consent-holder.
10. No leaflets, flyers or printed matter may be distributed within The Parade, High Street or surrounding roads unless the consent-holder has also obtained the appropriate consent from the Council.
11. The following are not permitted to be sold:
 - (a) age-restricted products including alcohol
 - (b) gas and electrical appliances
 - (c) general household goods
 - (d) pets and livestock
 - (e) explosive and flammable products
 - (f) good that do not carry where appropriate the relevant CE safety marking
 - (g) motor vehicles
 - (i) other goods deemed as unsuitable by Council officers.
12. If this consent is granted for street trading from a trailer vehicle:
 - (1) the towing vehicle may not be parked on any footway or part of a footway;
 - (2) this consent does not give permission for the holder to park any towing vehicle where waiting is normally prohibited;
 - (3) towing vehicles must be immediately removed from the designated trading location once the trailer vehicle is in position;
 - (4) any trailer vehicles must be secured against unexpected movement, for example by use of wheel-chocks if necessary;
 - (5) tow-bars and other apparatus must be secured against slips, trips or falls;
 - (6) access to The Parade is prohibited unless consent-holder obtains a dispensation from the Parking Service on 01908 223507 for the towing vehicle
13. Any damage to the highway at the location for trading must be notified to the Council's Transport and Infrastructure Section on 01923 278081 together with photographic evidence. Unreported damage to the highway that is subsequently found may result in a claim against the consent-holder for making good the damage.

PART A

Report to: Licensing Committee
Date of meeting: 14 July 2014
Report of: Head of Community and Customer Services
Title: Charity collections in the town centre

1.0 SUMMARY

- 1.1 At its last meeting on 18 March 2014 the Committee agreed to changes to its policy on charity collections in the town centre. This report is to briefly update Members on progress since then and to clarify a few minor outstanding points.

2.0 RECOMMENDATIONS

- 2.1 That the charitable collections policy adopted on 18 March 2014 be amended to allow:

(1) no more than one charitable stall in The Parade between Rickmansworth Road and Bentine Lane, unless recommended by exception by the Events Planning Group. This group will approve only additional stalls that are part of an organised event recognised by the Council and supporting local charities.

(2) with the exception of zone 1 of the policy, only one charity may be allowed to collect in the town centre at a time subject to the limits on the days and numbers of collectors set out in the policy.

(3) that vehicles used as part of non-commercial promotions and activities be authorised by officers to be sited in the town centre subject to consultation with the Highways Authority and the Parking Service;

Contact Officer:

For further information on this report please contact: Jeffrey Leib (Licensing Manager) on telephone extension 8429 or email: jeffrey.leib@watford.gov.uk.

Report approved by: Alan Gough, Head of Community and Customer Services

3.0 DETAILED PROPOSAL

3.1 At its' last meeting on 18 March 2014 the Committee agreed changes to its policy on charitable street collections in the town centre, which followed a public consultation exercise. A few minor operational changes require consideration as a result.

3.2 Charitable direct debit collections

Amongst the changes was a decision to enter into a site management agreement with the Public Fundraising Regulatory Association (PFRA), a voluntary umbrella body for organisations involved in face-to-face direct debit fundraising in the streets. The effect of the agreement is to limit the number of face-to-face fundraisers in the town centre at any one time.

3.3 The draft agreement suggested there would be a maximum of six fundraisers in the town centre at any one time, and Members expressed the view that this should be limited to no more than four. The agreement also specified that they should only be allowed to collect on Tuesdays, Wednesdays or Thursdays.

3.4 The PFRA have agreed to this change and officers are now able to sign the agreement.

3.5 Charitable cash collections

The policy divides the town centre into zones, with a limit on the times and numbers of collectors allowed in each zone at a time. For the sake of clarity, the Committee is asked to confirm that only one charity at a time should be allowed to collect in the town centre, subject to the limits on the numbers of collectors in each zone.

3.6 Non-commercial promotional stalls

The policy also set out three locations where non-commercial, charitable promotional stalls could be set up in:

(1) The Parade between Bentine Lane and Clarendon Road, subject to agreement with the charter market operator;

(2) St Mary's Square; and

(3) Queens Road between the High Street and Beechen Grove.

3.7 The policy sets out that no non-commercial stalls would be allowed in The Parade between Rickmansworth Road and Bentine Lane. As this area is specifically designed for events and entertainments such as Watford Live, it is suggested that this approach is too restrictive. Instead, the policy should allow one charitable stall to be positioned in this area, or more than one where part of a larger event recognised by the Council.

3.8 Vehicles

There are occasions when the sites above are not necessarily suitable for the proposed promotion. These are typically activities involving vehicles – officers have recently processed an application for Macmillan Cancer Care and for diabetes awareness day to park promotional buses in the High Street. In these cases approval is not given without prior consultation with Highways and with the Parking Service.

Officers propose a clarification to the policy so that alternative locations can be approved where the use of vehicles is involved, in consultation with Highways and the Parking Service.

4.0 **IMPLICATIONS**

4.1 **Financial**

4.1.1 The Shared Director of Finance comments that there are no financial implications arising from this report.

4.2 **Legal Issues** (Monitoring Officer)

4.2.1 The Head of Democracy and Governance comments that there are no legal implications arising from this report.

4.4 **Potential Risks**

Potential Risk	Likelihood	Impact	Overall score
Not implementing the policy	1	1	2

Appendices

None

Background Papers

PFRA draft Site Management Agreement with Watford Borough Council and related correspondence

File Reference

None

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